

Ownership of minerals and cadastral system

1. Minerals property of Republic
2. Compulsory acquisition of land
3. Land available for application for mineral right
4. Minister may reserve land from mining
5. Power of Minister to grant mineral rights
6. Exportation and disposal of minerals commission
7. Government's right of pre-emption
8. Cadastral system

Mineral rights

9. Mining activities require mineral right
10. Qualification for grant of mineral right
11. Application for mineral rights
12. Recommendation to the Minister
13. Grant of mineral rights
14. Assignment of mineral rights
15. Amendment of mineral right to add other minerals
16. Obligations of holders of mineral rights
17. Water right
18. Forestry and Environmental protection
19. Records of and reports by mineral right holders
20. Public access to information
21. Copyright in information

Royalties, rentals and fees

22. Application fee
23. Annual ground rent
24. Annual mineral right fees
25. Royalties
26. Recovery of debts

Dispute resolution

27. Dispute resolution
28. Capitalization of expenditure
29. Additional benefits
30. Transferability of capital

Reconnaissance licence

31. Application for reconnaissance licence

32. Rights of holder of reconnaissance licence
33. Application for extension of term of reconnaissance licence

Prospecting licence

34. Application for prospecting licence
35. Extensions of the term of a prospecting licence
36. Programme of prospecting operations
37. Rights of holder of prospecting licence
38. Compulsory reduction of area of prospecting licence

Mining lease

39. Application for mining lease by holder of reconnaissance licence or prospecting licence
40. Application for a mining lease by any other person
41. Terms for the grant of a mining lease
42. Rejection of an application for a mining lease
43. Government participation in mining lease
44. Renewal of mining lease
45. Amendment of programme for mining operations
46. Rights conferred by mining lease
47. Merger and enlargement of mineral rights
48. Stability agreement
49. Development agreement
50. Recruitment and training of Ghanaians
51. Suspension of production
52. Change of control of company holding mining lease
53. Objection to new or increased control
54. Contraventions by controller
55. Restriction and sale of shares
56. Notification of ceasing to be a controller
57. Notification by mining company
58. Investigation on behalf of the Minister
59. Mine support services
60. Special share of Republic
61. Modification of application of Companies Code (Act 179)

Radio-Active minerals commission

62. Radio-active minerals
63. Holder of radio-active mineral right to report operations
64. Export of radio-active mineral

- 65. Offence and penalties under sections 62 to 64
- 66. Powers of search and arrest

Surrender, suspension and cancellations of mineral rights

- 67. Surrender of mineral rights
- 68. Suspension and cancellation of mineral right
- 69. Suspension or cancellation of mining lease or restricted mining lease
- 70. Vesting of property on termination of mineral right
- 71. Delivery of documents to Minister on termination of a mineral right

Surface rights and compensation

- 72. Surface rights
- 73. Compensation for disturbance of owner's surface rights
- 74. Compensation principles
- 75. Access to the Court in respect of compensation

Industrial minerals commission

- 76. Licences and leases for industrial minerals
- 77. Limits on restricted licences and leases
- 78. Qualification for application for restricted licence or restricted mining lease
- 79. Non-citizen's right to apply for industrial mineral right
- 80. Special right of owner or occupier with regard to industrial minerals

Small scale mining

- 81. Application of this Part
- 82. Licence for small scale mining
- 83. Qualification of applicant for small scale mining licence
- 84. Conditions for the grant of a licence
- 85. Duration of a licence
- 86. Areas covered by licence
- 87. Revocation of licence
- 88. Transfer of licence
- 89. Designated areas
- 90. Establishment of District Small Scale mining Centres and functions of Centres
- 91. Registration of prospective licensees
- 92. Small Scale Mining Committees
- 93. Operations of small scale miners
- 94. Compensation for use of land

- 95. Use of explosives
- 96. Purchase of mercury
- 97. Sale of minerals
- 98. Sale of jewellery
- 99. Offences and penalties under sections 81-99

Administration and miscellaneous provisions

- 100. Power of Minerals Commission
- 101. Inspectorate of Mines
- 102. Functions of Inspectorate of Mines
- 103. Register of mineral rights
- 104. Licence to buy and deal in minerals
- 105. Preference for local products and employment of Ghanaians
- 106. Offences
- 107. Offences by bodies of persons
- 108. General penalty
- 109. Penalty to be civil debt
- 110. Regulation
- 111. Interpretation
- 112. Repeal, savings and transitional provisions

THE SEVEN HUNDRED AND THIRD
ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

THE MINERALS AND MINING ACT, 2006

AN ACT to revise and consolidate the law relating to minerals and mining and to provide for connected purposes.

DATE OF ASSENT: 22nd March, 2006

ENACTED by the President and Parliament:

Ownership of minerals and cadastral system

Minerals property of Republic

1. Every mineral in its natural state in, under or upon land in Ghana, rivers, streams, water-courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the President in trust for the people of Ghana.

Compulsory acquisition and land

2. Where land is required to secure the development or utilization of a mineral resource, the President may acquire the land or authorize its occupation and use under an applicable enactment for the time being in force.

Land available for application for mineral right

3. Land in the country may be made the subject of an application for a mineral right in respect of a mineral specified in the application, other than land which is
 - (a) the subject of an existing mineral right in respect of the specified mineral,
or
 - (b) expressly reserved, by or under this Act or any other enactment from becoming the subject of a mineral right.

Minister may reserve land from mining

4. (1) The Minister may, by Executive Instrument declared land, not being the subject of a mineral right, to be reserved from,
 - (a) becoming the subject of an application for a mineral right for a mineral, or
 - (b) becoming the subject of an application for a mineral right in respect of specified minerals or of all minerals except specified minerals.
- (2) An Executive Instrument issued shall be by the authority of the President.

Power of Minister to grant mineral rights

5. (1) Subject to subsections (4) and (5), the Minister on behalf of the President and on the recommendation of the Commission may negotiate, grant, revoke, suspend or renew mineral rights in accordance with this Act.
 - (2) Where the Minister grants a mineral right, the Minister shall determine the land subject to the grant.
 - (3) Where the Minister determines not to grant an application or determines to grant an application over a part of the land applied for, the Minister shall give the applicant written reasons.
 - (4) A transaction contract or undertaking involving the grant of a right or concession by or on behalf of a person or body of persons, for the exploitation of a mineral in Ghana shall be subject to ratification by Parliament.
 - (5) Parliament may, by resolution supported by the votes of not less than two-thirds of all the members of Parliament, exempt from the provisions of subsection (4) of this section a particular class of transaction, contract or undertakings.

Exportation and disposal of minerals

6. (1) Except otherwise provided in this Act, a person shall not export, sell or otherwise dispose of a mineral, unless the person holds a licence granted by the Minister for that purpose.
 - (2) An application for a licence shall be made in writing to the Minister in the prescribed manner.

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

(4) A licence issued is not transferable.

(5) Shipment of rough diamonds to and from Ghana shall be subject to rules and Regulations as prescribed and shall be in accordance with the Kimberley Process Certification Scheme.

Government's right of pre-emption

7. (1) The Minister has the right of pre-emption of all minerals raised, won or obtained in Ghana and from any area covered by territorial waters, the exclusive economic zone or the continental shelf and products derived from the refining or treatment of these minerals.

(2) The Government may, by an Executive Instrument, appoint a statutory body to act as its agent for the exercise of the right of pre-emption.

Cadastral system

8. (1) For purpose of this Act, the surface of the Earth shall be deemed to be divided in accordance with the co-ordinates represented in the official maps of Ghana held at the Commission at a scale of 1:50,000,

(a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 15 or a multiple of 15 seconds of longitude,

(b) by the equator and by parallels of latitude that are at a distance from the equator of 15 or a multiple of 15 seconds of latitude, into sections ("geometric sections") each of which is bounded,

(c) by portions of those 2 meridians that are at a distance from each other of 15 seconds of longitude, and

(d) by portions of 2 of those parallels of latitude that are at a distance from each other of 15 seconds of latitude.

(2) For purposes of this Act,

(a) a geometric section that is wholly within Ghana constitutes a block and

(b) where only part of a geometric section is within Ghana, that part constitutes a block.

(3) Despite the provisions of paragraphs (a) and (b) of subsection (2), fractions of blocks as may be prescribed shall be acceptable in the case of a licence granted for small scale mining.

Mineral rights

Mining activities require mineral rights

9. (1) Despite a right or title which a person may have to land in, upon or under which minerals are situated, a person shall not conduct activities on or over land in Ghana for the search, reconnaissance, prospecting, exploration or mining for a mineral unless the person has been granted a mineral right in accordance with this Act.
- (2) Activities conducted under a mineral right shall be limited to the activities permitted by the mineral right.
- (3) Subsection (1) does not prevent a government institution or agency from conducting geological activities in accordance with its powers under an enactment.

Qualification for grant of mineral right

10. Unless otherwise provided in this Act, a mineral right shall not be granted to a person unless the person is a body incorporated under the Companies Code 1963 (Act 179), under the Incorporated Private Partnerships Act 1962 (Act 152) or under an enactment in force.

Application for mineral rights

11. An application for a mineral right shall be submitted to the Minerals Commission in the prescribed form and shall be accompanied with a statement providing,
 - (a) particulars of the financial and technical resources available to the applicant for the proposed mineral operations,
 - (b) an estimate of the amount of money proposed to be spent on the operations,
 - (c) particulars of the programme for proposed mineral operations, and
 - (d) particulars of the applicant's proposals with respect to the employment and training in the mining industry of Ghanaians.

Recommendation to the Minister

12. The Commission shall, unless delay occurs because of a request for further information from an applicant or a delay is caused by the applicant, submit its recommendation on an application for a mineral right to the Minister within ninety days of receipt of the application.

