

THE MINES AND MINERALS ACT, 1967

No. 50



of 1967

ARRANGEMENT OF SECTIONS

PART I

INTRODUCTORY

1. Short title and Commencement
2. Interpretation of Terms
3. Right of Prospecting and Mining and Disposing of Minerals
4. Appointment etc. of Officers
5. Saving for Tribal Custom

PART II

PROSPECTING RIGHTS

6. Acquisition of a prospecting right.
7. Rights conferred by a prospecting right
8. Special prospecting licence
9. Prospecting permits
10. Applications for prospecting rights
11. Restriction on grant of prospecting rights etc.
12. Deposit for restoration of surface
13. Areas open for prospecting

14. Restrictions on prospecting
15. Pegging of claims
16. Manner of pegging
17. Claims not to be pegged at certain times
18. Provision where holder of mineral rights does not avail himself of right to prospect.
19. Transfer of prospecting rights
20. Records of prospecting operations
21. Disposal of minerals obtained under a prospecting right

PART III

MINING RIGHTS

22. Acquisition of a mining right
23. Rights conferred by a mining right
24. Mining lease where State has mineral rights
25. Mining lease where State has not mineral rights
26. Registration of mining claim
27. Applications for a mining right
28. Grounds for refusal of mining right
29. Certificate of registration
30. Demarcation of area of mining lease
31. Holder of mining right to notify Registrar of his address
32. Mining right held by more than one person
33. Licence fees
34. Development work as an entitlement to licence fee refund
35. Transfer and hypothecation of mining rights
36. Renewal of mining right
37. Priorities of titles
38. Subterranean limits
39. Excesses in demarcation of a mining area
40. Returns and reports

PART IV

SPECIAL PROVISION RELATING TO CLAIMS

41. Claim licences
42. Demarcation of claims
43. Diagrams
44. Extension of life of claims
45. Mining sites
46. Cancellation of portion of title

PART V

TERMINATION OF MINING RIGHT

47. Lapse of mining right
48. Cancellation of mining rights
49. Abandonment of mining right
50. Duties on lapse of mining right
51. Removal of buildings etc.
52. Treatment of tailings etc. after lapse of mining right

PART VI

ROYALTIES

53. Royalties
54. Additional Diamond royalties
55. Remission of royalties
56. Returns etc.
57. Prohibition of disposal of minerals

PART VII

FISCAL

58. Duties
59. Registration rental

PART VIII

RIGHTS OF SURFACE OWNER OR OCCUPIER

60. Rental to owner or occupier of land
61. Rights to compensation
62. Surface rights of landholder

PART IX

SURFACE PROTECTION

63. Protection of cracks, subsidences, shafts and workings
64. Mining under roads, buildings etc.
65. Underground Boundary pillars
66. Alluvial working

PART X
DISPUTES

- 67. Commissioner may decide disputes
- 68. Procedure before Commissioner
- 69. Records
- 70. Enforcement by courts
- 71. Appeals to High Court
- 72. Saving for other proceedings
- 73. Survey for purposes of hearing of disputes
- 74. Working of mining area under interdict

PART XI
REGISTRATION

- 75. Register
- 76. Documents to be registered
- 77. Production of documents necessary to deduce title
- 78. Period within which documents are to be registered
- 79. Documents to be void for want of registration
- 80. Priority and date of registration
- 81. Documents giving mining rights may be registered though not required to be registered
- 82. Correction of error or omission in register
- 83. Description of mining or prospecting area etc.
- 84. Identity of person presenting document for registration
- 85. Stamp duties and fees to be paid before registration or issue of certificates
- 86. Copies
- 87. Copies to be furnished
- 88. Details of registration
- 89. Order of filing and numbering
- 90. Memorandum of registration
- 91. Power of registrar if consideration understated
- 92. Documents in foreign language to be accompanied by translation
- 93. Defect in document not used by registration
- 94. Admissibility of certified copy or extract of registered document
- 95. Search of register
- 96. Registration of original grant of prospecting or mining right

PART XII
MINING RECORDS OFFICE

- 97. Establishment of Mining Records Office

98. Certain records to be lodged in the Mining Records Office
99. Access to Mining Records Office

PART XIII

ADDITIONAL AND SUPPLEMENTARY

100. Amalgamation of prospecting and mining rights
101. Surrender of documents
102. Retention of ores and samples
103. Discovery of economic minerals to be notified
104. Export of radio-active minerals
105. Trading on mining areas
106. Shaft sinking
107. Poisonous substances
108. Inspections etc.
109. Geological survey
110. Register of employees
111. Employment of persons who are not citizens of Botswana
112. Proceedings in the case of accidents
113. Government officers prohibited from acquiring rights
114. Forms
115. Regulations
116. Penalties
117. Savings
118. Repeals

**FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE**

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO MINES AND MINERALS

Date of Assent: 1.11.67.

Date of Commencement: On a date to be appointed.

ENACTED by the Parliament of Botswana.

PART I

INTRODUCTORY

Short title and Commencement

1. This Act may be cited as the Mines and Minerals Act, 1967, and shall come into operation on a day to be appointed by the Minister by notice in the *Gazette*.

Interpretation of Terms

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

“alluvial” means –

- (a) in relation to precious stones, any deposit either non-coherent or consolidated, of any geological age, which has been formed by the agency of water or wind;
- (b) in relation to any other mineral, any accumulation of sand, gravel or clay deposited by surface water and containing valuable minerals;

“block” means a number of prospecting or mining rights amalgamated or which may be amalgamated under the provisions of section 100;

“claim” means a claim pegged under the provisions of section 15;

“claim licence” means claim licence issued under section 41;

“Commissioner” means the Mining Commissioner;

“diagram” means a document containing geometrical, numerical and verbal representations of a piece of land, which has been signed by a land surveyor and which has been approved or certified by the Surveyor-General or other officer empowered under the Land Survey Proclamation, 1959 (Proclamation 80 of 1959) so to approve or certify a diagram;

“Director” means the Director of Geological Survey;

“holder” in relation to a time other than the present includes the predecessors in title of a holder, as the case may be;

“holder of mineral rights” means the person who in law is the owner of the mineral rights but does not include the holder of a mining or prospecting right;

“instrument” shall include any certificate or written document of whatsoever nature;

“lapse” means the extinguishment of a right whether by the elapse of time, cancellation, forfeiture, abandonment or for any other reason whatsoever;

“lease” includes sub-lease;

“mine” means any working made for the purpose of winning minerals;

“miner” means any person conducting mining operations ;

“mineral” means any constituent of the crust of the earth that can be obtained by mining, digging, drilling, quarrying or other operations and includes precious stones, oil shale, natural oil, natural gas, bituminous shale and brine but excludes –

(a) water ;

(b) soil, sand, clay, gravel or stone (other than limestone or marble) if these mineral substances are *bona fide* required for –

(i) agriculture ;

(ii) building ;

(iii) fencing ;

(iv) roadmaking ;

(v) the manufacture of bricks and tiles ;

(vi) the construction of sports fields and airfields ;

(vii) the construction of bridges, dams, reservoirs, weirs, canals or other irrigation works ;

(viii) any other purpose which may be prescribed ;

(c) such other substances as may be prescribed ;

“mining” includes the working of any dump or tailing ;

“mining area” means the land upon which mining is permitted under a mining right and includes a mining site registered under the provisions of section 45 ;

“mining claim” means mining claim registered under the provisions of section 26 ;

“mining lease” means mining lease granted under section 24 or registered under section 25 ;

“mining right” means mining right acquired under the provisions of Part III ;

“owner” except in the case of crops, trees, buildings or works, in relation to tribal territory means the tribe concerned ;

“peg” means peg a claim under the provisions of section 15 ;

“pipe” includes fissure ;

“private land” means all land other than –

(a) the tribal territories ;

(b) State land which is not occupied by any person under any agreement ;

“precious metals” means gold, silver, the platinum group of metals and any other substances which the Minister may by order in the *Gazette* declare to

be precious metals for the purposes of this Act;

“precious stones” means rough and uncut diamonds, emeralds, rubies, sapphires and any other substances which the Minister may by order in the *Gazette* declare to be precious stones for the purposes of this Act;

“prospecting permit” means prospecting permit issued under section 9;

“prospecting right” means a prospecting right acquired under the provisions of Part II;

“prospect” means search for minerals or mineral deposits;

“radioactive mineral” means a mineral which contains by weight at least one-twentieth of one per cent (0.05 per cent) or uranium or thorium or any combination thereof, including but not limited to the following –

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

“register” means register under the provisions of Part XI;

“Records Office” means the Mining Records Office established under Part XII;

“Registrar” means the Registrar of Mining Title;

“registry” means the Registry of the Registrar of Mining Title;

“special prospecting licence” means special prospecting licence granted under section 8;

“tribal territory” means –

- (a) tribal territory as defined in the Tribal Territories Proclamation (Chapter 68);
- (b) the area of the Barolong Farms;

“will” includes a codicil.

(2) Where any unit of measurement is referred to in this Act the reference shall be construed as a reference to English measure.

(3) The Minister may, by order in the *Gazette*, direct for the whole of Botswana or any portion thereof that where the winning or working of stone, clay, soil, sand or gravel is for the purpose of disposal to another party for profit, such stone, clay, soil, sand or gravel shall be deemed to be a mineral for the purposes of this Act:

Provided that before making any such order which will be of effect in a tribal territory the Minister shall consult with the Chief or Tribal Authority of that territory and the local District Council.

Right of Prospecting and Mining and Disposing of Minerals

3. (1) Subject to the provisions of subsection (2) and save as is otherwise provided in this Act the right of prospecting for, mining and disposing of minerals on any land is vested in the State.

(2) Save as is otherwise provided in this Act where mineral rights over any land are held by a person other than the State, the right of prospecting for, mining and disposing of minerals on that land is vested in the holder of the mineral rights :

Provided that the onus of establishing that mineral rights are vested in a person other than the State shall rest on the person alleging such vesting.

(3) The ownership of any mineral which is mined, dealt with or disposed of in contravention of the provisions of this Act shall vest without compensation in the State unless the Minister directs to the contrary.

(4) No State Grant of land issued subsequent to the coming into operation of this Act shall confer on the grantee any right to prospect for, mine or dispose of minerals found in or on such land.

Appointment etc. of Officers

4. (1) The Minister may appoint, for the purposes of this Act –
- (a) a Mining Commissioner;
 - (b) a Registrar of Mining Title.

(2) The Commissioner, Registrar and Director may, by instrument in writing and with the consent of the Minister, delegate to any public officer any or all of their functions under this Act other than under Part X.

(3) Neither the Commissioner, Registrar nor Director shall be personally liable for, or in respect of, any act or matter done or omitted to be done in good faith in the performance or supposed performance of their functions under this Act.

Saving for Tribal Custom

5. Nothing in this Act shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, within his tribal territory, minerals from lands from which it has been the custom of members of the tribe to which he belongs to take minerals and to the extent only that this is permissible under the customary law of that territory.

PART II
PROSPECTING RIGHTS

Acquisition of a prospecting right

6. (1) No person shall prospect for any mineral on any land unless he has obtained, or is deemed to have obtained, a prospecting right for such mineral and on such land under the provisions of this Part.

(2) A prospecting right may be acquired by means of --

- (a) a special prospecting licence issued under the provisions of section 8;
- (b) a prospecting permit issued under the provisions of section 9.

(3) the holder of --

- (a) a mining right shall be deemed to be the holder of a prospecting right over his mining area and in respect of the minerals to which his mining right relates;
- (b) a claim licence shall be deemed to be the holder of a prospecting right over his claim and in respect of the minerals to which the prospecting right under which the claim was pegged related.