Grant of mineral rights

13. (1) The Minister shall within sixty days on receipt of recommendation from the Commission make a decision and notify the applicant in writing of the decision on the application and where the application is approved, the notice shall include details of the area, the period and the mineral subject to the mineral right.
 - (2) The Minister shall, not less than forty-five days prior to making a decision under subsection (1), give a notice in writing of a pending application for the grant of a mineral right in respect of the land to a chief or allodial owner and the relevant District Assembly.
 - (3) A notice given under subsection (2) shall
 - (a) state the proposed boundaries of the land in relation to which the mineral right is applied for, and
 - (b) be published in
 - (i) a manner customarily acceptable to the areas concerned, and
 - (ii) the Gazette and exhibited at the offices of the District Assembly within whose district, a part of the area is situated.
 - (4) The applicant shall within sixty days of receipt of notification of approval, notify the Minister in writing of acceptance of the offer of the grant.
 - (5) The Minister shall upon receipt of the notification of acceptance of the offer, grant the mineral right to the applicant.
 - (6) An approved application shall lapse if the applicant fails to notify the Minister of an acceptance in accordance with subsection (4).
 - (7) Subject to the provision of this Act, a mineral right shall be subject to the terms and conditions that are prescribed from time to time.
 - (8) The rights and obligations of a holder of mineral right shall apply to the agents and employees of the holder.

(9) Subject to sections 73 and 74, a mineral right granted by the Minister under this section is sufficient authority for the holder over the land and entitles the holder to enter the land in respect of which the right is granted.

(10) The holder of a mineral right shall not remove or destroy a mineral obtained by the holder in the course of a mineral operations without the permission in writing of the head of the Inspectorate Division of the Commission.

(11) Despite subsection (10), cores and samples may be retained by a holder for the purpose of assay, identification or analysis of the mineral.

(12) Where a core is retained under subsection (11), the holder shall maintain in respect of the core or sample, particulars sufficient for the identification of

- (a) the core or sample, and
- (b) the location and geological horizon of its origin

as the head of the Inspectorate Division of the Commission may in consultation with the Director of Geological Survey Department determine.

(13) Geological core samples may after assaying, identification or analysis of a mineral be disposed of only with the express consent of the Commission given in consultation with the Geological Survey Department.

Assignment of mineral rights

(14) (1) A mineral right shall not in whole or in part be transferred, assigned, mortgaged or otherwise encumbered or dealt in, in a manner without the prior approval in writing of the Minister, which approval shall not be unreasonably withheld or given subject to unreasonable conditions.

(2) Where the Minister has not given a decision in writing to the applicant, within thirty days of receipt of an application for approval, the Minister shall upon a request from the applicant give written reasons to the applicant for the failure to communicate a decision on the application.

(3) The reasons required under subsection (2) shall be sent to the applicant within fourteen days of receipt of the request.

(4) A dispute between the Minister and an applicant or holder in respect of a decision of the Minister under subsection (1), shall be referred for resolution under section 27.

- (5) Subject to the other provisions of this section, an undivided proportionate part of a mineral right or application for a mineral right may be transferred, assigned, mortgaged or otherwise encumbered or dealt with.

Amendment of mineral at right to add other minerals

- (15) (1) Where in the course of exercising a mineral right under this Act, the holder discovers an indication of a mineral not included in the mineral right, the holder shall within thirty days of the discovery, notify the Commission and Geological Survey Department in writing of the discovery.
- (2) The notification given under subsection (1) shall
 - (a) contain particulars of the discovery, and
 - (b) the site and circumstances of the discovery.
- (3) The holder of the mineral right may in the prescribed form, apply for the mineral right to be amended to
 - (a) include an additional mineral, or
 - (b) exclude a mineral.
- (4) Subject to this Act and unless the land which is the subject of the mineral right, is subject to another mineral right in respect of the mineral applied for under subsection (3), the Minister shall amend the mineral right on the terms and conditions that may be prescribed.
- (5) A mineral right shall not be granted for another mineral over the same area of land subject to an existing mineral right unless the holder of the existing right is notified and given the first option of applying for the right.
- (6) A notification given under subsection (5) shall contain
 - (a) particulars of the mineral applied for and
 - (b) the area applied for.

Obligations of holders of mineral rights

- (16) (1) The holder of a mineral right shall at all times appoint a manager with the requisite qualification and experience to be in charge of that holder's mineral operations.

(2) The holder of a mineral right shall notify the Head of the Inspectorate Division of the Commission in writing of the appointment of a manager and on each change of the manager.

Water right

17. Subject to obtaining the requisite approvals or licences under the Water Resources Commission Act 1996 (Act 552), a holder of a mineral right may, for purposes of or ancillary to the mineral operations, obtain, divert, impound, convey and use water from a river, stream, underground reservoir or watercourse within the land the subject of the mineral right.

Forestry and environmental protection

18. (1) Before undertaking an activity or operation under a mineral right, the holder of the mineral right shall obtain the necessary approvals and permits required from the Forestry Commission and the Environmental Protection Agency for the protection of natural resources, public health and the environment.

(2) Without limiting subsection (1), a holder of a mineral right shall comply with the applicable Regulations made under this Act and any other enactment for the protection of the environment in so far as relates to exploitation of minerals.

Records of and reports by mineral right holders

19. (1) A holder of a mineral right shall maintain, at an address in Ghana notified to the Commission for the purposes of this section, the documents and records that may be prescribed and shall permit an authorized officer of the Commission at a reasonable time to inspect the documents and records and take copies of them.

(2) A holder of a mineral right shall furnish the Commission, Geological Survey Department and other persons prescribed, with such reports on the mineral operations of and geological information attained by or on behalf of the holder.

Public access to information

20. (1) Records, documents and information furnished or attained under sections 19 and 63 shall, as long as the holder or the holder's successor-in-title retains the mineral right, or any mineral right granted in substitution over the area to which the records, documents and information relate, be treated as confidential and shall not be divulged without the prior written consent of the holder.

(2) Subject to subsection (1), the records, documents and reports furnished or attained under sections 19 and 63 shall be made available for inspection and copy by the public, on payment of the prescribed fee.

- (3) Nothing in this section prohibits the disclosure of confidential information,
- (a) where the disclosure is necessary for the purposes of this Act or an enactment,
 - (b) for the purposes of a prosecution under this Act or any other enactment, or
 - (c) to a person being consultant to the Commission or an officer who is authorized by the Minister to receive the confidential information.
- (4) A person to whom disclosure is made under this section is under an obligation to treat the information as confidential.

Copyright in information

21. Despite a law to the contrary, the copyright in respect of the documents, records and information furnished or attained under sections 19 and 63 shall pass to and reside with the Republic on and from the time that the records, documents and information become available, under section 20(2) for inspection by the public.

Royalties, rentals and fees

Application fee

22. An applicant for a mineral right shall pay a fee as may be prescribed.

Annual ground rent

23. (1) A holder of a mineral right, shall pay an annual ground rent as may be prescribed.
- (2) Payment of annual ground rent shall be made to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which shall be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481).

Annual mineral right fees

24. A holder of a mineral right shall pay an annual mineral right fee that may be prescribed and payment of the fee shall be made to the Commission.

Royalties

25. A holder of a mining lease, restricted mining lease or small scale mining licence shall pay royalty that may be prescribed in respect of minerals obtained from its mining operations to the Republic, except that the rate of royalty shall not be more than 6% or less than 3% of the total revenue of minerals obtained by the holder.

Recovery of debts

26. A fee, royalty or other payment which falls due in respect of a mineral right or otherwise under this Act is a debt owed to the Republic and recoverable in the Court.

Dispute resolution

Dispute resolution

27. (1) Where a dispute arises between a holder of a mineral right and the Republic in respect of a matter expressly stated under this Act is a matter which shall be referred for resolution, all efforts shall be made through mutual discussion and if agreed between the parties, by reference to alternative dispute resolution procedures, to reach an amicable settlement.

(2) Where a dispute arises between a holder who is a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution, which is not amicably resolved as provided in subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may be submitted by a party to the dispute, to arbitration for settlement in accordance with the Arbitration Act, 1961 (Act 38) or any other enactment in force for resolution of disputes.

(3) Where a dispute arises between a holder who is not a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution under this section, which is not amicably resolved as provided under subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may, by a party to the dispute giving notice to all other parties, be submitted to arbitration,
 - (a) in accordance with a international machinery for the resolution of investment disputes, as agreed to by the parties, or
 - (b) if the parties do not reach an agreement under paragraph (a) within thirty days, or a longer period agreed between the parties, of the matter being submitted to arbitration, in accordance with

- (i) firstly, the framework of a bilateral or multilateral agreement on investment protection to which the Republic and the country of which the holder is a national, are parties, or
- (ii) secondly, if no agreement contemplated by subparagraph (i) exists, the rules of procedure for arbitration of the United Nations Commission on International Trade Law, (UNCTRAL Rules).

(4) Each agreement granting a mineral right shall contain provisions on the method of resolution of disputes that may arise under the agreement.

(5) Where a holder has notified the Minister in writing that the holder wishes to refer a dispute for resolution and, but for this subsection,

- (a) the term of the mineral right would expire,
- (b) the area the subject of the mineral right, would be reduced, or
- (c) the rights under the mineral right held at that time would be diminished, the term the area, the right held, as the case may be, shall continue without diminution for the period ending thirty days after the determination of the dispute.

Capitalization of expenditure

28. The holder of a mining lease is entitled to the capitalization of expenditure on reconnaissance and prospecting approved by the Minister on the advice of the Commission where the holder starts development of a commercial find.

Additional benefits

29. The holder of a mineral right may be granted the following:
- (a) exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations;
 - (b) exemption of staff from the payment of income tax on furnished accommodation at the mine site;
 - (c) immigration quota in respect of the approval number of expatriate personnel; and
 - (d) personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Transferability of capital

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

(2) The Minister for Finance, in consultation with the Minister acting on the advice of the Commission may, where the net earnings of a holder of a mining lease from the holder's mining operations are in foreign exchange, permit the holder of the lease to open and retain in an account, an amount not less than twenty five percent of the foreign exchange for

- (a) the acquisition of spare parts, raw materials, and machinery and equipment,
- (b) debt servicing and dividend payment,
- (c) remittance in respect of quotas for expatriate personnel, and
- (d) the transfer of capital in the event of a sale or liquidation of the mining operations.

(3) An account opened and operated under subsection (2) shall, with the consent of the Bank of Ghana, be held in trust by a trustee appointed by the holder of the lease.

(4) Subject to this Act, a holder of a mining lease shall be guaranteed free transferability of convertible currency

- (a) through the Bank of Ghana, or
- (b) in the case of a net foreign exchange holder, through the account opened under subsection (2).

Reconnaissance licence

Application for reconnaissance licence

31. (1) Subject to this Act, the Minister may, on an application made by a qualified person and on the recommendation of the Commission, grant a reconnaissance licence in respect of all or a part of the area applied for and in respect of all or any of the minerals specified in the application.

(2) A reconnaissance licence may be granted for an initial period not more than twelve months.

(3) The area of land in respect of which a reconnaissance licence may be granted shall be a block or any number not more than five thousand contiguous blocks each having a side in common with at least one other block the subject of the application.

Rights of holder of reconnaissance licence

32. (1) Subject to this Act and the Regulations made under this Act, a reconnaissance licence confers on the holder and a person authorized, in accordance with this Act by the holder of the reconnaissance licence, the exclusive right to carry on reconnaissance in the reconnaissance area for the minerals to which the reconnaissance licence relates and to conduct other ancillary or incidental activity.

(2) For the purposes of exercising the right conferred under subsection (1), a holder of a reconnaissance licence and a person authorized in accordance with this Act by the holder of there reconnaissance licence, may enter the reconnaissance area and erect camps or temporary buildings.

(3) A holder of a reconnaissance licence shall not engage in a drilling or excavation.

Application for extension of term of reconnaissance licence

33. (1) A holder of a reconnaissance licence may, not later than three months before the expiration of the initial term of the licence, apply to the Minister for an extension of the term of the reconnaissance licence in respect of all or part of the reconnaissance area.

(2) The form of the application shall be as may be prescribed.

(3) Where an application for extension of the term of a reconnaissance licence is made under this section and the applicant has materially complied with the obligations imposed by this Act with respect to,

- (a) the holding of the licence, and
- (b) the activities to be conducted under the licence,

the Minister shall extend the term of the licence.

(4) Subject to subsection (5), a reconnaissance licence may be extended once only and for a period not exceeding twelve months.

(5) Where, at least one month before the end of the extended period, or within the shorter period that the Minister may allow, the holder of a reconnaissance licence satisfies the Minister that delay by a government institution in the issuance of a permit or in carrying out a lawful activity has resulted in delay by the holder in the discharge of an obligation under the reconnaissance licence, the holder may apply in writing to the Minister for extension and the Minister may extend the term of the reconnaissance licence for a period not more than twelve months.

(6) Where a holder of a reconnaissance licence has made an application for an extension of

- (a) the term of the licence, or
- (b) the land and for some or all of the minerals the subject of the reconnaissance licence,
- (c) immigration quota in respect of the approved number of expatriate personnel; and
- (d) personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

Transferability of capital

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

(2) The Minister for Finance, in consultation with the Minister acting on the advice of the Commission may, where the net earnings of a holder of a mining lease from the holder's mining operations are in foreign exchange, permit the holder of the lease to open and retain in an account, an amount not less than twenty five percent of the foreign exchange for

- (a) the acquisition of spare parts, raw materials, and machinery and equipment,
- (b) debt servicing and dividend payment,
- (c) remittance in respect of quotas for expatriate personnel, and
- (d) the transfer of capital in the event of a sale or liquidation of the mining operations

(3) An account opened and operated under subsection (2) shall, with the consent of the Bank of Ghana, be held in trust by a trustee appointed by the holder of the lease.

(4) Subject to this Act, a holder of a mining lease shall be guaranteed free transferability of convertible currency;

- (a) through the Bank of Ghana, or
- (b) in the case of a net foreign exchange holder, through the account opened under subsection (2).

Reconnaissance licence

Application for reconnaissance licence

31. (1) Subject to this Act, the Minister may, on an application made by a qualified person and on the recommendation of the Commission, grant a reconnaissance licence in respect of all or a part of the area applied for and in respect of all or any of the minerals specified in the application.
- (2) A reconnaissance licence may be granted for an initial period not more than twelve months.
- (3) The area of land in respect of which a reconnaissance licence may be granted shall be a block or any number not more than five thousand contiguous blocks each having a side in common with at least one other block the subject of the application.

Rights of holder of reconnaissance licence

32. (1) Subject to this Act and the Regulations made under this Act, a reconnaissance licence confers on the holder and a person authorized, in accordance with this Act by the holder of the reconnaissance licence, the exclusive right to carry on reconnaissance in the reconnaissance area for the minerals to which the reconnaissance licence relates and to conduct other ancillary or incidental activity.
- (2) For the purposes of exercising the right conferred under subsection (1), a holder of a reconnaissance licence and a person authorized in accordance with this Act by the holder of the reconnaissance licence, may enter the reconnaissance area and erect camps or temporary buildings.
- (3) A holder of a reconnaissance licence shall not engage in a drilling or excavation.

Application for extension of term of reconnaissance licence

33. (1) A holder of a reconnaissance licence may, not later than three months before the expiration of the initial term of the licence, apply to the Minister for an extension of the term of the reconnaissance licence in respect of all or part of the reconnaissance area.
- (2) The form of the application shall be as may be prescribed.

(3) Where an application for extension of the term of a reconnaissance licence is made under this section and the applicant has materially complied with the obligations imposed by this Act with respect to,

- (a) the holding of the licence, and
- (b) the activities to be conducted under the licence,

the Minister shall extend the term of the licence.

(4) Subject to subsection (5), a reconnaissance licence may be extended once only and for a period not exceeding twelve months.

(5) Where, at least one month before the end of the extended period, or within the shorter period that the Minister may allow, the holder of a reconnaissance licence satisfies the Minister that delay by a government institution in the issuance of a permit or in carrying out a lawful activity has resulted in delay by the holder in the discharge of an obligation under the reconnaissance licence, the holder may apply in writing to the Minister for extension and the Minister may extend the term of the reconnaissance licence for a period not more than twelve months.

(6) Where a holder of a reconnaissance licence has made an application for an extension of

- (a) the term of the licence, or
- (b) the land and for some or all of the minerals the subject of the reconnaissance licence, and the term of the reconnaissance licence would but for this subsection, expire, the reconnaissance licence shall continue in force with respect to the land or minerals the subject of the application until the application determined.

(7) If the holder of a reconnaissance licence transfers the reconnaissance licence in accordance with this Act after making an application for

- (a) an extension of the term of the licence, or
- (b) a prospecting licence or mining lease in respect of all or part of the land and for some or all of the minerals the subject of the reconnaissance licence,

the application shall continue in the name of the transferee, as if the transferee had made it.

Prospecting licence

Application for prospecting licence

34. (1) The Minister may, on an application duly made by a qualified person and on the recommendation of the Commission, grant a prospecting licence in respect of all or any of the minerals specified in the application.
- (2) A prospecting licence shall be granted for an initial period not exceeding three years.
- (3) The area of land in respect of which a prospecting licence may be granted shall be a block or a number not exceeding 750 contiguous blocks each having a side in common with at least one other block the subject of the application.
- (4) If a holder of a reconnaissance licence applies for a prospecting licence over all or part of the land and for a mineral the subject of the reconnaissance licence and the holder has materially complied with the obligations imposed by this Act with respect to
- (a) the holding of the licence, and
 - (b) the activities to be conducted under the licence, the Minister shall within sixty days of the application, subject to the permits and other obligations required by law having been complied with, grant the applicant the prospecting licence on the conditions that shall be specified in the licence.
- (5) A dispute between the Minister and a holder in respect of any matter that arises under subsection (4), shall be referred for resolution under section 27.

Extensions of the term of a prospecting

35. (1) The holder of a prospecting licence may, at any time but not later than three months before the expiration of the initial term of the licence, apply in the form that may be prescribed to the Minister for an extension of the term of the prospecting licence subject to section 38(3), for a further period not more than three years in respect of all or any number of blocks the subject of the prospecting licence.
- (2) On an application duly made under subsection (1), and upon being satisfied that the holder has complied with the obligation imposed by this Act with respect to
- (a) the holding of the licence, and
 - (b) the activities to be conducted under the prospecting licence, the Minister shall on the recommendations of the Commission grant an extension of the term of the prospecting licence.

(3) A dispute between the Minister and a holder in respect of a matter that arises under subsection (2) shall be resolved under section 27.

(4) Where a holder of a prospecting licence has made an application for an extension of the term of the licence and the term of the prospecting licence would, but for this subsection expire, the prospecting licence shall continue in force in respect of the land the subject of the application until the application is determined.

(5) Where a holder of a prospecting licence has made an application for a mining lease and the term of the prospecting licence would, but for this subsection expire, the licence shall continue in force with respect to the land and minerals the subject of the application until the application determined.

(6) If the holder of a prospecting licence transfers the prospecting licence in accordance with this Act after making an application for

- (a) the extension of the term of the prospecting licence, or
- (b) a mining lease in respect of all or part of the land and for some or all of the minerals the subject of the prospecting licence,

the application shall continue in the name of the transferee as if the transferee had made the application.

Programme of prospecting operations

36. (1) A prospecting licence may not be granted unless the proposed programme of mineral operations submitted with the application is, in the Minister's reasonable opinion, suitable in the circumstances.

(2) The holder of a prospecting licence shall notify the Minister of an amendment the holder wishes to make to the programme of prospecting operations and the amendment shall, unless rejected by the Minister on reasonable grounds, within two months after receipt of the notice, have effect after that period.

(3) The Minister may, upon an application made by the holder of a prospecting licence, limit or suspend the obligation of the holder to carry on prospecting operations, under terms and conditions that the Minister may reasonably determine.

(4) A dispute between the Minister and a holder in respect of a matter that arises under subsections (1) or (2), shall be resolved under section 27.

Rights and obligations of holder of a prospecting licence

37. (1) The holder of a prospecting licence may in the exercise of the rights under the licence, enter upon land to which the licence relates to

- (a) prospect for the mineral in respect of which the licence is granted,
- (b) make boreholes and excavations that may be necessary for the prospecting purposes,
- (c) erect camps and put up temporary buildings necessary for the prospecting operations, and
- (d) conduct other activity ancillary or incidental to the prospecting.