(4) Any person prospecting save under and in accordance with the provisions of this Act shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 116.

Rights conferred by a prospecting right

7. (1) Subject to the provisions of section 14 and of any other law the holder of a prospecting right may enter upon the land to which his prospecting right relates together with his servants and agents and may --

- (a) prospect thereon for the mineral or minerals specified in his licence or permit or which he is authorized to prospect for under the provisions of section 6 (3):

Provided that the Commissioner may, by endorsement on his licence or permit and on the registry duplicate thereof authorize the holder to prospect for additional minerals;

- (b) employ in prospecting on such land any number of persons who, for the purpose of prospecting, shall not be required to hold prospecting rights;
- (c) sink shafts or boreholes or wells or dig holes or trenches thereon:

Provided that --

- (i) all such excavations shall, unless the Commissioner otherwise directs,

be fenced and secured and, on the prospector leaving the neighbourhood, filled in in such manner as to prevent persons or livestock inadvertently entering therein ;

- (ii) in the case of a trench the earth shall be thrown out in such manner as to form as far as possible regular ridges on either side of the trench ;
- (d) peg claims thereon in accordance with the provisions of section 15 in respect of minerals for which he may lawfully prospect and additionally or alternatively make application for a mining right thereon in accordance with the provisions of Part III.

(2) In addition to the rights conferred under subsection (1) the holder of a prospecting right shall have the following ancillary rights –

- (a) he shall be entitled to water for domestic and prospecting purposes in accordance with the provisions of the Water Act, 1967 ;
- (b) he may erect any temporary buildings for the purposes of his work ;
- (c) he may remove, on or before the termination of such work, any buildings which he may have so erected.

(3) Subject to the provisions of this Part the holder of a prospecting right shall not be entitled to use the surface of the land to which he holds such right except for the purpose of prospecting.

(4) The holder of a prospecting right shall not exercise his right to enter upon occupied land under the provisions of this section unless fourteen days prior to effecting entry he serves on the occupier thereof notice in writing of such intention and, on the expiry of the period of notice he shall be entitled to enter upon the land with such persons, animals, vehicles, machinery, appliances, instruments or materials as may be necessary for the purposes of prospecting :

Provided that the notice to such occupier may be dispensed with if the occupier has consented to such entry.

(5) Any person on whom notice is served under the provisions of subsection (4) or who is the owner or occupier of land upon which prospecting operations are being, or to be, carried on may require the holder of the prospecting right to give security in such sum and as the Commissioner may direct for the payment of compensation for the disturbance of surface rights and for any damage done to the lands by prospecting operations thereon, and, if required by the owner or occupier, shall desist from prospecting on the land until such security has been given :

Provided that, in assessing such security regard shall be had to any deposit made or security given under the provisions of section 12.

(6) The holder of a prospecting right shall not prospect within a National Park save under and in accordance with any permission given under section 16

of the National Parks Act, 1967.

(7) For the purposes of this section "occupied land" does not include any unsurveyed area occupied solely for grazing purposes.

(8) Any holder of a prospecting right who fails to fence or secure an excavation in accordance with the provisions of subsection (1) (c) shall be guilty of an offence and liable on conviction, to the penalties prescribed in section 116.

Special prospecting licence

8. (1) A special prospecting licence shall not be granted save on the authority of the Minister and shall be in the form of a State Grant of Prospecting Rights issued under the hand of the Commissioner.

(2) Subject to the provisions of this Act, a special prospecting licence shall be issued subject to such terms, conditions and restrictions as the Minister may in each case determine.

(3) A special prospecting licence –

(a) in respect of an area not exceeding 1,000 square miles shall be valid for such period not exceeding three years as the Minister may, in each case, determine:

Provided that the licence may be renewed from time to time on the direction of the Minister for periods not exceeding two years at a time;

(b) in respect of an area of, or exceeding, 1,000 square miles shall be valid for such period not exceeding two years as the Minister may, in each case, determine:

Provided that the licence may be renewed, on the direction of the Minister, for a further period of one year.

(4) A special prospecting licence shall confer an exclusive right to prospect for the minerals in respect of which it is granted over the area specified therein

(5) Applications for a special prospecting licence shall be considered by the Minister in the order in which they have been lodged with the Commissioner (whose determination in the matter shall be final) and, in granting or refusing any application, the Minister may take into consideration such advice as the Commissioner may tender thereon.

(6) Subject to the provisions of section 18 no grant shall be made under the provisions of this section in respect of land to which the State does not hold mineral rights.

Prospecting permits

9. (1) Subject to the provisions of this Act, the Minister shall issue a prospecting permit to a person making application therefore under the provisions of section 10 to –

- (a) any holder of mineral rights, in respect of the land and minerals to which his rights relate, or to such person as the holder may give authority thereto in writing;
- (b) any person wishing to prospect in an area declared open for public prospecting by notice under the provisions of section 13 in respect of such area and such minerals as may be specified in that notice.

(2) A prospecting permit may be granted to a person, as agent of another person, if such other person submits a written undertaking to be responsible for the acts and omissions of such agent.

(3) A prospecting permit shall be valid for a period of one year from the date of issue.

(4) A prospecting permit shall be produced at the request of –

- (a) any person who is a peace officer as defined in section 3 of the Criminal Procedure and Evidence Proclamation (Chapter 18);
- (b) the owner or occupier of land on which the holder thereof is prospecting.

Applications for prospecting rights

10. (1) A person making application for the grant of a prospecting right under the provisions of sections 8 and 9 shall make application to the Minister through the Commissioner and shall furnish the Commissioner with –

- (a) his full name or, in the case of an application by an association of persons, the full names of such persons or, in the case of an application by a corporate body the full registered name of such body;
- (b) the name, number (if any) and situation of the farm or land in respect of which such right is desired, the size of the area over which a prospecting right is sought and a sketch plan thereof;
- (c) where application is made for a special prospecting licence, full information as to his financial status and, if so required by the Minister, particulars of any guarantees that may be offered for the performance of his obligations under the licence;
- (d) particulars of the minerals for which he wishes to prospect;
- (e) if the applicant is a company, the full names and nationality of the directors and the full names by which those directors have at any time been known in any part of the world;

- (f) where the application is made by the holder of any mineral rights or his assignees proof to the satisfaction of the Commissioner that he holds the mineral rights in respect of which the application is made; and
- (g) such further information as may be required of him by the Minister including details as to the prospecting or mining experience of the applicant.

(2) In the case of an application for the grant of a prospecting permit the Commissioner may dispense with any or all of the provisions of paragraph (b), (d) or (e) of subsection (1).

(3) Any person who in making application for a prospecting right makes any statement which is false or misleading in any material particular shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Restriction on grant of prospecting rights etc.

11. (1) No prospecting right shall be granted to or held by –

- (a) any natural person under the age of eighteen years, unless he is the holder of the mineral rights of the land in respect of which the permit is issued;
- (b) an unrehabilitated insolvent or an undischarged bankrupt whether under the laws of Botswana or elsewhere;
- (c) a person who has, within the previous ten years been convicted of –
 - (i) any offence of which dishonesty is an element;
 - (ii) any offence under this Act, under the Employment Law, 1963 or under analogous provisions in the laws of any foreign or Commonwealth country;

and sentenced therefor to imprisonment without the option of a fine or to a fine in excess of R300.

(2) Except on land to which the State does not hold the mineral rights no person shall prospect for any precious stones, natural oil or natural gas save under and in accordance with a special prospecting licence issued under the provisions of section 8; and no such prospecting licence shall confer the right to prospect for such minerals unless the right is explicitly conferred therein.

(3) Where the holder of a prospecting right is, or becomes, disqualified from holding such prospecting right under the provisions of subsection (1) the Commissioner shall declare the right to be cancelled and, thereupon the right shall be determined:

Provided that before exercising his powers under this subsection the Commissioner shall, where reasonably practicable give the holder of the right the opportunity of making representations thereon.

Deposit for restoration of surface

12. (1) The Minister may, as a condition of the grant or issue of a prospecting right require the making of a deposit or the giving of security to the satisfaction of the Commissioner for the rendering safe of any land affected by prospecting operations in accordance with the provisions of section 7 (1) (c):

Provided that in the case of –

(a) a special prospecting licence the amount of the deposit or security shall not exceed R1.00 for every square mile of the grant, or R100 whichever is the greater or such other amount as may be prescribed;

(b) a prospecting permit the amount of the deposit of security, shall not exceed R100 or such other amount as may be prescribed.

(2) In the event of the holder of a prospecting right failing to render safe land affected by prospecting operations the Commissioner may himself do so and, in such event, the Commissioner may recover the expenses from the holder by set-off against such deposit or calling upon such security and may in addition, bring action in a court of competent jurisdiction for the recovery of the balance and, in any such action, a certificate by the Commissioner as to the amount owing shall be *prima facie* proof thereof.

(3) On the termination of prospecting operations, unless the deposit paid under subsection (1) is applied in accordance with the provisions of subsection (2) it shall be returned to the depositor.

Areas open for prospecting

13. (1) The Minister may by notice in the *Gazette* from time to time declare land open to public prospecting in respect of such minerals as may be specified in the notice and may, in like manner, close any area so opened:

Provided that the closure of an area to prospecting shall not affect any right lawfully acquired in the area during the period when it was open.

(2) Where mineral rights in any land are held by a person other than the State, such land shall not be declared open to public prospecting under the provisions of subsection (1) unless that person consents thereto.

(3) Information as to land open to public prospecting shall be given by the Commissioner on application.

Restrictions on prospecting

14. (1) No person shall be entitled to exercise any of the rights conferred under the provisions of section 7 upon the holder of a prospecting right –

(a) without the written consent of the President, upon –

(i) a cemetery or burial ground;

- (ii) any land containing a monument or relic declared as such under the provisions of section 7 of the Bushman Relics Proclamation (Chapter 180) or on any ancient working;
- (iii) any area of land set aside or used for the purposes of the State;
- (b) without the written consent of the owner or occupier thereof or his duly authorised agent in the case of trenching, shaft sinking, borehole drilling or similar prospecting operations -
 - (i) upon any land within two hundred feet of any inhabited or occupied house or two hundred yards of any occupied village or homestead;
 - (ii) upon any works as defined in section 2 of the Water Act, 1967;
 - (iii) upon any cultivated or irrigated land;
 - (iv) upon any land which is the site or within two hundred feet of any cattle dip, well, borehole or reservoir;

Provided that where consent is unreasonably withheld the Minister may authorize prospecting on such land or works, subject to such conditions as he may impose;

- (c) within a distance of 200 yards from the surveyed limits of any township proclaimed under the provisions of the Townships Proclamation (Chapter 120) without the consent of the President or the Town Council concerned;
- (d) without the written consent of the railway administration, upon any land reserved for the purposes of any railway or within fifty yards of any railway;
- (e) upon any street, road or highway or public place without the written consent of the President or of the public body having control thereof;
- (f) upon any land over which any other person holds mining rights without the written consent of such other person;
- (g) upon any claim without the consent of the claimholder;
- (h) upon any land over which any other person holds a special prospecting licence, except in relation to minerals not subject to such licence, without the written consent of such other person;
- (i) upon any land on which material ordinarily used for road making is being worked by the Government or public authority, without the consent of the Minister, or such authority, as the case may be;
- (j) upon land specified by the Minister by notice in the *Gazette* as being land upon which prospecting is prohibited or restricted.

(2) Nothing contained in subsection (1) shall derogate from the rights conferred upon any person by virtue of any agreement or deed of title; and where the consent of the owner or occupier of land is required under subsection (1)

before prospecting operations may take place such owner or occupier shall give his consent in accordance with the terms and conditions of any such agreement or deed.