(2) The holder of a prospecting licence shall

- (a) commence prospecting operation within three months after the date of the issue of the licence, or at a time specified by the Minister,
- (b) demarcate and keep demarcated the prospecting area in the prescribed manner,
- (c) carry on prospecting operation in accordance with the programme of prospecting operations,
- (d) notify the Minister through the Commission, of any discovery of minerals to which the prospecting licence relates within a period of thirty days from the date of the discovery,
- (e) notify the Minister through the Commission of the discovery of a mineral deposit which is of possible economic value within a period of thirty days from the date of the discovery,
- (f) fill back or otherwise make safe to the satisfaction of the Commission a borehole or excavation made during the course of prospecting operations,
- (g) unless the Commission otherwise stipulates, remove within sixty days from the date of the expiration of the prospecting licence a camp, temporary building or machinery erected or installed and make good to the satisfaction of the Commission damage to the surface of the ground occasioned by the removal,
- (h) subject to the condition of the prospecting licence, expend on prospecting not less than the amount specified in the prospecting licence, and
- (i) submit reports of other documents to persons at prescribed intervals and supporting documents containing required information.

(3) Moneys required to be spent under subsection (2) (h) and which are not yet spent shall be a debt to the Republic and recoverable from the holder in the Court.

(4) The holder of a prospecting licence shall to the satisfaction of the Minister, keep full and accurate records of the prospecting operations showing particulars that the Minister may prescribe.

Compulsory reduction of area of prospecting licence

38. (1) Subject to this section, the holder of a prospecting licence shall, prior to or at the expiration of the initial term, surrender not less than half the number of blocks of the prospecting area so long as a minimum of one hundred and twenty five

blocks remain subject to the licence and the blocks form not more than three discrete areas each consisting of

- (a) a single block, or
- (b) a number of blocks each having a side in common with at least one other block in that area.

(2) Where, at least one month before the end of the term or within a shorter period that the Minister may allow, the holder of a prospecting licence satisfies the Minister that delay by a government institution or agency in the issuance of permits or in carrying out a lawful activity have resulted in delay by the holder in the discharge of an obligation under the prospecting licence, the holder may apply in writing to the Minister for relief from the obligation to surrender land and the Minister may exempt that holder from the requirements of this section, either wholly or in part, for a period, not more than twelve months and on other conditions and the Minister thinks fit.

(3) A dispute between the Minister and a holder in respect of a matter that arises under subsection (2), shall be resolved under section 27.

Mining lease

Application for mining lease by holder of reconnaissance licence or prospecting licence

39. (1) A holder of a reconnaissance licence or a prospecting licence may, prior to the expiration of the licence, apply in the prescribed form for one or more mining leases in respect of all or any of the minerals the subject of the licence and in respect of all or any one or more of the blocks which constitutes the reconnaissance or prospecting area except that the blocks shall form not more than three discrete areas, with each consisting of

- (a) a single block, or
- (b) a number of blocks each having a side in common with at least one other block in that area,

and each of which could be the subject of a separate mining lease application.

(2) Subject to this Act and upon an application duly made under subsection (1), if the applicant has materially complied with the obligations imposed by this Act with respect to,

- (a) the holding of the lease, and
- (b) the activities to be conducted under the licence,

the Minister on the recommendation of the Commission shall, within sixty days of receipt of the application and subject to all obligations having been satisfied, grant the applicant a mining lease on conditions specified in the lease.

(3) A dispute between the Minister and a holder in respect of a matter that arises under subsection (2), shall be resolved under section 27.

Application for a mining lease by any other person

40. (1) A person may apply in the prescribed form for mining lease in respect of a mineral specified in the application over land that is not the subject of a mineral right for the mineral applied for.

(2) On an application duly made, the Minister on the recommendation of the Commission, may grant the applicant a mining lease in respect of all or any of the land applied for and in respect of a mineral specified in the application on condition prescribed.

Terms for the grant of a mining lease

41. (1) A mining lease shall be for an initial term of thirty years or for a lesser period that may be agreed with the applicant.

(2) The area in respect of which a mining lease may be granted shall not be less than one block or more than three hundred contiguous blocks each having a side in common with at least one other block the subject of the grant.

Rejection of an application for a mining lease

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

(a) unless the concerns of the Minister have been conveyed in writing to the applicant and the applicant has been given an opportunity to make appropriate amendments to the application or to the proposed programme of mineral operations and has within reasonable time that the Minister may permit, failed to do so, or

(b) on the grounds that the applicant is in default, unless the Minister has given the applicant notice of the default and the applicant has failed within a reasonable time that may be specified in the notice to remedy the default.

(2) A dispute between the Minister and an applicant in respect of a matter that arises under subsection (1) shall be referred for resolution under section 27.

Government participation in mining lease

43. (1) Where a mineral right is for mining or exploitation, the Government shall acquire a ten percent free carried interest in the rights and obligations of the mineral operations in respect of which financial contribution shall not be paid by Government.

(2) Subsection (1) does not preclude the Government from any other or further participation in mineral operations that may be agreed with the holder.

Renewal of mining lease

44. (1) A holder of a mining lease may, at any time but not later than three months before the expiration of the initial term of the mining lease or a shorter period that the Minister allows, apply in a prescribed form to the Minister for an extension of the term of the lease for a further period of up to thirty years in respect of all or any number of contiguous blocks the subject of the lease and in respect of all or any of the minerals the subject of the lease.

(2) An application made under subsection (1) shall be accompanied with a proposed programme of mineral operations.

(3) On an application duly made under subsection (1) and if the holder has materially complied with the obligations imposed by this Act with respect to the holding of and activities pursuant to the mining lease, the Minister shall grant the extension of the term of the lease on conditions specified in writing.

(4) Where the holder has made an application for an extension of the term of the lease, and the term of the lease would but for this subsection, expire, the lease shall continue in force in respect of the land the subject of the application until the application is determined.

(5) A dispute between the Minister and a holder in respect of a matter that arises under this section, shall be resolved under section 27.

Amendment of programme of mining operations

45. (1) A holder of a mining lease shall notify the Minister of amendments the holder intends to make to the programme of mining operations and the amendments shall, unless the Minister on reasonable grounds rejects them within two months after being so notified, have effect after that period.

(2) A dispute between the Minister and a holder in respect of a matter that arises under this section, shall be resolved under section 27.

Rights conferred by mining lease

46. Subject to this Act and Regulations made under this Act, a mining lease authorizes the holder, the holder's agents and employees and a person authorized by the holder, in accordance with this Act, to enter upon the land the subject of the mining lease, to
- (a) conduct mineral operations including, without limitation, to mine for the specified minerals of the mining lease,
 - (b) erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered by the holder during the mining operations,
 - (c) take and remove from the land the specified minerals and dispose of them in accordance with the holder's approved marketing plan,
 - (d) stack or dump a mineral or waste product as approved in the holder's Environmental Impact Statement, and
 - (e) conduct other incidental or ancillary activity.

Merger and enlargement of mineral rights

47. (1) Subject to this Act, if a holder of a mineral right covering contiguous blocks considers that the efficient and economic management of its operations require the merger of all or part of its mineral rights, the holder may apply to the Minister for the merger to be effected on the terms that may be agreed between the holder and the Minister.
- (2) A holder of a mineral right may apply to the Minister for the enlargement of the area to which the lease relates by the inclusion of additional contiguous blocks and the Minister may, subject to this Act, approve the application if the Minister is satisfied on reasonable grounds that the additional area is required for the holder's operations.
- (3) A dispute between the Minister and a holder in respect of a matter that arises under this section, shall be resolved under section 27.

Stability agreement

48. (1) The Minister may as a part of a mining lease enter into a stability agreement with the holder of the mining lease, to ensure that the holder of the mining lease will not, for a period not exceeding fifteen years from the date of the agreement,
- (a) be adversely affected by a new enactment, order instrument or other action made under a new enactment or changes to an enactment, order, instrument that existed at the time of the stability agreement, or other action taken under these that have the effect or purport to have the effect of imposing obligations upon the holder or applicant of the mining lease, and

(b) be adversely affected by subsequent changes to

- (i) the level of and payment of customs or other duties relating to the entry materials, goods, equipment and any other inputs necessary to the mining operations or project,
- (ii) the level of and payment of royalties, taxes, fees and other fiscal imports, and
- (iii) laws relating to exchange control, transfer of capital and dividend remittance

(2) A stability agreement entered into under subsection (1) shall be subject to ratification by Parliament.

Development agreement

49. (1) The Minister on the advice of the Commission may enter into a development agreement under a mining lease with a person where the proposed investment by the person will exceed US\$ five hundred million.

(2) A development agreement may contain provisions,

- (a) relating to the mineral right or operations to be conducted under the mining lease,
- (b) relating to the circumstance or manner in which the Minister will exercise a discretion conferred by or under this Act,
- (c) on stability terms as provided under section 48,
- (d) relating to environmental issues and obligations of the holder to safe-guard the environment in accordance with this Act or another enactment, and
- (e) dealing with the settlement of disputes.

(3) A development agreement is subject to ratification by Parliament.

Recruitment and training of Ghanaians

50. (1) In pursuance of a localization policy, each holder of a mining lease shall submit to the Commission a detailed programme for the recruitment and training of Ghanaian personnel as prescribed.

(2) The programme to be submitted under subsection (1) shall be a condition for the grant of a mining lease.

(3) For the purposes of subsection (1) “localization” means a training programme designed towards the eventual replacement of expatriate personnel by Ghanaian personnel.

Suspension of production

51. (1) The holder of a mining lease shall notify the Minister three months in advance where the holder proposes to suspend production from the mine and shall in each case, give reasons for the suspension.
- (2) Where the holder is unable to give the required notice as provided under subsection (1) for reasons beyond the holder's control including, without limitation, market conditions and the holder suspends production from a mine, the holder shall, within fourteen day of the suspension notify the Minister.
- (3) The suspension of production shall not exceed twelve months and the holder may apply in writing to the Minister for extension for a period not exceeding twelve months.
- (4) On receiving the notification under subsection (1) or on the Minister becoming aware of a suspension of production, the Minister shall cause the matter to be investigated and shall subject to any relevant requirement contained in the mining lease
- (a) give approval for the suspension, or
- (b) direct the holder of the mining lease to resume full production at the mine by a specified date.
- (5) Approval of suspension may be given subject to conditions that the Minister may on the advice of the Commission determine.

Change of control of company holding mining lease

52. (1) A person may not become a controller of a mining company unless
- (a) the person has served on the Minister notice in writing stating that the person intends to become a controller of the mining company, and
- (b) the Minister has, before the end of a period of two months beginning with the date of service of that notice, notified the person in writing that there is no objection to the person becoming a controller of the mining company or that period has elapsed without the Minister having served on the person a written notice of objection to the person becoming a controller of the mining company.
- (2) A notice under paragraph (a) of subsection (1) shall contain information that the Minister may reasonably direct and the Minister may, after receiving a notice from a person, by notice in writing, require the person to provide additional

information or documents the Minister may reasonably require to decide whether to serve a notice of objection or not.

(3) Where additional information or documents are required from a person 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 paragraph (b) of subsection (1).

(4) A notice served by a person under paragraph (a) of subsection (1) shall not have effect if the person fails to acquire the controlling interest within a period of one year from the date of service of the notice.

Objection to new or increased control

53. (1) The Minister shall serve a written notice of objection under this section on a person who has given a notice under section 52 if the Minister considers on reasonable grounds that the public interest would be prejudiced by the person concerned becoming a controller of the mining company.

(2) Where a person required to give a notice under section 52(1) (a) in relation to the person becoming a controller, becomes a controller of that description without having given the notice, the Minister shall serve the person with a written notice of objection under this section within a period of six months after becoming aware of that fact and may, for the purpose of deciding whether to serve the notice, require the person by notice in writing to provide information or documents that the Minister may reasonably require.

(3) A dispute between the Minister and a person upon whom a notice of objection is served under subsection (1) shall be referred for resolution under section 27.

Contraventions by controller

54. (1) A person who contravenes section 52 by

- (a) failing to give the notice required under paragraph (a) of subsection (1) of that section, or
- (b) becoming a controller of a description to which that section applies, before the end of the period specified in paragraph (b) of that subsection, unless the Minister has previously notified the person in writing that there is no objection to that person becoming such a controller,

commits an offence.

(2) A person who,

- (a) contravene section 53 by becoming a controller of any description after being served with a notice of objection to that person becoming a controller of that description, or
- (b) having become a controller of any description, in contravention of that section, whether before or after being served with a notice of objection, continues to be the controller after the notice has been served on the person,

commits an offence.

(3) A person convicted of an offence under this section is liable on summary conviction to a fine not more than the cedi equivalent of US\$ twenty thousand or imprisonment for a term not more than three years or to both.

Restriction and sale of shares

55. (1) The powers conferred by this section shall be exercised where a person,

- (a) has contravened section 53 by becoming a controller after being served with a notice of objection to the person becoming a controller, or
- (b) having become a controller in contravention of section 53 continues to be one after the notice has been served on the person.

(2) The Minister acting on the recommendation of the Commission may, by Executive Instrument, order that specified shares to which this section applies shall, until further order is made, be subject to one or more of the following restrictions:

- (a) a transfer of, or agreement to transfer those shares or, in the case of unissued shares, a transfer of or agreement to transfer the right to be issued with them shall be void;
- (b) no voting rights shall be exercisable in respect of the shares;
- (c) no further shares shall be issued in right of them or in pursuance of an offer made to their holder;
- (d) except in a liquidation, no payment shall be made for sums due from the mining company on the shares, whether in respect of capital or otherwise.

(3) The Minister may 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 Court may order the sale of 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 Court may order the holder or another person to execute a necessary transfer on behalf of a holder and may order the directors of the relevant mining company to enter the name of the transfers in the appropriate register, despite the absence of a share or other relevant certificate being lodged in respect of the shares and to issue a new certificate to the transferee, and an instrument of transfer executed by the person pursuant to the order shall be as effective as if it had 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 who has an interest in the specified share or other person for an act done pursuant to an order of the Court or for the consequences of the 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 into Court for the benefit of the persons beneficially interested in them and the person may apply to the Court for the whole or part of the proceeds to be paid to that person.

(8) This section applies

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

(9) A copy of the instrument referred to in subsection(2) shall be served on the person and on the mining company to whose shares it relates and, if it relates to shares held by an associate of that person, on the associate, except that 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.

Notification of ceasing to be a controller

56. A person shall notify the Minister in writing prior to or within fourteen days of ceasing to be a controller of the mining company.

Notification by mining company

57. (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 to be given under subsection (1) shall be given within fourteen days of the mining company becoming aware of the relevant facts.
- (3) A mining company which fails to give the notice required under subsection (1) is liable to an administrative penalty of the cedi equivalent of US\$ one thousand payable to the Commission.

Investigation on behalf of the Minister

58. (1) Where the Minister considers it desirable to do so in the public interest, the Minister may appoint one or more competent person to investigate and report to the Minister on the ownership or control of a mining company.
- (2) The Minister shall promptly give to the mining company, written notice of the appointment.
- (3) A person who is or was a director, controller, employee, agent, banker, auditor or solicitor of a company which is under investigation must
- (a) produce to the person appointed under subsection (1), within the time and at the place in the country that the Minister may require, the documents which are in that person's custody or power, relevant to the shareholding and board of directors to the company,
 - (b) attend before the person appointed at the time and place in the country that the investigator may require, and
 - (c) give the investigator the assistance in connection with the investigation which the person is reasonably able to give,

and the investigator may take copies of or extracts from documents produced under paragraph (a) of this subsection.

- (4) For the purpose 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 by the person under this section, but the investigator shall not do so without prior notice in writing unless the investigator has reasonable cause to believe that if notice were given, documents whose production could be required under this section, would be removed, tampered with or destroyed.

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

(6) A person who,

- (a) without reasonable excuse fails to produce documents which it is that person's duty to produce under subsection (2),
- (b) without reasonable excuse fails to attend before the investigator appointed under subsection (1) when required to do so,
- (c) without reasonable excuse fails to answer a question which is put to the person by the investigator with respect to the company which is being investigated, or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (4).

Commits an offence and is liable on summary conviction to a fine not more than the cedi equivalent of US\$ ten thousand or a term of imprisonment not exceeding three years or to both.

(7) A statement made by a person in compliance with a requirement under this section may be used in evidence against the person.

(8) Nothing in this section requires disclosure of an information or document by a person which the person is entitled to refuse to disclose or provide under the Evidence Decree, 1975 (N.R.C.D. 323) or under some other enactment.

Mine support services

59. Persons or companies providing prescribed services to a holder of a mineral right and registered with the Commission may be granted concession as prescribed.

Special share to Republic

60. (1) The Minister may by notice in writing to a mining company require the mining company to issue to the Republic a special share, by whatever name called in the company for no consideration.

(2) A special share shall constitute a separate class of shares and shall have the rights that shall be agreed between the Minister and the company, but in the absence of the agreement shall have the following rights:

- (a) a special share is a preference share and shall carry no right to vote but the holder is entitled to receive notice of and to attend and speak at a general meeting of the members of the company or a separate meeting of the holders of a class of shares in the company;

- (b) the special share may only be issued to, held by or transferred to the President, the Minister or another person acting on behalf of the Republic and authorized in writing by the President or the Minister;
- (c) the special share shall not confer a right to participate in the dividends, profits or assets of the company or a return of assets in a winding up or liquidation of the company;
- (d) the holder of the special share may require the company to redeem the special share at any time for no consideration or for a consideration determined by the company and payable to the holder on behalf of the Republic;
- (e) each of the following matters shall be taken to be a variation of the rights that attach to the special share, and shall accordingly be effective only with the prior written consent of the holder of the special share, which consent may not be unreasonably delayed or withheld or made subject to unreasonable conditions;
 - (i) an amendment to or removal of a provision in the constitution, regulations, bye-laws, articles of association, or 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 51 to 60;
 - (ii) the voluntary winding-up or voluntary liquidation of the company;
 - (iii) the disposal of a mining lease granted under this Act or a repealed law upon which mining operations are conducted or of the whole or a material part of the assets of the company which are attributable to the company's operations in Ghana but are not held in the country.

(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 summary conviction to a fine not more than the cedi equivalent of US\$ ten thousand.

(4) A dispute between the Minister and a holder in respect of a matter that arises under this section shall be referred for resolution under section 27.

Modification of application of Companies Code (Act 179)

61. The provisions of sections 51 to 60 shall apply and be implemented despite

- (a) provisions of the Companies Code, 1963 (Act 179),
- (b) provisions in the constitution, regulations, bye-laws or articles of association of any company, or

- (c) an agreement to which a company is a party, other than an agreement between a company and the Republic that relates to the application of the sections.

Radio-active minerals

Radio-active minerals

62. (1) The provisions of this Act which relate to reconnaissance, prospecting and mining of minerals shall, subject to the provisions contained in sections 62 to 66, apply to radio-active minerals with the modifications that may be necessary.
- (2) Where a radioactive mineral is discovered in the course of exercising a right under this Act or under another enactment, the holder of the mineral right or another person shall immediately notify the Commission and the Geological Survey Department of the discovery.
- (3) Where a radio-active mineral is discovered on land other than land subject to a mining right, the owner of the land shall immediately notify the Commission and the Geological Survey Department of the discovery.

Holder of radio-active mineral right to report operations

63. A holder of a licence or lease under section 62 shall within the first week of each month furnish the Commission and the Geological Survey Department with a true report in writing of the prospecting and mining operations conducted by the holder in the immediately preceding month with respect to radioactive minerals.

Export of radio-active mineral

64. (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 for that purpose.
- (2) A permit issued under subsection (1) shall be in the form and shall be subject to the payment of the fee that the Minister may on the advice of the Commission determine.

Export of radio-active mineral Offence and penalties under sections 62 to 64

65. (1) A person who contravenes section 62 to 64 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 more than the cedi equivalent of US\$ fifty thousand or to imprisonment for a term not exceeding two years or both.

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

Powers of search and arrest

66. A police officer not below the rank of an Inspector, a senior official of the Inspectorate Division of the Commission, and an officer authorized by the Minister may, for the purpose of enforcing section 62 to 66 without warrant,
- (a) enter and search a place where the officer has reasonable grounds to suspect that an offence under section 65 has been or is about to be committed,
 - (b) search and arrest a person who the officer has reasonable grounds to suspect to have committed or is about to commit an offence under section 65,
 - (c) seize radio-active mineral which the officer suspects to have been obtained contrary to sections 62 and 63,
 - (d) seize prospecting or mining apparatus, which is used or about to be used in the Commission of an offence under section 64.

Surrender, suspension and cancellation of a mineral right

Surrender of a mineral right

67. (1) A 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 for a certificate of surrender not later than two 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 prescribed Regulations.
- (3) Subject to subsection (4), upon an application duly made under subsection (1), the Minister shall 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,
 - (b) to an applicant who fails to give records and reports in relation to the applicant's mineral operations,
 - (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 land, if the remaining area of the land after the surrender would not be less than one block.