Pegging of claims

15. (1) The holder of a prospecting right shall have the right to peg off, on land which he has the right to enter claims or blocks of claims, each claim not exceeding 90,000 square feet in area:

Provided that in the case of claims pegged to cover the area of a diamond pipe under the provisions of this section as read with section 23 (4) the number of claims shall be such as the Commissioner may, in such case, determine.

(2) A person pegging a claim under the provisions of subsection (1) shall be entitled –

- (a) to exclusive prospecting rights over the area so pegged;
- (b) to make application for a claim licence under the provisions of Part IV, which application shall be preferent to any other application in respect of the area so pegged.

(3) The rights conferred in subsection (2) shall lapse –

- (a) if application is not made for a claim licence within thirty days of pegging or within such further period, not exceeding sixty days as the Commissioner may in special circumstances allow;
- (b) if the application for a claim licence is unsuccessful.

Manner of pegging

16. (1) Unless in any special case the Commissioner otherwise permits, a claim or block of claims shall be rectangular in shape, the width of the rectangle being not less than one-third of its length; the boundaries of the claim or block indicated on the ground by corner pegs or beacons and, where a boundary line is more than one thousand feet long, by line pegs or beacons marked "line" and spaced not more than one thousand feet apart.

(2) Pegs used in demarcating a claim or block of claims in accordance with the provisions of subsection (1) shall –

- (a) be not less than two inches in diameter; and
- (b) project not less than three feet above the ground; and
- (c) in the case of corner pegs bear the name of the person by or in whose name the area or claims were pegged, the date of pegging and shall be marked consecutively with the letters of the alphabet from A onwards.

(3) Every corner peg shall bear on it, in addition to its distinguishing letter, the registration number of the prospecting right under which the claim was pegged.

(4) Notice boards affixed to pegs shall be at least nine inches square and any notice thereon shall be printed, painted or embossed and be kept distinct and legible; no paper or other material liable to be washed off shall be attached to the board, and no writing liable to be rendered illegible by rain or exposure shall, except for purely temporary purposes, be deemed to be a proper marking.

Claims not to be pegged at certain times

17. (1) No person shall peg any claim under the provisions of section 16 between sunset and sunrise, and any pegging during such time shall be void and of no effect.

(2) No pegging shall be illegal by reason of being done on a Sunday or other *dies non*.

Provision where holder of mineral rights does not avail himself of right to prospect

18. (1) The Minister may where –

- (a) the holder of the mineral rights does not avail himself of the right to prospect, or allow prospecting on such lands in respect of any mineral specified by the Minister; or
- (b) such holder, having so availed himself does not carry on or cause to be carried on prospecting on the land in a manner and to a scale which, in the opinion of the Minister, is adequate to secure the efficient development of the mineral resources of such lands;

if after consultation with the Director he has reason to believe that adequate prospecting operations may prove the existence of such specified mineral, cause such holder to be called upon by notice in writing adequately to prospect or cause to be prospected for such specified mineral and to commence such prospecting or cause such prospecting to be commenced within a period specified in the notice, not being less than three months after the date of issue thereof, and may if such mineral is not prospected for on that land to the satisfaction of the Minister or such prospecting is not commenced within the said period or within such further period as the Minister may allow, and after considering any representations in writing by such holder –

- (i) by notice published in such manner as he shall think fit call for tenders for a special prospecting licence over that land in regard to the specified mineral, and may grant such licence over that land in respect of the mineral so specified subject to such conditions as the Minister may determine to any tenderer who satisfies the Minister either that his financial resources are adequate for proper prospecting under such a licence or that the arrangements by which he proposes to obtain capital for the purposes are satisfactory; or
- (ii) without calling for tenders grant a special prospecting licence subject

to such conditions as the Minister may determine over that land in respect of the mineral so specified to any person applying therefore who so satisfies the Minister.

(2) During the currency of any special prospecting licence granted under subsection (1) the holder of the mineral rights or persons authorized by him there-to shall not be entitled to prospect or cause prospecting to be carried out on land included in the licence area save with the written permission of the Minister and in accordance with such conditions as may be set forth in that permission.

(3) Prior to exercising his powers under paragraphs (i) and (ii) of subsection (1) the Minister shall give notice of his intention so to exercise his powers to the holder of the mineral rights and to any person having an interest or right therein; and any such person may, within four weeks of the date of such notice, make application to the High Court for the determination of his interest or right and the legality of the exercise of powers as aforesaid.

Transfer of prospecting rights

19. (1) A special prospecting licence may not be transferred, assigned, ceded or hypothecated without the consent of the Minister and in accordance with a written agreement registered under the provisions of Part XI.

(2) The holder of a special prospecting licence may, with approval of the Minister, sub-let part or all of his rights under his special prospecting licence and, additionally or alternatively, his rights to any portion of the area to which his special prospecting licence relates :

Provided that any such sub-lease shall not relieve the holder of the special prospecting licence of any obligation imposed upon him by this Act or in terms of the licence.

(3) A prospecting permit shall not be transferable.

(4) No claim pegged under the provisions of section 15 may be transferred, assigned, ceded or hypothecated until and unless a claim licence in respect of the claim is obtained under the provisions of section 41.

(5) Subject to the provisions of this section the subletting, transfer, assignment, cession or hypothecation of a prospecting right or claim (other than a mining claim) or of any interest therein shall be effected by written agreement registered under the provisions of Part XI:

Provided that no such agreement shall be registered where the transferee is disqualified from obtaining a prospecting right under the provisions of this Part.

(6) On effecting registration of an agreement under the provisions of subsection (5) the Registrar shall issue to the transferee a certificate of registration and shall cancel the last issued certificate of registration, if any.

Records of prospecting operations

20. (1) The holder of a prospecting right shall keep, to the satisfaction of the Commissioner, full and accurate records of his prospecting operations which shall show --

- (a) boreholes put down;
- (b) strata penetrated;
- (c) minerals discovered;
- (d) the results of any geochemical analysis;
- (e) the results of any geophysical exploration;
- (f) the results of any analysis or identification of minerals removed under the provisions of section 21;
- (g) the number of persons employed;
- (h) work done; and
- (i) such other matters as may be prescribed

and shall supply, at least once in every three months, copies of such records to the Commissioner and Director:

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

(2) Records supplied under the provisions of subsection (1) shall, so long as the person supplying the same or his successors in title retain a mining or prospecting right over the area to which the records relate, be treated as confidential and any person who, during the period aforesaid and without the consent of the person supplying such records or his successor in title, communicates the contents, or any part thereof, of such records to any person otherwise than in the course of his duty or on the instructions of a court of law shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 116:

Provided that where, in the opinion of the Minister, the consent of the person supplying the records or his successor in title is unreasonably withheld the Minister may authorize the communication of the contents of the records or of any part thereof to such person or persons as he may specify.

(3) Any person failing to keep any record in accordance with the provisions of this section or who fails to supply any document which he is required to surrender under the provisions of subsection (1) within fourteen days of being called upon so to do by the Commissioner shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Disposal of minerals obtained under a prospecting right

21. (1) No mineral obtained in the course of prospecting under a prospecting right shall be removed from the land or disposed of by the holder of the right or by any other person except with the consent of the Commissioner, other than for the purposes of assay or identification.

(2) The Commissioner may authorise the removal of minerals from the land from which they have been obtained to any place approved by him for safe custody or for the purpose of the bulk treatment of samples subject to such conditions as he may impose.

(3) If the holder of a prospecting right should desire to retain or dispose of any minerals obtained in the course of prospecting he shall make an application in writing to the Commissioner stating the kind and quantity of minerals in respect of which the application is made and the situation of the land from which the mineral was obtained, and, if the Commissioner is satisfied that the applicant has been conducting only such work as is reasonably necessary to enable him to test the mineral-bearing qualities of the land, he may authorize the applicant to retain or dispose of the minerals in respect of which application is made on payment of the prescribed taxes and, if not so satisfied, such minerals shall vest in the State.

(4) Any precious stone discovered in the course of prospecting operations which has not previously been lawfully sold or otherwise disposed of shall, within three months of its discovery, be surrendered by the holder of the prospecting right to the Commissioner.

(5) Any person who removes, disposes of, or fails to surrender any mineral or precious stone in contravention of the provisions of this section or of any condition imposed by the Commissioner under subsection (2) shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

PART III

MINING RIGHTS

Acquisition of a mining right

22. (1) No person shall mine any mineral, other than in the course of prospecting under the provisions of Part II, unless he has acquired the right to do so under the provisions of this Part:

Provided that the Commissioner may grant permission to an applicant for a mining right to mine on the mining area applied for on such conditions and subject to such restrictions as the Commissioner may think fit.

(2) Any permission granted under subsection (1) may at any time be withdrawn by the Commissioner.

(3) A mining right may be acquired –

- (a) under a mining lease issued under the provisions of section 24, or registered under the provisions of section 25;
- (b) by the registration of a mining claim under the provisions of section 26.

(4) No mining right may be acquired in any National Park unless permission under section 16 of the National Parks Act, 1967, is first obtained.

(5) Any person mining save under and in accordance with the provisions of this Act shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 116.

Rights conferred by a mining right

23. (1) Subject to the provisions of this Act the holder of a mining right may enter upon his mining area together with his agents and servants and may –

- (a) take all reasonable measures on and under the surface of his mining area to mine and process the mineral to which his right relates :

Provided that the Minister may by endorsement on the mining lease or registration certificate as the case may be and on the registry duplicate thereof permit the holder of the mining right to mine and process additional minerals ;

- (b) erect the necessary equipment, plant and buildings on his mining area for the purpose of transporting, dressing, treating, smelting and refining the mineral or mineral ore recovered by him during his mining operations ;
- (c) dispose of any minerals, mineral concentrates or mineral ores derived from his mining area ;
- (d) prospect within his mining area for the mineral which he has the right to mine ;
- (e) stack or dump any of the products of mining ;
- (f) erect, construct and maintain houses and buildings for his use and for the use of his agents or servants ;
- (g) subject to the provisions of the Water Act, 1967, lay water pipes and make water courses and ponds, dams and reservoirs ;
- (h) construct and maintain all such tramways, roads, communications and conveniences as may be necessary ;
- (i) take and use water for domestic and mining purposes in accordance with the provisions of the Water Act, 1967 ;

(2) The rights conferred under this section shall be exercised reasonably and so as to affect injuriously the interests of the owner or occupier of the land on which the mining area is to the minimum extent necessitated by the reasonable and proper conduct of mining operations.

(3) No person shall mine any precious stone, natural oil or natural gas except on land to which the State does not hold the mineral rights save under and in accordance with a mining lease granted under the provisions of section 24 and no such mining lease shall confer the right to mine any such mineral unless such right is explicitly conferred therein.

(4) If a diamond pipe is discovered by the holder of a special prospecting licence entitling him to prospect for diamonds he shall, subject to the provisions of this Part have the right of working the whole of such pipe under such conditions as may be determined in the mining lease or as may be prescribed.

Mining lease where State has mineral rights

24. (1) The Minister may grant to the holder of a prospecting right (including a prospecting right granted under the provisions of section 6 (3)) a mining right in the form of a State Grant of a mining lease issued under the hand of the Commissioner.

(2) Subject to the provisions of this Act a mining lease issued under the provisions of this section shall be issued subject to such terms, conditions and restrictions as the Minister may in each case determine.

(3) Subject to the provisions of section 36 a mining lease issued under the provisions of this section shall be granted for such period, not being less than five nor more than twenty-one years, as the Minister may determine:

Provided that a mining lease may be granted for a period in excess of twenty-one years where, in the opinion of the Minister, special circumstances justifying such grant exist.

(4) No grant shall be made under the provisions of this section –

- (a) in respect of land to which the State does not possess mineral rights other than to a person to whom a special prospecting licence has been granted under section 18 and in respect of the mineral and land to which such licence relates;
- (b) in respect of land to which any other person possesses a mining right unless the Minister is satisfied that such person will not be prejudiced thereby;
- (c) to any person other than the holder of a prospecting right in respect of the mineral and area to which his right relates:

Provided that nothing in this paragraph shall prevent the issuing of a State Grant of a mining lease which has the effect of extending any mining area.

Mining lease where State has not mineral rights

25. (1) Subject to the provisions of this Act the holder of mineral rights may lease his right to mine minerals on any land in respect of which he holds mineral rights for a period not exceeding twenty-one years to –

- (a) the holder of a prospecting right over the land concerned;
- (b) the holder of a mining right over the land concerned, or his heirs or assigns;

Provided that a mining lease may be entered into under the provisions of this section for such period in excess of twenty-one years as the Minister may allow where, in the opinion of the Minister, special circumstances justifying a lease for such period exist.

(2) No mining lease entered into under the provisions of subsection (1) shall be of any force or effect unless it is registered by the Registrar on the instructions of the Minister under the provisions of this section.

(3) The Minister may refuse to authorise the registration of a mining lease entered into under the provisions of this section –

- (a) if he is of the opinion that it would be in the public interest to do so;
- (b) under the provisions of section 28;
- (c) where the lease relates to land which is owned or occupied by a person other than the holder of the mineral rights and the terms of the mining lease or the size of the area concerned affect such person to a greater degree than, in the opinion of the Minister, is warranted in the circumstances;

and shall refuse to authorise such registration unless he is satisfied that he may lawfully authorise such registration under the provisions of section 28(2).

Registration of mining claim

26. (1) Where a claim licence has lawfully been issued under the provisions of section 41 the holder of the claim licence shall, subject to the provisions of sections 23 (3), 28 and 41 be entitled to the registration of his claim as a mining claim.

(2) Where the Minister, acting under the provisions of section 27 authorises the registration of a mining claim, such claim shall be registered by the Registrar in accordance with the provisions of Part XI who shall assign such claim a registered number.

Applications for a mining right

27. (1) A person making application for the grant or registration of a mining right shall make application to the Minister through the Commissioner.

(2) The applicant shall in his application, furnish the Commissioner with –

- (a) his full name or, in the case of an application by an association of persons, the full names of such persons or, in the case of an application by a corporate body, the full registered name of such body;
- (b) the name, number (if any) and situation of the farm or land in respect of which such right is desired and in the case of a mining claim, a sketch plan in such form as the Commissioner may approve showing the area pegged under the provisions of sections 15 and 16, the beacons and points of reference;
- (c) full information as to his financial status and, if so required by the Minister, particulars of any guarantees that may be offered for the performance of his obligations under this Act;
- (d) particulars of the minerals in respect of which the right is sought and of the mineralization of the land in respect of which the right is sought;
- (e) if the applicant is a company, the full names and nationality of the directors and the full names by which those directors have at any time been known in any part of the world;
- (f) where the application is made by the holder of any mineral rights, or his assignees, proof to the satisfaction of the Commissioner that he holds the mineral rights in respect of which the application is made or has obtained from the holder of such rights the authority to make application for the mining right sought;
- (g) the scheme according to which the applicant wishes to mine;
- (h) such further information as may be required of him by the Minister.

(3) The applicant shall, when called on to do so by the Commissioner, furnish to the Commissioner within the time specified by him, a diagram of the mining area in respect of which the application is made; and no mining lease shall be granted or registered, as the case may be, until and unless such diagram is so furnished.

(4) Any person who in making application for a mining right makes any statement which is false or misleading in any material particular shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Grounds for refusal of mining right

28. (1) The Minister may direct the Registrar not to register a mining right under the provisions of section 25 or 26 where –

- (a) he is satisfied that there are reasonable grounds for believing that the mineral which it is sought to mine does not occur in workable quantities in or on the land in respect of which the right is to be granted ;
- (b) he is satisfied that the scheme according to which the applicant proposes to carry on mining under such right is not satisfactory, and either his technical or financial resources are not adequate for the proper mining of the mineral sought; or that arrangements whereby he proposes to obtain capital for the purpose are not satisfactory ;
- (c) the applicant is disqualified from obtaining a prospecting right under the provisions of section 11 (1) ;
- (d) the applicant has failed in any respect to comply with the provisions of this Act relating to the acquisition of a mining right.

(2) No mining lease shall be granted or registered under the provisions of this Part unless the Minister is satisfied that, in the circumstances of the case it would be inappropriate for the applicant therefor to acquire a mining right by the registration of a mining claim, or unless the applicant is not entitled to peg a claim and register it as a mining claim.

(3) Any applicant for a mining right who considers that any direction under subsection (1) is unreasonable may, within one month of being notified thereof, appeal to the High Court by way of notice of motion addressed to the Minister for an order requesting the Minister to withdraw his direction; and the High Court may make such order in the matter as it thinks fit.

Certificate of registration

29. (1) Where a mining lease is registered under the provisions of section 25 or a mining claim is registered under the provisions of section 26 the Registrar shall issue a certificate of registration to the holder of the mining right.

(2) No mining right shall accrue until the certificate of registration is issued.

Demarcation of area of mining lease

30. (1) On the grant or registration of a mining lease the Commissioner shall give directions as to the manner in which the mining area concerned is to be demarcated.

(2) Failure to demarcate a mining area in accordance with the directions of the Commissioner shall be an offence and the holder of the mining rights shall be liable, on conviction, to the penalties prescribed in section 116.

Holder of mining right to notify Registrar of his address

31. (1) Every holder of a mining right shall have an address within Botswana registered with the Registrar to which all communications and notices may be addressed and at which all process may be served.

(2) Notice of the situation of the registered address and of any change therein shall be given within twenty-one days after the date of the acquisition of the mining right, or any change, to the Registrar who shall record the same.

(3) Any person failing to comply with the provisions of this section shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Mining right held by more than one person

32. (1) Upon the grant or registration of a mining right, or at any time thereafter, not more than four natural or artificial persons shall be named as the holders of such right.

(2) Where more than one person is registered as the holder of a mining right, such persons shall, at the time of the grant or registration of the right, register at the offices of the Registrar the name and address of an accredited agent or manager residing within Botswana, and such agent or manager shall, in respect of the period during which his name is so registered, be personally responsible for all acts, matters and omissions in connection with the mining right as if such right were registered in his name as his own property.

(3) The registration of an agent or manager may be revoked at any time by the persons who obtained such registration, or their successors in title, and thereupon another person shall be registered as agent or manager.

(4) A registered agent or manager may at any time resign from his appointment as such by giving to the Registrar notice in writing to that effect, and any such resignation shall become effective for the purposes of this Act at the expiration of a period of forty-eight hours after such resignation is received by the Registrar.

(5) Within forty-eight hours after receipt of a notification from the Registrar of the resignation of an agent or manager under the provisions of subsection (4), the persons who had registered the name of such agent or manager, or their successors in title, shall cause the name and address of some other person to be registered as their agent or manager.

(6) Nothing contained in this section shall be taken in any way to relieve any person of any liability incurred under the provisions of this Act, or of any responsibility imposed on such person in regard to any mining right held by him or it, and where any mining right is held by two or more persons, each such person shall be jointly and severally responsible for every obligation or liability attaching to the holder of such right.

(7) Any person failing to register an agent or manager under the provisions of subsections (2), (3) or (5) shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Licence fees

33. (1) There shall be payable on the acquisition of a mining right and, thereafter, monthly in advance, licence fees at the rate of --

- (a) in the case of every mining lease granted under the provisions of section 24, such amount as may be determined in the lease;
- (b) in the case of a mining lease registered under the provisions of section 25, such amount as may be prescribed;
- (c) in respect of every mining claim, other than a claim for precious stones, natural oil or natural gas --
 - (i) for the first year after the date of registration: R2 per month;
 - (ii) for the second year thereafter: R4 per month;
 - (iii) for the third year thereafter: R6 per month;
 - (iv) for the fourth year thereafter: R8 per month;
 - (v) for the fifth and subsequent years: R10 per month;
- (d) in respect of a mining claim for precious stones R100 per month;

Provided that in the case of a mining claim for alluvial deposits the fee shall be R50 per month:

- (e) in respect of a mining claim for natural oil or natural gas, such amount as may be prescribed:

Provided that where the Commissioner is satisfied that any licence fee payable under this section will probably be refundable under the provisions of subsection (2) he may permit the holder of the mining right to defer payment of the licence fee for such period, not being in excess of nine months, as he may determine.

(2) Any fee paid under the provisions of subsection (1) shall be refunded to the holder of the mining right by the Commissioner if such holder applies for such refund and proves to the satisfaction of the Commissioner that he has during any six months period in respect of which the refund is claimed carried out work on the mining area in the amount prescribed in section 34:

Provided that where a claim holder holds a block or blocks of contiguous or neighbouring mining claims, if operations which are being carried on on any claim in that block or in those blocks are in the opinion of the Commissioner capable of extension to any other claims in that block or in those blocks then the licence holder at his option may treat the claim on which work is being done together with any one or more claims to which in the opinion of the Commissioner operations may be extended as a single claim for the purposes of this section.

(3) The Minister shall waive the payment of any licence fee payable under the provisions of this section –

- (a) where he is of the opinion that the mineral to which the mining right relates cannot, in all the circumstances of the case, be worked at a profit; or
- (b) where he is satisfied that the work required in order for a refund to be claimed under the provisions of subsection (2) has not been carried out by reason of the influx or scarcity of water, serious accident, damage to mine equipment or by any other reasonable cause of whatsoever nature.

(4) Where the holder of a mining right carries out work in a mining area in excess of the amount prescribed in section 34 during any period in respect of which licence fees are payable under the provisions of subsection (1) such work may be deemed to be work entitling the holder of the mining right to be refunded in accordance with the provisions of subsection (2) in respect of any other such period in such circumstances and subject to such conditions as may be prescribed.

Development work as an entitlement to licence fee refund

34. (1) For the purposes of section 33 “work” includes –

- (a) development work as defined in subsection (3);
- (b) the production of minerals;
- (c) capital expenditure;
- (d) such other work in connection with mining as may be prescribed.

(2) The amount of work required to obtain a refund of fees under the provisions of section 33 (2) shall be in the case –

- (a) of development work: 60 feet or such amount or value as may be prescribed;
- (b) of the production of minerals; such quantity or value as may be prescribed;
- (c) of capital expenditure: R500;
- (d) where other work has been prescribed under subsection (1) (d): such amount as may be prescribed.

(3) For the purposes of this section development work –

- (a) shall consist of shafts, drives, adits, tunnels, winzes, rises and boreholes made or constructed for the purposes of developing the mineral contained within the area to which the mining right relates;
- (b) shall include for a period of two years commencing on the date of acquisition of the mining right trenching or excavation of a minimum depth of 3 feet which has been performed for the tracing of a reef or the proving of a deposit:

Provided that for the purposes of computing the footage of development work for the purposes of subsection (2) (a) such trenching or excavation shall be reckoned on the basis of three cubic yards of trenching or excavation being the equivalent of one foot of such work;

(c) except as provided for in subsection (5) shall be new work and not the restoration or cleaning out of existing works.

(4) No work shall be development work for the purposes of this section unless it is of the minimum dimensions prescribed in the First Schedule and the manner in which the footage of development work shall be computed for the purposes of subsection (2) (a) shall be as prescribed in that Schedule :

Provided that the Minister may, by notice in the *Gazette* vary, amend or modify any or all of the provisions of the First Schedule.