(5) Where a certificate of surrender is issued under this section, the Minister shall, where only part 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) 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 the certificate of surrender is issued under subsection (3).

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

Suspension and cancellation of a mineral right

68. (1) The Minister on the recommendation of the Commission may suspend or cancel a mineral right if the holder,

- (a) fails to make payment on the due date, whether due to the Republic or another person, required by or under this Act,
- (b) becomes insolvent or bankrupt, enters into an agreement or scheme of composition with the holder's creditors, or takes advantage of an enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation,
- (c) makes a statement to the Minister in connection with the mineral right which the holder knows or ought to have known to be materially false, or
- (d) for a reason, becomes ineligible to apply for a mineral right under this Act.

(2) The Minister shall, before suspending or canceling a mineral right under subsection (1), give notice to the holder and shall in the notice, require the holder to remedy a breach of the condition of the mineral right within a reasonable period, being not less than one hundred and twenty days in the case of a mining lease or restricted mining lease or sixty days in the case of another mineral right and what the breach cannot be remedied, to show cause to the reasonable satisfaction of the Minister why the mineral right should not be suspended or cancelled.

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

Suspension or cancellation of mining lease or restricted mining lease

69. (1) Without limiting the scope of section 68, the Minister may on the recommendation of the Commission suspend or cancel a mining lease or a restricted mining lease if the holder has failed other than for good cause, for a

period of two years or more, to carry out any or a material part of the holder's programme or mineral operations.

(2) The Minister shall before suspending or canceling a mining lease give notice to the holder and shall in the notice, require the holder to remedy the breach within a reasonable period, being not less than one hundred and twenty days, and where the breach cannot be remedied, to show cause to the reasonable satisfaction of the Minister why the mining lease or restricted mining lease should not be suspended or cancelled.

(3) A dispute between the Minister and a holder of mining lease in respect of a matter arising under subsection (2) shall be referred for resolution under section 27.

Vesting of property on termination of mineral right

70. (1) When for a reason a mineral right terminates,

- (a) the person who was the holder of the mineral right immediately prior to the termination, or
- (b) another person,

who is entitled to a mining plant lawfully erected or brought onto the land to which the mineral right relates by the former holder, or a predecessor in title, may, within six months of the termination of the mineral right or a further period allowed by the Minister, remove the mining plant if the mining plant is removed solely for the purpose of use by the former holder or a person deriving title through the former holder, in another relevant mining activity in the country.

(2) A mining plant not removed by the former holder within two months after notice is given by the Minister to the former holder at any time after expiration of the period referred to in subsection (1), shall vest in the Republic on the expiration of the two month notice period, but the Minister may not give a notice under this subsection if the land upon which the mining plant is located is the subject of a new mineral right held by the former holder of the terminated mineral right.

(3) Nothing in this section removes or diminishes an obligation that the former holder may have under this Act, another enactment or a condition of a mineral right, to remove a mining plant and rehabilitate the land.

Delivery of documents to Minister on termination of a mineral right

71. (1) On the termination of a mineral right, the former holder shall deliver to the Minister or as the Minister directs,

- (a) the records which the holders is obliged under this Act or Regulations made under this Act to maintain,
- (b) the plans and maps of the area covered by the mineral right prepared by the holder or at the holder's instructions, and
- (c) other documents, including in electronic format, if available that relate to the mineral right.

(2) A person who fails to deliver, within thirty days from the date of being called upon to do so by the Minister, a document which is required to be delivered under subsection (1) commits an offence and is liable on summary conviction to a fine not more than the cedi equivalent of US\$ ten thousand or imprisonment for a term not more than three years or to both.

Surface right and compensation

Surface rights

72. (1) The holder of a mineral right shall exercise the rights under this Act subject to limitations that relate to surface rights that apply under an enactment and further limitations reasonably determined by the Minister.

(2) In the case of a dispute between a holder of a mining lease and the Minister concerning the limitations determined by the Minister under this subsection, the dispute shall be referred for resolution under section 27.

(3) The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if 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 a structure without the consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.

(5) The owner of a mining lease shall, in the presence of the owner or lawful occupier or accredited representative of the owner or lawful occupier of land, the subject of a mining lease and in the presence of an officer of the Government agency responsible for land valuation carry out a survey of the crops and produce a crop identification map for the compensation in the event that mining activities are extended to the areas.

(6) An owner or lawful occupier of land shall not upgrade to a higher value crop without the written consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.

Compensation for disturbance of owner's surface rights

73. (1) The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier, in accordance with section 74.
- (2) A claim for compensation under subsection (1) shall be copied to the Minister and the Government agency responsible for land valuation.
- (3) The amount of compensation payable under subsection (1) shall be determined by agreement between the parties but if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred by either party to the Minister who shall, in consultation with the Government agency responsible for land valuation and subject to this Act, determine the compensation payable by the holder of the mineral right.
- (4) The Minister shall ensure that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic well-being and social and cultural value, and the resettlement is carried out in accordance with the relevant town planning laws.
- (5) The cost of resettlement under subsection (4) shall be borne by the holder of the mineral right,
- (a) as agreed by the holder and the owner or occupier as provided under subsection (3) or by separate agreement with the Minister, or
- (b) in accordance with a determination by the Minister, except that where the holder elects to delay or abandon the proposed mineral operation which will necessitate resettlement, the obligation to bear the cost of resettlement shall only arise upon the holder actually proceeding with the mineral operation.
- (6) Subject to this section, the Minister and a person authorized by the Minister may take the necessary action to give effect to a resettlement agreement or determination.

Compensation principles

74. (1) The compensation to which an owner or lawful occupier may be entitled, may include compensation for,
- (a) deprivation of the use or a particular use of the natural surface of the land or part of the land,
- (b) loss of or damage to immovable properties,

- (c) in the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land,
- (d) loss of expected income, depending on the nature of crops on the land and their life expectancy,

but claim for compensation lies, whether under this Act or otherwise

- (e) in consideration for permitting entry to the land for mineral operations,
- (f) in respect of the value of a mineral in, on or under the surface of the land, or
- (g) for loss of damage for which compensation cannot be assessed according to legal principles in monetary terms.

(2) In making a determination under section 73(3), the Minister shall observe the provisions of article 20(2)(a) of the Constitution which states that, in the case of compulsory acquisition of property, prompt payment of fair and adequate compensation shall be made.

(3) An agreement or determination in respect of a compensation to which an owner or lawful occupier is entitled, shall take account of payments and the value of benefits made or given to the owner or occupier in the past or undertaken to be made or given in the future by or on behalf of the holder and which are in the nature of compensation including without limitation,

- (a) the cost of resettlement,
- (b) the annual ground rent, and
- (c) work that the holder has carried out or undertakes to carry out to make good damage to the land and improvements.

Access to the Court in respect of compensation

75. (1) The owner or lawful occupier of land affected by a mineral right shall not apply to the High Court for determination of compensation to which the person is entitled unless the person is dissatisfied with the terms of compensation offered by the holder of the mineral right or as determined by the Minister under section 73(3) or 73(5)(b).

(2) The person entitled to be compensated or the holder of the mineral right may apply to the High Court for a review of a determination by the Minister made under section 73(3) or 73(5)(b).

(3) In proceedings brought before the High Court under subsection (2), the High Court shall be exercising its supervisory jurisdiction.

Industrial Minerals

Licences and leases for industrial minerals

76. (1) Subject to section 78 a person may,
- (a) search for industrial mineral by reconnaissance,
 - (b) prospect for industrial mineral, or
 - (c) mine for industrial mineral

by holding a restricted reconnaissance licence, restricted prospecting licence or restricted mining lease respectively granted by the Minister or a person authorized by the Minister.

(2) Except as provided and subject to specific provision made in this Act in respect of industrial minerals, the provisions of this Act relating to mineral rights apply to industrial minerals subject to the exemptions and modifications that the Minister may prescribe.

Limits on restricted licences and leases

77. (1) A restricted reconnaissance licence, a restricted prospecting licence and a restricted mining lease may be granted by the Minister in respect of an industrial mineral specified in the grant and may be amended to include other industrial minerals.

(2) A restricted mining lease shall be valid for the period that is specified in the lease but shall not be more than a period of fifteen years and may on an application made to the Minister be renewed by the Minister for further periods not more than fifteen years at any one time.

Qualification for application for restricted licence or restricted mining lease

78. (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 recommendation of the Commission cancel a mineral right granted under section 76-80, 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.

Non-citizen's right to apply for industrial mineral right

79. (1) A person who is not a citizen may apply for a mineral right in respect of industrial mineral provided the proposed investment in the mineral operations is US\$ ten million or above.

(2) If the holder of the mineral right fails, within the period of time specified in the holder's programme of mineral operations given with the application, or further time permitted by the Minister, to expend an amount equal to or greater than US\$ ten thousand, the Minister may suspend or cancel the mineral right in accordance with section 68.

Special right of owner or occupier with regard to industrial minerals

80. Nothing in this Act prevents

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

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

Small scale mining

Application

81. Section 82 to 99 apply to small scale mining only.

Licence for small scale mining

82. (1) Despite a law to the contrary, a person shall not engage in or undertake a small scale mining operation for a mineral unless there is in existence in respect of the mining operation a licence granted by the Minister for Mines or by an officer authorized by the Minister.

(2) An application for a licence shall be made in a form the Minister may direct to the office of the Commission in the designated area and shall be submitted with a fee the Minister may determine.

(3) Where a mineral licence has been granted over a parcel of land, another mineral licence of the same kind shall not be granted in respect of the same land.

Qualification of applicant for small scale mining licence

83. A licence for small-scale mining operation shall not be granted to a person unless that person

- (a) is a citizen of Ghaa,
- (b) has attained the age of eighteen years, and
- (c) is registered by the office of the Commission in an area designated under section 90(1).

Conditions for the grant of a licence

84. Except otherwise provided in section 82 to 99, a licence granted by the Minister shall be in respect of the mineral specified in the licence and shall be subject to conditions specified in the licence.