(5) Notwithstanding the provisions of subsection (3) (c), the Commissioner may, where he is satisfied that work in connection with cleaning out, dewatering or restoring old workings on a mine has been undertaken for the purpose of re-opening such workings and that an expenditure of not less than R500 has been thereby incurred make refund of fees in accordance with the provisions of section 33 (2).

(6) Capital expenditure –

(a) for the purposes of subsection (2) (c) shall not include the purchase price paid or other consideration given in respect of the acquisition or transfer of a mining right;

(b) on plant shall not be taken into account in computing the amount of expenditure for the purposes of subsection (5).

(7) If any dispute arises as to whether any expenditure is capital expenditure for the purposes of this section, the Commissioner shall refer the matter to the Minister, whose decision in the matter shall be final and without appeal.

Transfer and hypothecation of mining rights

35. (1) No State Grant of a mining lease or of any interest therein may be sub-let, transferred or hypothecated without the consent of the Minister.

(2) Subject to the provisions of subsection (1) the sub-letting, transfer or hypothecation of a mining right or of any interest therein shall be effected by written agreement registered under the provisions of Part XI:

Provided that no such agreement shall be registered where the transferee is disqualified from obtaining a mining right under the provisions of this Part.

(3) On effecting registration of an agreement under the provisions of subsection (2) the Registrar shall, in the event of the transfer to or vesting of the

right in a person other than the previous holder issue to the transferee a certificate of registration and shall cancel the last issued certificate of registration, if any.

Renewal of mining rights

36. (1) If at the expiration of the term originally fixed in a mining lease or any renewal thereof the lessee shall be carrying on work in a normal and business-like manner –

- (a) in the case of a State Grant of a mining lease where the lessee has given the Commissioner six months' notice in that behalf, then the lessee shall be entitled to obtain a renewal of the lease for a term not exceeding twenty-one years upon the terms and conditions which are then generally applicable to new leases:

Provided that nothing in this paragraph shall derogate from the power of the Minister, on the application of the lease holder, to novate any State Grant of a mining lease by regrant under the provisions of section 24;

- (b) in the case of a mining lease registered under the provisions of section 25 and with the consent of the lessor, then the lessee shall be entitled to the extension or renewal of the lease for such period, not exceeding twenty-one years, as the parties thereto may agree:

Provided that such mining lease may be renewed for such period in excess of twenty-one years as the Minister may allow where, in the opinion of the Minister, special circumstances justifying such renewal exist.

(2) A mining right acquired under the provisions of section 26 may be renewed for a further period under the provisions of section 44.

Priorities of titles

37. (1) Priority of acquisition of title to any mining area, if such title has been duly maintained, shall in every case determine the rights as between two or more persons claiming title to the same mining area or portion thereof, and in the event of the rights of a subsequent pegger conflicting with those of a prior pegger, then, to the extent of such conflict, the rights of such subsequent pegger shall be subordinated to the rights of such prior pegger, and all registration certificates or grants shall be issued subject to the provisions of this section.

(2) After the expiration of a period of –

- (a) two years after the date of an original registration certificate or grant;
- (b) six months after the transfer of a mining right in respect of which a registration certificate has been issued under the provisions of section 35 (3) to a *bona fide* purchaser for value;

it shall not be competent for any person to allege that the original pegging, grant or registration of such mining area or mining right was invalid or illegal, or that the provisions of this Act were not properly carried out prior to the issue of such registration certificate or grant or prior to such transfer, as the case may be.

(3) For the purposes of this section "acquisition of title" means the due performance of the first physical act required to be done in order to acquire any mining right.

Subterranean limits

38. The subterranean limits of any mining area shall be vertical planes passing through the sides by which the area is bounded.

Excesses in demarcation of a mining area

39. (1) If at any time the Commissioner has reason to believe that the extent of a mining area exceeds the area for a mining area of the relevant type prescribed under this Act as read with the terms and conditions of any relevant mining lease (hereinafter referred to in this section as the "specified area") he may cause the boundaries of such area to be surveyed.

(2) If the extent of such mining area is found on survey to exceed the specified area, the holder thereof shall be liable to pay the Commissioner the cost of such survey in addition to any amount that the holder may have to pay in consequence of any action which he may be required to take under the provisions of subsections (3) and (4) of this section.

(3) If at any time after the registration of a mining right it is found that the extent of the mining area exceeds the specified area, the Commissioner shall notify the holder of the mining right accordingly, and such holder shall, within thirty days after a date fixed by the Commissioner in such notification, unless he abandons such mining area under the provisions of Part V –

- (a) in the case of a mining lease, alter the demarcated boundaries of the mining area to conform with those of the specified area, and;
- (b) in the case of a mining claim registered under the provisions of section 26 obtain a cancellation of the registration certificate relating to such mining area and the issue of a fresh registration certificate of any portion thereof, the extent of which does not exceed the specified area.

(4) Upon the issue of a fresh registration certificate under the provisions of subsection 3 (b) the mining right to which such certificate relates shall be deemed for all purposes to have been acquired on the same day and to be held upon the same terms and conditions as the original mining right.

(5) Failure to comply with the provisions of subsection (3) shall render the whole of the mining area concerned liable to forfeiture under the provisions of section 48.

Returns and reports

40. (1) The holder of a mining right shall furnish the Commissioner with such returns and reports of his mining operations on or in the mining area to which his right relates and in such manner as may be prescribed.

(2) Any person who knowingly furnishes any return or report in accordance with regulations made under subsection (1) as read with section 115 which is false in any material particular or who fails to re-submit any such return or report after notice by the Commissioner that such return or report is defective in any material particular shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

PART IV

SPECIAL PROVISION RELATING TO CLAIMS

Claim licences

41. (1) Subject to the provisions of this Act a person pegging a claim under the provisions of section 15 shall, on application to the Commissioner within the time prescribed in section 15 (3), be entitled to the issue to him of a claim licence.

(2) An application for a claim licence under the provisions of subsection (1) shall be accompanied by a sketch plan to the satisfaction of the Commissioner showing the area pegged, the beacons and the points of reference.

(3) The Commissioner may refuse to issue a claim licence if –

- (a) the application therefor does not comply with the provisions of this Act or the licence may not lawfully be granted under the provisions of this Act;
- (b) the applicant is not entitled to obtain a mining right in respect of the claim;
- (c) the claim has not been pegged in accordance with the provisions of this Act.

(4) A person to whom a claim licence is issued under the provisions of subsection (1) shall be entitled –

- (a) to exclusive prospecting rights over the claim concerned;

(b) to make application for a mining right under the provisions of Part II to the claim concerned, which application shall be preferent to any other application in respect of the area so pegged.

(5) The rights conferred in subsection (4) shall lapse –

(a) if application is not made for a mining right within twelve months of the issue of the claim licence;

(b) if the application for the mining right is unsuccessful.

(6) Prior to the issue of a claim licence the Commissioner may inspect the claim for the purpose of ascertaining whether the provisions of this Act have been complied with.

Demarcation of claims

42. (1) Before application is made for a mining right in respect of any claim the pegs placed under the provisions of section 15 shall be replaced by stone or concrete beacons at least 2 feet high and 3 feet in diameter at the base, and in the centre of such beacon there shall be securely fixed in an upright position a peg of not less than 2 inches in diameter, and projecting not less than three feet above the ground level.

(2) At every such stone beacon, there shall be dug two trenches not less than three feet long, six inches wide, and one foot deep, to indicate the direction of the two adjacent beacons.

(3) Every corner peg fixed under the provisions of subsection (1) shall bear a notice board or notice of the nature prescribed in section 16 (4) containing in the order shown the following particulars –

(a) the letter of the original peg for which the beacon has been substituted;

(b) the name, if any of the reef and of the principal mineral, or if alluvial claims, the word "alluvial";

(c) the name of the registered holder;

(d) the number of the certificate of registration;

(e) the date of the certificate of registration.

(4) In the event of the amalgamation of claims under the provisions of section 100 only the external beacons need be maintained or erected in the manner prescribed in this section.

Diagrams

43. Before the expiration of the first four years after the date of the first pegging of a claim or at such earlier date as the Commissioner may require, the

holder of the mining right shall furnish the Registrar with a diagram of his claim-holding, unless the Commissioner is satisfied that the cost of the diagram would be an unnecessary burden on the claimholder, and that no useful purpose would be served by furnishing it and so informs the holder in writing.

Extension of life of claims

44. (1) If the Minister is at any time satisfied –

- (a) that the size of any ore reserves proved on any claim is such that, having regard to the mining and reduction methods appropriate to the ore body and the marketing prospects of the minerals to be derived therefrom, it is unreasonable to expect the holder of such claim to mine out those reserves within the remaining period of the life thereof;
- (b) that the inability to mine out such reserves has not been brought about by any failure of the holder to carry on prospecting or mining operations on the said claim on a reasonable scale and in a reasonable manner:

Provided that no such failure shall be deemed to have arisen in the case of any period of stoppage caused by the influx of water, serious accident, damage to mine equipment or any other reasonable cause of any nature whatsoever; and

- (c) that the holder's title to the claim has not expired and is not liable to cancellation under any of the provisions of section 48;

he may order that the title to the said claim shall not expire on the date prescribed in section 47 (1) (b) but shall expire after the passage of forty-two years from the date on which the said claim was pegged.

(2) The Commissioner shall endorse any order made under the preceding subsection upon the claim licence relating thereto.

(3) The provisions of subsections (1) and (2) shall apply *mutatis mutandis* to the title of any other claim which is licensed by the same holder, the title to which has not expired and is not liable to cancellation under the provisions of section 48 and which forms part of the same block of contiguous claims licensed by the holder as does the claim mentioned in subsection (1) and which in the opinion of the Minister is reasonably required by the holder for the operation in extension of operation on the claim mentioned in subsection (1).

(4) Any holder aggrieved by the refusal of the Minister to extend the life of a claim under the provisions of this section may appeal to the High Court by way of notice of motion to the Minister, and the High Court may direct the Minister to extend the life of the claim concerned or may dismiss the appeal as it thinks just.

Mining sites

45. (1) An applicant for the registration of a mining claim under the provisions of section 26 may in like manner make application for the registration of claims ancillary thereto under the provisions of this section, which claims shall be termed "mining sites":

Provided that such ancillary claim may be of any size but shall not exceed in area one acre for every four claims to which it is ancillary.

(2) A claim registered under the provisions of section 26 as read with the provisions of this section shall confer upon the holder the rights described in section 23 other than the right to mine.

(3) The certificate of registration of a claim to which the provisions of this section apply shall bear endorsed upon it the words "Mining Site".

(4) Every mining site shall be inalienably attached to the claims to which it is ancillary, and every transfer, lease, hypothecation, or charge affecting such claims shall act as a transfer, lease, or hypothecation of or charge to such claim; and no separate sale, lease, hypothecation or charge purporting to affect any such claim apart from the claims to which it is attached shall be valid:

Provided that nothing in this subsection shall prevent the abandonment of such claim whether for the purpose of effecting the registration of another similar claim or for any other cause.

(5) A mining site shall lapse when the claims to which it is ancillary, lapse:

Provided that if certain claims lapse, and others do not, the Commissioner may give such directions in the matter as he thinks fit.

(6) Subject to the provisions of this section a claim registered under the provisions of this section shall be deemed for all purposes to be a mining claim:

Provided that the provisions of sections 33 and 34 shall not apply to such claim.

(7) The Commissioner may refuse to register a claim under the provisions of this section if, in the opinion of the Commissioner, it will interfere with any mining operations.

(8) A mining site may be re-registered by the holder thereof as a mining claim to which the provisions of this section are not applicable.