Duration of a licence

85. (a) A licence granted under section 82 (1) to a person, a group of persons, a co-operative society or a company shall be for a period not more than five years from the date of issue in the first instance and may be renewed on expiry for a further period that the Minister may determine.
- (2) The Minister may by legislative instrument and on the advice of the Commission, prescribe the fees payable for the grant and renewal of licences for small-scale mining.

Areas covered by licence

86. The size of the area in respect of which a licence may be granted for small-scale mining shall be in accordance with the member of blocks prescribed.

Revocation of licence

87. The Minister may revoke a licence granted under section 82 (1) where,
- (a) the minister is satisfied that the licensee has contravened or failed to comply with a term or condition of the licence or a requirement applicable to the licensee,
 - (b) the licensee is convicted of any offence relating to the smuggling or illegal sale or dealing in minerals, or
 - (c) the Minister is satisfied that it is in the public interest to do so.

Transfer of licence

88. A licence granted under section 82 (1) may be transferred only to a citizen and with the consent of the Minister.

Designated areas

89. Where the Minister, after consultation with the Commission considers that it is in the public interest to encourage small scale mining in an area, the Minister may by notice in the *Gazette*, designate that area for small scale mining operations and specify the mineral to be mined.

Establishment of District offices of the Commission

90. (1) The Commission may establish an area designated for mining operations, an Office to be known as the District Office of the Commission referred to in this Act as the “District Office”.
- (2) There shall be appointed by the Commission a District Officer who shall be the head of the District Office of the Commission.
- (3) A District Office shall among other functions
- (a) compile a register of the small scale miners and prospective small scale miners specifying particulars that may be determined by the Minister,
 - (b) supervise and monitor the operation and activities of the small scale miners and prospective small scale miners;
 - (c) advise and provide training facilities and assistance necessary for effective and efficient small scale mining operations,
 - (d) submit to the Commission in a form and at intervals directed by the Commission, reports or other documents and information on small scale mining activities within the District; and
 - (e) facilitate the formation of Small Scale Miners Association.

Registration of prospective licensees

91. (1) A person engaged in or wishing to undertake a type of small scale mining operation shall register with the District Office of the designated area where the person operates or intends to operate.
- (2) A person shall not be granted a licence under section 82(1) unless the person is registered under this section.

Small Scale Mining Committees

92. (1) There is established in every designated area a Small Scale Mining Committee.
- (2) The Committee consists of the following members:
- (a) the District Chief Executive or the representative of the District Chief Executive who shall be the chairperson of the Committee;

- (b) the District Officer appointed under section 90(2);
- (c) one person nominated by the relevant District Assembly;
- (d) one person nominated by the relevant Traditional Council;
- (e) an officer from the Inspectorate Division of the Commission; and
- (f) an officer from the Environmental Protection Agency.

(3) The Committee shall assist the District Office to effectively monitor, promote and develop mining operations in the designated area.

(4) The members of the Committee shall be appointed by the Minister and shall hold office for a period and on terms and conditions determined by the Minister.

Operations of small scale miners

93. A person licensed under section 82 may win, mine and produce minerals by an effective and efficient method and shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment during mining operations.

Compensation for use of land

94. Where a licence is granted in a designated area to a person other than the owner of the land, the licensee shall pay compensation for the use of the land and destruction of crops to the owner of the land that the Minister in consultation with the Commission and the Government agency with responsibility for valuation of public lands may prescribe.

Use of explosives

95. A small-scale miner shall not without the written permission of the Minister on the recommendation of the Commission use explosives in the area of operation.

Purchase of mercury

96. A small-scale miner may purchase from an authorized mercury dealer the quantities of mercury that may be reasonably necessary for the mining operations of the small scale miner.

Sale of minerals

97. (1) The sale of a mineral won by a licensed small scale miner shall be subject to Rules and Regulations prescribed by the Minister.

(2) A person is presumed to be lawfully in possession of minerals until the contrary is proved.

(3) Shipment of rough diamonds to and from the country shall be subject to rules and regulations as prescribed by the Minister and shall be in accordance with the Kimberly Process Certificate Scheme.

Sale of jewellery

98. (1) Nothing precludes a person from disposing of personal jewellery to an authorized dealer or another person.

(2) A person shall dispose of a gold artifact or gold coin only to an authorized dealer.

Offences and penalties under section 81 to 99

99. (1) A person who buys or sells minerals without a licence granted under section 81 to 99 or without a valid authority granted under an enactment for the time being in force commits an offence and is liable on summary conviction to a minimum fine of three thousand penalty units or to imprisonment for a term not more than five years or to both.

(2) A person who,

(a) without a licence granted by the Minister undertakes a small scale mining operation contrary to section 1, or

(b) acts in contravention of provision of this Act in respect of which an offence has not been specified, commits an offence and is liable on summary conviction to a minimum fine of one thousand penalty units or to imprisonment for a term not more than three years or to both

(3) A court before which a person is convicted under this Act may in addition to a penalty that it may impose, order the forfeiture to the State of the mineral in respect of which the offence was committed.

Administration and Miscellaneous Provisions

Power of Minerals Commission

100. (1) The Commission shall exercise the powers and perform the functions specified under this Act in relation to the Commission and shall under the direction of the Minister generally supervise the proper and effective implementation of the provisions of this Act and Regulations made under this Act.

(2) The Minister shall obtain the advice and recommendation of the Commission before exercising a power, discretion or making a determination or agreement pursuant to this Act and Regulations made under this Act.

(3) Except as provided under section 82 to 99 in respect of small scale mining an application for a mining right and mineral licence shall be submitted to the Commission for processing.

Inspectorate Division of the Commission

101. There is established in the Minerals Commission, a division of the Commission to be known as the Inspectorate Division of the Commission.

Functions of the Inspectorate Division

102. (1) The head of the Inspectorate Division or an officer authorized by the head may at reasonable times enter a reconnaissance, prospecting, or mining area or premises in the area other than a dwelling house to

- (a) break up the surface of land in the area for the purpose of ascertaining the rocks or minerals in or under the land,
- (b) take samples or specimen of rocks, ore or concentrates, tailings or minerals situated in an area under a mineral right for inspection or assay,
- (c) inspect explosives magazine on a mine and direct in what manner an explosive shall be stored,
- (d) inspect the area of mineral operations to ascertain whether a nuisance is created in the area by the mineral operations,
- (e) examine documents and records required to be kept under this Act, Regulations made under the Act or the terms and conditions of a mineral right and take copies of the documents,
- (f) enter into or upon land through which it may be necessary to pass for the purpose of a survey, or
- (g) give directions and effect acts that are incidental or conducive to the attainment of functions of the head of the Inspectorate Division under this law.

(2) The Inspectorate of the Division of the Commission shall perform functions as are conferred on the Division by law for the effective implementation of this Act.

(3) The head of the Inspectorate Division of the Commission or an officer authorized by the head of the Division may hold an inquiry whenever there is an occurrence on land which is subject to a mineral right.

Register of mineral rights

103. (1) The Commission shall, in accordance with Regulations, maintain a register of mineral rights in which shall be promptly recorded applications, grants, variations and dealings in, assignments, transfers, suspensions and cancellations of the rights.

(2) The register shall be open to public inspection on payment of a prescribed fee and members of the public shall upon request to the Commission and on payment of the prescribed fee, be given a copy of the records.

Licence to buy and deal in minerals

104. Without limiting the effect of an enactment empowering a person or body to purchase and deal in a mineral, the Minister in consultation with the Commission may in writing, licence persons the Minister considers fit, to buy and deal in the types and forms of minerals and under terms and conditions specified in the licence.

Preference for local products and employment of Ghanaians

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

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

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

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

Offences

106. A person who

- (a) conducts reconnaissance, prospects for or mines minerals otherwise than in accordance with the provisions of this Act,
- (b) in making application for mineral right or renewal of mineral right, knowingly makes a statement which is false or misleading in any material particular,
- (c) in a report, return or affidavit submitted in pursuance of the provisions of this Act, knowingly includes information which is false or misleading in a material particular,

- (d) removes or disposes of a mineral contrary to the provisions of this Act, removes a building, fixed machinery or other movable property contrary to this Act,
- (e) removes a building, fixed machinery or other movable property contrary to this Act,
- (f) places or deposits, or causes to be placed or deposited, a mineral in a place with the intention to mislead another person as to the mineral possibilities of the place,
- (g) mingles or causes to be mingled with samples or ore, substances which will enhance the value or in a way change the nature of the ore with the intention to cheat, deceive or defraud.
- (h) 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 scales or weights for weighing the ores, metals or minerals, or uses a false or fraudulent assay scales or weights or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent,
- (i) Fails, neglects or refuses to comply with a direction lawfully given under this Act,
- (j) Fails, neglects or refuses to allow or provide reasonable facilities and assistance to an officer exercising a power under this Act,
- (k) Obstructs, hinders or delays an authorized officer in the performance of the officer's duties under this Act, or
- (l) Contravenes a provision of this Act or Regulations made under this Act,

Commits an offence and is liable on summary conviction to a fine not more than the cedi equivalent of US\$ five thousand and in the case of a continuing offence after first conviction, t a penalty of the cedi equivalent of US\$ five hundred for each day the offence is continued.

Offences by bodies of persons

107. (1) Where an offence is committed under this Act or under Regulations made under this Act by a body of persons,

- (a) in the case of a body corporate, other than a partnership, each director or an officer of the body shall also be considered to have committed the offence, and
- (b) in the case of a partnership each partner or officer of that body shall be considered to have committed that offence.

(2) A person shall not be considered to have committed the offence by virtue of subsection (1) if the person proves that the offence was committed without the person's knowledge or connivance and that the person exercised due care and diligence to prevent the Commission of the offence having regard to all the circumstances.

General penalty

108. (1) A person found guilty of an offence under this Act for which a penalty has not been provided is on summary conviction liable, on first conviction, to a penalty of a fine not more than the cedi equivalent of US\$ five thousand.
- (2) On a second or subsequent summary conviction for an offence under this Act, the court may impose a penalty which is not more than twice the penalty referred to in subsection (1).

Penalty to be civil debt

109. Except otherwise provided in this Act, where a fine is imposed on a person under this Act or Regulations made under this Act and there is failure to pay the fine, the amount shall be recoverable as a civil debt owed to the State.