Cancellation of portion of title

46. (1) The holder of a block of mining claims shall, after giving notice thereof to the Commissioner, have the right at any time to the cancellation of his title to any portion of such block and to the issue of a new certificate of registration of the remainder:

Provided that he proceeds in all respects as to the beaconing and registration of such remaining claims as if they were newly pegged claims, and that he lodges his old certificate of registration with the Registrar, and that he removes all pegs and beacons relating to the old claims.

(2) The Registrar shall issue a new certificate of registration for the retained claims, with a fresh official number, and make appropriate entries in his books with regard to the abandoned claims.

PART V

TERMINATION OF MINING RIGHT

Lapse of mining right

47. (1) Subject to the provisions of sections 36 and 44 a mining right shall lapse –

- (a) in the case of a mining lease, on the expiry of the lease;
- (b) in the case of a mining claim registered under the provisions of section 26, on the twenty-first anniversary of the first registration of the claim;
- (c) if the right is abandoned under the provisions of section 49;
- (d) if the right is cancelled under the provisions of section 48.

(2) On the lapse of a mining right the Registrar shall make appropriate entries in all relevant books and registers kept under this Act.

Cancellation of mining rights

48. (1) If the Minister is satisfied that the holder of a mining right –

- (a) is not carrying on in a satisfactory manner prospecting or mining operations in the area of his right and has not been prevented from carrying on such operations by the influx or scarcity of water, serious accident, damage to mine equipment or by any other reasonable cause of whatsoever nature;
or
- (b) is occupying the area of his right for purposes other than mining; or
- (c) has contravened any provisions of this Act relating to the rendering of any returns; or
- (d) is liable to the forfeiture of his mining area under the provisions of section 39 (5); or

(e) is three months or more in arrears with the payment of any rental owing under the provisions of section 60;

he may issue an order directing the holder of the right to remedy his default within a period fixed by the Minister, being a period not less than three months from the date of issue of the notice.

(2) Any holder who considers a notice issued in terms of subsection (1) to be unreasonable may, within the period fixed under subsection (1), apply to the High Court by way of notice of motion addressed to the Minister, for an order directing the Minister to withdraw or vary his notice and the High Court may make such order in the matter as it thinks fit.

(3) Where an order has been issued in terms of subsection (1) and the holder remains in default after the expiration of the period fixed therein without having made application to the High Court as provided in subsection (2), or where the holder, having made such an application, fails to comply with the terms of the Court's order, the Minister shall declare the mining right to be cancelled.

(4) Whenever the licence fees due under the provisions of section 33 or rentals due under the provisions of section 59 are three months or more in arrear, the Commissioner shall give notice to the holder of the mining right and also to the holder of any bond registered under the provisions of Part XI informing them that unless such licence fees, rental and all other payment due in respect thereof are paid before the expiration of three months from the date of notice the title to such claim will be cancelled and if at the expiration of the said three months such fees and payments have not been paid, the said right shall be deemed to be cancelled.

(5) If at any time after the registration or grant of a mining right it shall appear to the Minister that such right was registered or granted otherwise than in accordance with the provisions of this Act or that the person on whose application the right was registered or granted was not entitled by virtue of the provisions of this Act to such right, the Minister shall give notice to such persons that unless within thirty days the Minister is satisfied by such evidence as seems to him necessary that such registration or grant was in accordance with the provisions of the Act or that such persons were entitled as aforesaid (as the case may be) the mining right will be cancelled and unless within such period the Minister is so satisfied that right shall as from the expiry of the period of thirty days be cancelled:

Provided that the holder of the right may appeal to the High Court against such cancellation within a period of fourteen days from the date thereof and the High Court may in the event of such appeal make such order in the matter as thinks fit.

(6) Where a third party holds a leasehold, hypothec or other interest in or in respect of any mining right which is cancelled under the provisions of this section such party may, within a period of four weeks of the cancellation, make

application to the Minister for the registration of the right in favour of himself or his nominee (being a person other than the previous holder of the right or a person responsible for the default occasioning cancellation) and, for the purpose of effecting any such transfer and of safeguarding the interests of interested parties pending the decision of the Minister the right shall be deemed to remain in existence.

(7) The provisions of sections 27 and 28 shall apply *mutatis mutandis* to any application under the provisions of subsection (6) and, in addition, the Minister may, in granting permission to transfer, impose such conditions as he may think equitable in the circumstances of the case.

Abandonment of mining right

49. (1) Any person wishing to abandon a mining right or a portion thereof shall give notice thereof to the Commissioner at least three months prior to such abandonment.

(2) The Commissioner if he is satisfied –

- (a) that the abandonment will not prejudice the interests of any person holding any interest in the mining right or mining area; and
- (b) the purpose of the abandonment is not to enable the holder unlawfully to evade his obligations under this Act or any other law;

shall direct the Registrar to register such abandonment and, upon such registration and the issue of a certificate of abandonment to the person abandoning the right as aforesaid, the mining right or such portion thereof shall be deemed to be abandoned and, if he is not so satisfied, the mining right or such portion thereof shall not be so deemed:

Provided that –

- (i) the abandonment of a mining right or a portion thereof under the provisions of this section shall not affect any liability incurred by the holder of the right before such abandonment shall have taken effect;
- (ii) in the case of a mining lease granted under the provisions of section 24 no abandonment shall be registered until such fees as may be prescribed have first been paid.

Duties on lapse of mining right

50. (1) Any person whose mining right lapses shall, forthwith upon such lapse fill up, fence, or secure to the satisfaction of the Commissioner all shafts, pits, holes and excavations, in such manner as to prevent persons or stock inadvertently entering them, but shall not remove beacons, pegs or boundary posts thereon.

(2) If any person fails to comply with the provisions of subsection (1) the Commissioner may himself fill up, fence, or secure shafts, pits, holes and excavations and, in such event, the Commissioner may recover the expenses of such filling up, fencing or securing from the defaulter and the event of any legal proceedings, a certificate by the Commissioner as to the amount owing shall be *prima facie* proof of such amount.

(3) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable to the penalties prescribed in section 116.

Removal of buildings etc.

51. (1) Any person whose mining right lapses may within a period of six months of the effective date of such lapse remove from the mining area to which such right relates any buildings, structures or machinery which he or his predecessors in title may have erected thereon;

Provided that if any other person acquires a mining right to the mining area upon which the buildings structures or machinery are situated, the holder of such new mining right shall not be liable for any damage done to any such building, structures or machinery in the due and proper exercise of his rights as such holder.

(2) Notwithstanding the provisions of subsection (1) no person shall in the exercise of his powers under that subsection damage any dam, well or bore-hole or remove or damage any reservoir:

Provided that all machinery and appliances in connection with such dam or reservoir which can be readily removed without in any way injuring, weakening, or impairing such dam or reservoir, may be removed in accordance with the provisions of that subsection.

(3) Any person who contravenes the provisions of subsection (2) shall be guilty of an offence and liable on conviction, to the penalties prescribed in section 116.

Treatment of tailings etc. after lapse of mining right

52. (1) Where any mining right lapses the former holder of the right may, not less than thirty days prior to such lapse, apply to the Commissioner for leave to enter the land comprised in the right and to treat or remove any tailings, ore or stone left thereon by him.

(2) The Commissioner may grant such leave and may fix a time within which such treatment or removal is to be completed.

(3) If such leave is not applied for as aforesaid or such treatment or removal is not completed within the time fixed, any tailings, or any stone remaining on the land shall become the absolute property of the State.

PART VI
ROYALTIES

Royalties

53. (1) Subject to the provisions of this Part all minerals obtained in the course of prospecting or mining operations shall be liable to royalties –

- (a) payable to the State where the State is the owner of the mineral rights –
 - (i) in the case of natural oils or natural gas, at such rate as may be prescribed;
 - (ii) in the case of any mineral other than a mineral specified in subparagraph (i), at the rate prescribed in the Second Schedule;
- (b) payable to the holder of the mineral right or his nominee where the State is not the owner of the mineral rights, at such rate as may be agreed upon between the owner of the mineral rights and the holder of the mining or prospecting right, as the case may be:

Provided that in addition to such royalties there shall be paid in the case of precious stones a royalty to the State at one half the rate prescribed in the Second Schedule.

(2) The rate agreed upon under the provisions of subsection (1) (b) shall not exceed such amount as may, from time to time, be prescribed and in so far as any agreement provides for the payment of royalties in excess of such rate, the agreement shall, to the extent of such excess, be unenforceable whether it was entered into before or after the date when the rate was prescribed as aforesaid.

(3) Where any person has acquired a prospecting or a mining right under the provisions of section 18 as read, as the case may be, with Part III, the holder of the prospecting or mining right shall pay to the owner of the mineral rights such sums, by way of royalty, as the Minister may determine as being adequate in the circumstances of the case:

Provided that any person aggrieved by the decision of the Minister under the provisions of this paragraph may appeal within four weeks of receiving notification thereof to the High Court for its determination as to whether the amount so determined is adequate and if not, what that amount should be, and, in exercising its powers under this proviso the High Court may make such order in the matter as it may think fit.

(4) The Minister may, by notice in the *Gazette*, vary, amend or modify any or all of the provisions of the Second Schedule including the manner in which royalties may be computed whether in relation to market value of any mineral, the profitability of any mining operations or otherwise:

Provided that the effect of any variation, amendment or modification is to increase the rate of royalty payable by any holder of a mining right the Minister shall give notice in the Gazette of his intention to exercise his powers under this subsection at least three months prior to the exercise thereof.

(5) Nothing in this section shall render unenforceable any agreement for the payment of royalties (being royalties which accrue to the State) which was entered into prior to the date of the coming into operation of this Act and stipulating for the payment of royalties at a rate, or calculated in a manner, other than that prescribed in the Second Schedule, and such royalties shall, in such event, be payable in lieu of the payment of royalties at the rate so prescribed.

(6) For the purposes of this section and section 55 royalties shall include all sums, by whatever name called, payable by way of consideration for the right to mine any mineral.

Additional Diamond royalties

54. (1) In addition to such royalties as may be payable in terms of section 53 the State shall be entitled to one-quarter of the annual realised profits from the working of any diamond pipe, and such one-quarter shall be paid within six months of the termination of the financial year of the holder of the mining right.

(2) For the purposes of subsection (1) the realised profit shall be the excess of revenue from the sale of diamonds over expenditure, including capital expenditure, incurred in working the pipe and in the production and realisation of diamonds. If there is a loss in any one year, it shall be carried forward as an addition to expenditure in the following year.

(3) For the purposes of subsection (2) "expenditure" shall include such expenses as may be prescribed.

Remission of royalties

55. (1) Samples of minerals required for purposes of assay, analysis or other examination may be exempted from liability to royalties at the direction of the Commissioner by permit under his hand.

(2) The Minister may remit royalties payable to the State under sections 53 and 54 in such manner and on such conditions as may be prescribed.

(3) The Minister may remit wholly or in part the royalty payable on any specified mineral or specified deposit of minerals for such period as he may determine whenever he deems it expedient to do so in the interest of the production of such mineral or as an inducement to the commencement or continuation of mining operations:

Provided that where the State does not hold the mineral rights such remission shall not be made save with the consent of the holder of the mineral rights.

Returns etc.

56. (1) The holder of a mining right shall notify the Commissioner of his intention to win any mineral from his mining area and of the approximate date of commencement of such winning.

(2) The holder of a mining right shall, as from the date of the commencement of the winning of any mineral from his mining area render monthly to the Commissioner, not later than the first day of the second month following the one to which the return relates, a return of the amount of ore or other material treated or disposed of and the value of the output of the minerals therefrom. Every such return shall be supported by such statutory declaration, certificates and documents as may from time to time be prescribed, and any royalty which may be due on such output shall be accounted for and paid to the Commissioner at the time of rendering such return.

(3) If at the time of rendering such return it is for any reason impracticable to calculate the total value of the output from a mining area the Commissioner may on the application of the holder of the mining right fix a provisional value for such output and royalty shall be payable on such provisional value. When the total value of the output has been ascertained, the holder shall be entitled to be repaid any sums paid by him in excess of the royalty payable on such total value, or shall pay any sum which may be required to complete the royalty payable on such total value.

(4) If at the time of rendering any such return the holder of the mining right makes application to the Commissioner for permission to defer payment of any royalty which may be due on such output and on subsequent outputs, the Commissioner shall refer such application to the Minister, and the Minister may in his discretion prescribe that during such period as he may specify the royalty shall be paid when each such output is realised or on or before such other date as it may determine.

(5) Every holder of a mining right shall, if so required by the Commissioner produce such evidence as the Commissioner may require as to the total sums realised by him for any output.

(6) The Commissioner or any official duly authorised by him shall, at all reasonable times, have access for the purpose of inspection to all books and records, reports and other documents, relating to any mining area as may be necessary for the purpose of ascertaining or verifying any return rendered under this section.

(7) Any person failing to give notice under subsection (1) or render returns under subsection (2) shall be guilty of an offence and liable, on conviction to the penalties prescribed in section 116.

Prohibition of disposal of minerals

57. (1) If a holder of a mining right fails to pay any royalty due in respect of his mining area on or before the prescribed date, the Commissioner may issue an order prohibiting the disposal of any minerals from such area or from any other mining area which is being worked by such holder, whether or not such holder has failed to pay any royalty due in respect of such other area, until all outstanding royalty has been paid or until an arrangement has been made which is acceptable to the Commissioner for the payment of any such royalty.

(2) If the Commissioner has reason to believe that minerals have been produced from any mining area and he has not received in respect thereof the return mentioned in section 56 he may issue an order prohibiting the disposal of any minerals from such mining area until such return has been rendered and any royalty due in respect of such production has been paid or until an arrangement has been made which is acceptable to the Commissioner for the payment of such royalty.

(3) Any holder of a mining right who fails to observe such an order and any person knowing of such order who contrary thereto receives any minerals from the mining area concerned, shall be guilty of an offence and, liable, on conviction to the penalties prescribed in section 116.

PART VII

FISCAL

Duties

58. (1) Every instrument described in the Third Schedule shall, save as to the exemptions in this Act specified, be severally subject to the duties prescribed in respect of such instrument, whether the instrument be executed in Botswana or whether it is executed outside Botswana.

(2) Where the amount of duty exceeds R20 the Registrar shall be deemed to have been authorised under the provisions of section 6 (1) (d) of the Stamp Duties and Fees Proclamation (Chapter 91) to issue a special receipt in lieu of requiring stamps to be affixed to the instrument.

(3) Where an instrument is chargeable with *ad valorem* duty in respect of –

- (a) any money in any foreign or Commonwealth currency; or
- (b) any stock or marketable security;

the duty shall be calculated on the value on the date of the instrument of the money in rand according to the current exchange or of the stock or security according to the average price thereof.

(4) Any instrument chargeable with duty under the provisions of this section shall not be chargeable with further duty under the provisions of the Stamp Duties and Fees Proclamation (Chapter 91).

(5) The Minister may, with the approval of the Minister for the time being responsible for Finance, by notice in the *Gazette* exempt any instrument or class of instrument either from the whole or part of any duty chargeable under the provisions of this section.

(6) The Minister may, by notice in the *Gazette* vary, amend or modify any or all of the provisions of the Third Schedule.

Registration rental

59. (1) There shall be paid to the State at the office of the Commissioner by every holder of a special prospecting licence issued under the provisions of section 9 an annual registration rental of 50 cents per square mile of the grant, with a minimum rental of R50.

(2) The rental payable under the provisions of subsection (1) shall be payable on the issue of a special prospecting licence and, thereafter, annually on the anniversary thereof until the expiry or termination thereof.

(3) Where the special prospecting licence is granted over land within a tribal territory half of any moneys received by the State under the provisions of this section shall be appropriated as a grant in aid of the District Council within the area of which the land is situated.

(4) Registration rental shall be paid in respect of a mining right in such amount, to such persons (whether the State or otherwise) and subject to such conditions as may be prescribed.

(5) Where registration rental is payable under the provisions of this section no mining or prospecting right shall be deemed to accrue until the first annual payment in respect thereof has been paid.

PART VIII

RIGHTS OF SURFACE OWNER OR OCCUPIER

Rental to owner or occupier of land

60. (1) Where a mining right has been acquired by any person to land (other than unalienated State land) which is not owned or occupied –

- (a) by the holder of the mineral rights to that land unless such mining right has been acquired under the provisions of section 18 as read with section 7 (1) (d) and Part III;

(b) by the holder of the mining right to that land other than under a mining or prospecting right;

the holder of the mining right shall pay to the owner or occupier of the land annually in advance, such rental as may be agreed between them or, in the absence of such agreement, as may be determined by the Minister:

Provided that in the case of land in a tribal territory such rental shall be payable to the District Council within the area of which the land is situated and shall be in such amount as may be prescribed.

(2) The Minister may, on application by any interested party, apportion any rental payable under the provisions of subsection (1) between the owner and any occupier in proportion to their respective interests in the land included within the mining area or make such other order in the matter as may appear to him to be just.

(3) In assessing any rental payable under the provisions of this section the Minister shall determine the matter in relation to current leasehold values in the area in which the mining right is situated for land of a similar general nature to the land concerned but which is known to lack any exploitable deposit of minerals.

(4) The Minister may, on the application of any interested party from time to time vary any determination made by him under the provisions of this section:

Provided that the Minister may decline to vary any determination if the application thereto is made within five years of any previous determination of the same nature and shall so decline if the effect of a successful application would be to vary a High Court determination under the provisions of subsection (5) within five years of the date thereof.

(5) There shall be an appeal by any interested party from the Minister to the High Court against any determination by the Minister under the provisions of this section other than a determination under the proviso to subsection (4):

Provided that any such appeal shall be lodged within a period of four weeks after the appellant became aware of the determination appealed against.

(6) The High Court may, on appeal, vary or amend any determination of the Minister made under the provisions of this section:

Provided that the High Court shall not exercise its powers under this subsection unless it is satisfied that, in the circumstances of the case, the determination of the Minister was substantially inequitable.

Rights to compensation

61. (1) The holder of a prospecting or mining right shall, on demand being made by the owner or occupier of the land upon or under which prospecting or

mining operations are or have been carried on, pay him fair and reasonable compensation for any disturbance of the rights of such owner or occupier, and for any damage done to the surface of the land by such operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged by the holder of the right or by any servant or agent of such holder or of his predecessors in title, pay compensation for such damage :

Provided that –

- (a) except insofar as the parties concerned may otherwise agree no compensation may be claimed under the provisions of this section in respect of damage done to the surface of land situated within a mining area until the lapse of such right;
- (b) payment of rental under the provisions of section 60 shall be deemed to be adequate compensation for deprivation of the use of the land to which the rental relates;
- (c) in assessing compensation claimable under the provisions of this section account shall be taken of any improvements effected by the holder of the mining or prospecting right, or by his predecessors in title the benefit of which enures or will enure to the owner or occupier;
- (d) the basis upon which compensation shall be claimable for damage done to the surface of any land shall be the extent to which the market value of the land (which for such purposes, shall be deemed to be saleable) upon which the damage has occurred has been reduced by reason of such damage;
- (e) no compensation shall be claimable by the holder of a State Grant of land or his successors in title in respect of any mining or prospecting operation under a mining or prospecting right existing at the date of such Grant;
- (f) no compensation shall be claimable under the provisions of this section by an owner or occupier who is the holder of the mineral rights and from whom the holder of the prospecting or mining right has received permission to prospect or mine, as the case may be.
- (g) compensation shall be claimable for the clearing or preparation of land for agricultural or other purposes on the basis of the extent by which the market value of the land (which for such purposes, shall be deemed to be saleable) is enhanced by such clearing or preparation;

(2) If the holder of the prospecting or mining right fails to pay compensation when demanded under the provisions of subsection (1) or if the owner or occupier is dissatisfied with the compensation offered, the dispute shall be determined in accordance with the provisions of Part X.

(3) Unless any amount owing under the provisions of this section is paid within fourteen days of the decision of the Commissioner under the provisions of subsection (2) as read with Part X or, in the event of an appeal to the High Court, within fourteen days of the decision of the High Court thereon the Minister may,

by order served on the holder thereof and without prejudice to any other remedy which the person to whom compensation is owed may have, suspend the prospecting or mining right until such compensation is paid.

(4) A demand under the provisions of subsection (1) shall be made within a period of four years from the date when the right to claim compensation under this section first accrued, failing which such right shall be unenforceable.

Surface rights of landholder

62. The owner or occupier of any land within a mining area shall retain the right to graze stock upon or to cultivate the surface of such land in so far as such grazing or cultivation does not interfere with the proper working or utilisation of such area for mining or prospecting purposes but shall not erect any building or structure thereon without the consent of the holder of the mining right or, if such consent is unreasonably withheld, the consent of the Commissioner.

PART IX

SURFACE PROTECTION

Protection of cracks, subsidences, shafts and workings

63. (1) When large cracks or subsidences have taken place, or are likely to take place in consequence of mining operations, it shall be the duty of the holder of the mining right under which such operations have taken place, to fence in securely or enclose to the satisfaction of the Commissioner the places where such cracks or subsidences are, or are likely to occur, and to keep the same securely fenced or enclosed.

(2) The mouths of all shafts, as well as all other open surface workings, and all other excavations dangerous to the safety of persons or livestock shall be securely fenced in or enclosed to the satisfaction of the Commissioner and shall be kept so fenced in by the registered holder for the time being of the mining area on which such shafts, workings or excavations may be.

(3) Any person failing to comply with the provisions of subsection (1) or (2) shall be guilty of an offence and, on conviction, shall be liable to the penalties prescribed in section 116.

Mining under roads, buildings etc.

64. (1) Reefs, or other mineral deposits shall be left intact below roads, railways, landing fields, reservoirs, cemeteries, building stands, machine sites, rivers, lakes, water rights, villages and gardens, townships and other surface objects requiring protection, and for such distances outside the boundaries of

such premises or areas as the Commissioner may determine.

(2) The portions of reefs or mineral deposits required to be left intact under the provisions of this section or section 65 shall be termed "safety pillars".

(3) Cutting into or through any safety pillar other than on the written authority of the Commissioner and in accordance with the terms and conditions of such authority shall be an offence, and any person responsible therefore shall, on conviction, be liable to the penalties prescribed in section 116.

Underground Boundary Pillars

65. (1) On the inside of the boundary lines of every mine safety pillar shall be left standing the width of which, in coal mines, shall not be less than fifty feet and, in metalliferous mines, not less than twenty feet.

(2) On the joint application of the owners of adjoining mines the Commissioner may give permission to either party to weaken, cut through or work from the respective pillars between such mines.

(3) In the absence of such joint application the Commissioner may give written permission for the partial working, weakening or cutting through of such pillars.

Alluvial working

66. (1) If in the opinion of the Commissioner the working of alluvial deposits on any land might result in permanent damage to the surface or natural resources of such land he may prohibit, by order served on the holder of the mining right, the working of such minerals or permit such working subject to such conditions and restrictions as he may determine.

(2) Any person failing to comply with the provisions of an order served under the provisions of subsection (1) shall be guilty of an offence and shall be liable, to the penalties prescribed in section 116.