Regulations

110. (1) The Minister may, by legislative instrument, make Regulations for the purpose of giving effect to this Act.
- (2) Without limiting the generality of subsection (1), Regulations made under this section may provide for,
- (a) in circumstances where the Minister is exercising a discretionary power under this Act, specific criteria which, if satisfied by the holder or other person bringing an application before the Minister, obliges the Minister to approve the application;
 - (b) a matter which, in accordance with this Act, is or may be provided for by Regulations or which is to be or may be prescribed;
 - (c) the making of an application for a mineral right or extension of the term of an application or an application for another purpose under this Act;
 - (d) the establishment and operation of a mining cadastre;
 - (e) the rights and the priority between registered dealings in the register of mineral rights;
 - (f) the functions of the Inspectorate Division of the Commission;
 - (g) the examination of a mine or mineral by the Inspectorate Division of the Commission or a person authorized by the Minister;
 - (h) the retention of an ore or specimen of a mineral by a person in charge of a mine or connected with a mine for the identification of that ore or a sample of the ore and for sampling of the ore by an authorized officer of the Minister, the Commission and the Inspectorate Division;
 - (i) directions to be given to a person in charge of a mine or connected with a mine by an authorized officer of the Minister, the Commission and the

Inspectorate Division for the conservation and development of mines and minerals;

- (j) the making of returns of minerals won and for the valuation of the minerals;
- (k) the returns to be rendered in relation to accounts, books and plans required to be kept by holders;
- (l) the submission by a person in charge of a mine or connected with a mine of returns and for the maintenance by the person of the records;
- (m) the nature and adequacy of a map or plan required for the purposes of this Act;
- (n) the restriction of mineral operations in or near a river, dam, lake, forest or stream;
- (o) the grazing of cattle or other animals on an area subject to a mineral right;
- (p) the gathering of firewood and the cutting down and use of timber for the purposes of carrying on prospecting and mining operations;
- (q) the renewal, transfer, assignment, mortgaging, suspension, cancellation and surrender of mineral rights;
- (r) the protection of pits, shafts and other dangerous places;
- (s) the reporting of accidents;
- (t) fees payable under this Act, and
- (u) forms of applications and licences to be made or issued under this Act.

(3) The Minister may make Regulations fixing all or any fees payable under this Act, at concessionary rates for mineral rights held by citizens where;

- (a) the mineral right is of an area not greater than 2 blocks, and
- (b) the total area the subject of mineral right, in which the citizen holds a legal or beneficial interest does not exceed 20 blocks.

(4) Without limiting the generality of subsection (1), Regulations made under this section may provide for matters concerning environmental protection, health and safety including,

- (a) 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;
- (b) preventing employment of incompetent persons to be in charge of machinery,
- (c) preventing injury to persons or property in a mining area by chemicals;
- (d) regulating the use of explosives in mineral operations, and
- (e) the powers and procedures of the Inspectorate of Mines with respect to matters of health and safety in mining areas particularly as regards small scale mining.

(5) Despite the Statutory Instrument Act 1959 (No.52), Regulations made under this Act may impose a penalty not exceeding the cedi equivalent of US\$ ten thousand.

Interpretation

111. (1) In this Act, unless the context otherwise requires, “associate” in relation to a person entitled to exercise or control the exercise of 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 any settlement including a disposition or 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 director;
- (d) a person who is an employee or 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 employee of the subsidiary or holding company of that company; and
- (f) that person has with some other person, an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in that undertaking or body corporate or under which they undertake to act together in exercise of their voting power in relation to it, that other person;

“authorized buyer” means a person authorized by the Minister to buy minerals;

“authorized officer” means a person authorized by the Minister, the Commission or the Inspectorate Division to exercise a power or function under this Act;

“block” means 21 hectares;

“citizens” means,

- (a) an individual who is a citizen of Ghana by virtue of a law for the time being in force in Ghana;
- (b) a partnership or association which is composed exclusively of individuals who are citizens of Ghana;
- (c) a body corporate which is incorporated under the Companies Code, 1963 (Act 179), and
 - (i) which is certified by the Minister to be controlled by the Republic,
 - (ii) whose membership is composed exclusively of persons who are citizens;
 - (iii) whose directors are exclusively citizens,

(iv) which is controlled by individuals who are citizens; or

(d) a public corporation that is established by or under an enactment;

“Commission” means the Minerals Commission established under section 1 of the Minerals Commission Act 1993 (Act 450);

“Committee” means a Small Scale Mining Committee;

“company” means a body corporate wherever incorporated;

“continental shelf” or “the exclusive economic zone” means the exclusive economic zone or continental shelf as provided under the Maritime Zones (Delimitation) Law 1986 (PNDCL.159);

“controller” in relation to a company, means a person who, either along or with an associate or associates, is entitled to exercise, or control the exercise of more than twenty per cent of the voting power at any general meeting of the mining company or of another company which it is a subsidiary”

“Court” means the High Court;

“designated area” means an area designated as a small scale mineral operation area by the Minister by a notice published in the Gazette;

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

“head of Inspectorate Division” means the Chief Inspector of Mines’

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

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

“industrial mineral” means basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, slate talc, salt and other minerals as the Minister may from time to time declare, by notice published in the Gazette, to be industrial minerals;

“Kimberley Process” means the international understanding among participants that was recognized by Resolution 55/56 adopted by the General Assembly of the United Nations on December, 1, 2000, as amended from time to time;

“Kimberley Process Certificate” means a forgery resistant document with particular format which identifies a shipment of rough diamonds as being in compliance with the requirements of the certificate scheme;

“mine” when used as a noun, means a place, excavation or working where, an operation connected with mining is carried on together with all buildings, premises, erections and appliance belonging or appertaining to it 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 includes a quarry where building minerals are mined;

“mine” when used as a verb, means intentionally to win minerals, and includes an operation including prospecting directly or indirectly necessary for mining or incidental to mining, and “mining” shall be construed accordingly;

“mineral” means a substance in solid or liquid form that occurs naturally in or on the earth, or on or under the seabed, formed by or subject to geological process including industrial minerals but does not include petroleum as defined in the Petroleum (Exploration and Production) Law, 1984 (P.N.D.C.L. 84) or water;

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

“mineral right” means 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 area designated from time to time by the holder of a mining lease with the approval of the Commission;

“mining company” means a company which is or whose subsidiary is the holder of a mineral right granted under this Act but does not include,

- (a) a company listed on a stock exchange, or
- (b) a company of which the market value of the assets held by the company or its subsidiary in Ghana represent less than fifty per cent of the market value of all assets owned by the company;

“mining lease” means a mining lease granted under section 39 or 44;

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

“mining plant” means a building, plant, machinery, equipment, vehicle, tool or other property whether affixed to land or not affixed;

“Minister” means the Minister responsible for Mines;

“participant” is in relation to the Kimberley Process and means a State or an organization comprised of Sovereign States, or dependency territory of a State or customs territory;

“pre-emption” means the right to buy a mineral won or missed before it is sold;

“prescribed” means prescribed by Regulations;

“programme of mineral operations” means a programme which accompanies or follows an application for a mining lease and includes an amendment to it made under this Act;

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

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

“prospecting licence” means a prospecting licence granted under section 34;

“qualified person” means a person who qualifies to apply for a mineral right under this Act;

“radio-active mineral” means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) of uranium or thorium or a combination of these elements including but not limited to the following:

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

“reconnaissance” means the search for minerals by geophysical, geochemical and photo-geological surveys or other remote sensing techniques and surface geology in connection with it including collection of necessary environmental data but does not include drilling or excavation;

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

“Regulations” means Regulations made under section 110;

“Republic” means the Republic of Ghana;

“restricted mining lease” means a lease to mine industrial minerals;

“restricted prospecting licence” means a licence to prospect for industrial minerals;

“restricted reconnaissance licence” means a licence to search for industrial minerals by reconnaissance;

“rough diamonds” means diamonds that are unworked or simply sawn, leaved or bruted and fall under the Relevant Harmonized Commodity Description and Coding System 7102.10, 7102.21 and 7101.31;

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

“shipment” means one or more parcels of diamonds that are physically imported or exported;

“small scale mining operation” means mining operation over an area of land in accordance with the number of blocks prescribed; and

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

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

Repeal, savings and transitional provisions

112. (1) The following enactments are repealed

- (a) Minerals and Mining Law 1986 (PNDCL. 153);
- (b) Minerals and Mining (Amendment) Act 1994 (Act 475);
- (c) Administration of Lands (Amendment) Decree 1979 (AFRCD61);
- (d) Minerals Export Duty (Abolition) Law 1987 (PNDCL.182);
- (e) Mining Operations (Government Participation) (Repeal) Act 1993 (Act 465);
- (f) Mining Rights Regulations (Amendment) Ordinance (No.31 of 1957); and
- (g) Mining Lease Area Ordinance 1935;
- (h) Small Scale Gold Mining Law, 1989 PNDCL.218;
- (i) Diamond Decree, 1972 (NRCD 32); and
- (j) Diamonds (Amendment) Law 1989 (PNDCL. 216).

(2) Despite the repeal of the enactments mentioned under subsection (1), a licence, lease or permit granted or issued under an enactment and subsisting immediately before the coming into force of this Act shall continue under the laws applicable immediately before the commencement of this Act, except that the Minister may by legislative instrument make specified leases, licences permit

and agreements subject to this Act or subject to specific provisions of this Act as shall be stated.

(3) An instrument issue by the Minister under subsection (2) shall not have the effect of imposing or increasing annual holding costs in respect of mining rights held or otherwise impose an additional financial burden on the holder for a period of five years from the date of the coming into force of this Act.

(4) A dispute that arises between the Minister and a holder of a licence, lease or permit pursuant to an instrument issued by the Minister under subsection (2) shall be referred for resolution under section 27.

(5) Regulations or Rules made under the repealed enactment and in force immediately before the commencement of this Act are hereby continued in force until otherwise dealt with under this Act.

(6) The Chief Inspector of Mines and other persons employed in the Office of the Chief Inspector of Mines immediately before the commencement of this Act shall upon the commencement of this Act be considered to be employees in the Inspectorate Division of the Commission.

(7) A reference in an enactment, document or writing in existence immediately before the commencement of this Act to the Inspector of Mines or Chief Inspector of Mines shall on the commencement of this Act be considered as a reference to the Inspectorate Division of the Commission provided for under section 101.

Date of *Gazette* notification: 31st March, 2006