PART X

DISPUTES

Commissioner may decide disputes

67. (1) The Commissioner may inquire into and decide all disputes, which are referred to him by any party thereto, between persons engaged in prospecting or mining operations or between any such person and any person not so engaged in connection with -

- (a) the boundaries of any area pegged, beacons or registered under the provisions of this Act;
- (b) any act done or omitted in the course of or connected with or ancillary to prospecting or mining operations whether such act was done or omitted by the person carrying on such operations or by any other person;
- (c) subject to the provisions of the Water Act, 1967, any claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race or drain for mining purposes as against any other person claiming the same;
- (d) the assessment of any compensation assessable by him under the provisions of this Act;
- (e) the abandonment of any mining right under the provisions of section 49;
- (f) the priority of acquisition of title under the provisions of section 37;
- (g) such other matters as may be prescribed.

(2) Save where the Commissioner is elsewhere in the Act required to determine the matter he may, in his discretion, refuse to decide any dispute referred to him under the provisions of this section.

(3) For the purposes of section 6 of the Arbitration Proclamation, 1959, proceedings before the Commissioner under this section shall be deemed to be legal proceedings.

(4) The Commissioner shall have power to make any order necessary to give effect to any decision made by him in the matter or any dispute inquired into by him under the provisions of this section and may order the payment by any party to such dispute of compensation or costs, or both compensation and costs, to any other such party.

Procedure before mining commissioner

68. The initiation and conduct of any proceedings before the Commissioner under the provisions of section 67 of this Act shall be subject to the following provisions –

- (a) the person initiating such proceedings shall lodge with the Commissioner a memorandum in duplicate stating shortly the subject matter of the proceedings and the relief claimed;
- (b) upon receipt of such memorandum the Commissioner shall give notice to the other party to the dispute of the nature of the proceedings and of the time and place at which the same will be heard and determined;
- (c) at the time and place appointed the parties to the dispute shall attend, either in person or by his legal representative before the Commissioner, and may call or give evidence on oath, which oath the Commissioner is

hereby empowered to administer, in support of their cases ;

- (d) the Commissioner may adjourn any hearing to any time or place, and may, either at the original hearing or at any adjournment thereof, proceed in the absence of any party to the dispute ;
- (e) the Commissioner may, at any time during a hearing seize or cause to be seized any minerals and may detain them pending his decision ;
- (f) the law for the time being regulating proceedings before and the powers of a subordinate court of the first class in the exercise of its civil jurisdiction shall, so far as practicable and subject to any modifications, additions or alterations which may be prescribed apply to any proceedings before the Commissioner and to the enforcement of his decisions in like manner as if such decisions were the decisions of such a court, but this paragraph shall not restrict the Commissioner from inquiring into and deciding any dispute by reason of the fact that the subject matter exceeds in value the jurisdiction of a subordinate court of the first class.

Records

69. (1) The Commissioner shall keep a record of all disputes heard and determined by him under the provisions of section 67 of this Act and shall take notes of all evidence given before him.

(2) Any person interested in any dispute heard by the Commissioner or in any decision or order of the Commissioner given or made therein shall be entitled to obtain a copy of the record and notices concerning such dispute upon payment of such fee as may from time to time be prescribed.

Enforcement by courts

70. (1) The Commissioner may send a copy, certified under his hand, of any order made by him under the provisions of this Part to any court within the local limits of whose jurisdiction the subject matter of the order is situated, and such court shall have power to enforce such order in the same manner in which it could enforce an order made by such court.

(2) The fees payable in any court in respect of the enforcement of any order under the provisions of subsection (1) of this section shall be those which would be payable upon the enforcement of an order made by such court.

Appeals to High Court

71. Any person aggrieved by any decision or order of the Commissioner given or made under the provisions of this Part may appeal therefrom to the High Court within thirty days after the date of such decision or order.

Saving for other proceedings

72. Nothing in this Part contained shall be deemed to prevent any person from instituting in any court of law any proceedings in respect of any of the matters mentioned in section 67 (1):

Provided that when a dispute has been referred to the Commissioner and the Commissioner has not refused to decide such dispute, any court before which proceedings are brought in respect of the subject matter of the dispute, if satisfied that there is no sufficient reason why the dispute should not be determined by the Commissioner may make an order stating such proceedings.

Survey for purposes of hearing of disputes

73. If, before or during the hearing of any dispute, it shall appear to the Commissioner that it will be necessary for a survey to be made of any land in respect of which such dispute has arisen, he may order either party to such dispute to cause such survey and a plan thereof to be made, and the costs of the making of such survey and plan shall be in the discretion of the Commissioner.

Working of mining area under interdict

74. Whenever any interdict has been granted by the Commissioner under the provisions of this Act, the Commissioner may, upon the application of the holder of a mining area adjacent to the mining area which is the subject of such interdict, and upon being satisfied by such holder that the mining right of such holder will sustain damage or be materially depreciated in value by reason of the non-working of the mining area which is the subject of such interdict permit the working of such area upon such terms and conditions as he shall think fit and to such extent as, in his opinion is necessary to prevent such damage or depreciation, and the Commissioner may make such order as to the cost of such working as he may think just.

PART XI

REGISTRATION

Register

75. The Registrar shall keep a register for the registration of prospecting and mining rights, documents and other matters required or permitted to be registered under the provisions of this Act.

Documents to be registered

76. The following documents are required to be registered under this Part of this Act within the times and to be in the manner hereinafter stated, in the regis-

ter kept under section 75 of this Act –

- (a) every document purporting to grant, convey, or transfer a prospecting or mining right or any interest in a prospecting or mining right, or to be a lease or an agreement for a lease of a prospecting or mining right or any interest in a prospecting or mining right for a longer term than one year, or to create a charge upon a prospecting or mining right or upon any interest in a prospecting or mining right whether by way of mortgage or otherwise;
- (b) every certificate issued under this Act;
- (c) every notice in writing given under this Act by the Commissioner or Minister.

Production of documents necessary to deduce title

77. (1) Upon application to register any document required to be registered as aforesaid –

- (a) the Registrar may, before registering such document, order that any other document necessary for deducing the title of the applicant for registration to the prospecting or mining right or any interest therein which is the subject of the application (hereinafter referred to as “as document necessary to deduce title”) whether or not such document necessary to deduce title is required to be registered as aforesaid, shall be produced or its non-production explained to the satisfaction of the Registrar;
- (b) if any document necessary to deduce title is a document required to be registered pursuant to the provisions of this Part and has not been registered as so required the Registrar shall order that the same be registered under this Part at the expense of the applicant for registration unless such document necessary to deduce title is void in consequence of non-registration as hereinafter provided, in which case the Registrar shall not register the document tendered for registration unless the Commissioner or the Court has authorised or extended the time for its registration under section 79;
- (c) if any person has in his possession or custody any document or evidence of title affecting the prospecting or mining right or interest therein, which is the subject of the application, to the production of which the applicant or any trustee for him is entitled the Registrar may require such person to show cause within the time specified by the Registrar why he should not produce such document or evidence of title; and, unless cause is shown to the satisfaction of the Registrar within the time specified, he may order such document or evidence of title to be produced at the expense of the applicant at such time and place, and in such manner, as the Registrar thinks fit, and on the production of any document pursuant to such order as aforesaid the provisions of paragraph (b) of this subsection shall apply thereto.

(2) Any person aggrieved by an order of the Registrar under this section may appeal to the High Court which may annul or confirm the order of the Registrar with or without modification.

(3) If any person disobeys any order of the Registrar made in pursuance of paragraph (c) of subsection (1) of this section the Registrar may certify such disobedience to the High Court and thereupon such person, subject to such right of appeal as aforesaid, may be punished by the High Court in the same manner in all respects as if the order made by the Registrar were the order of the High Court.

Period within which documents are to be registered

78. (1) All documents, except letters of administration required to be registered under this Part, shall be lodged for registration in the office of the Registrar within the following periods respectively –

- (a) in the case of a document executed at the place where it is registered within thirty days from its date of execution;
- (b) in the case of a document executed at a place in Botswana other than the place at which it is registered within ninety days from its date of execution;
- (c) in the case of a document executed out of Botswana within one year from its date of execution.

(2) Letters of administration in respect of a deceased estate affecting a prospecting or mining right or any interest therein shall be registered within twelve months of the grant thereof or the sealing thereof under the provisions of the Administration of Estates Proclamation (Chapter 83) as the case may be.

Documents to be void for want of registration

79. (1) Any document required to be registered under this Act shall become null and void unless such document is registered within the appropriate period specified in this Act:

Provided that the Commissioner may extend the period within which such document shall be registered or authorise its registration after the expiration of such period on such terms as to costs and otherwise as he shall think fit, if the Commissioner is satisfied that the failure to register was unavoidable or that there are any special circumstances which afford ground for giving relief from the results of such failure and that no injustice will be caused by allowing such registration:

Provided further that the letters of administration required to be registered and not registered within the period specified in the immediately preceding section shall be null and void so far only they relate to a prospecting or mining right or any interest therein.

(2) There shall be an appeal to the High Court against any determination of the Commissioner under subsection (1) which may make such order in the matter as it deems fit.

Priority and date of registration

80. (1) The date of registration of a document registered under this Act shall be the date upon which the document is lodged for registration in the office of the Registrar or at such other place as may be prescribed.

(2) Subject to the provisions of section 37 all documents required to be registered under the provisions of this Part shall have priority according to the date of registration thereof and not according to the date of such documents or of the execution thereof.

(3) A person claiming any interest under any such document registered as aforesaid shall be entitled to priority corresponding to the priority of such document and shall not, except in cases of fraud, lose such priority in consequence of his having been affected with actual or constructive notice of any prior unregistered document which is required to be registered under this Part.

Documents giving mining rights may be registered though not required to be registered

81. At the option and upon the application of any person interested thereunder, any document affecting a prospecting or mining right or any interest therein which is not required to be registered under this Part may nevertheless be registered in the register in such manner as the Registrar may direct.

Correction of error or omission in register

82. (1) Where any person alleges that any error or omission has been made in the register or that any entry or omission therein has been made or procured by fraud or mistake the Registrar shall, if he shall consider such allegation satisfactorily proved, correct such error, omission or entry as aforesaid.

(2) Any person aggrieved by the refusal of the Registrar to correct an error, omission or entry or by any correction made in the register under the immediately preceding subsection may appeal against the refusal or correction to the High Court and the High Court may dismiss the appeal if it considers that there is not sufficient ground for interfering with the refusal or correction or may order the register to be rectified in such manner as may be directed in such order.

(3) The Registrar shall obey any order of the High Court made under the immediately preceding subsection on being served with the order or an official copy thereof.

Description of mining or prospecting area etc.

83. Every document presented for registration under this Part shall contain a description, and, if the Registrar so requires, shall have annexed thereto a sketch plan or diagram of the mining or prospecting area or of the situation of the minerals to which it refers, certified by the Commissioner as being adequate for the purposes of this Act.

Identity of person presenting document for registration

84. The Registrar may, in any case in which he thinks fit so to do, require that the document to be registered shall be presented for registration either by the person executing or claiming an interest under such document, or the representative or agent of such person and the Registrar may require to be satisfied as to the identity of the person by whom it is brought for registration or in the case of a representative or agent as to his authority which authority may be proved by power of attorney, or other evidence appearing to the Registrar to be sufficient.

Stamp duties and fees to be paid before registration or issue of certificates

85. Before registering a document or issuing a certificate under this Act the Registrar shall be satisfied that all stamp or other duties and fees or other payments due to the State hereon have been duly paid.

Copies

86. If the document to be registered is not in Botswana a copy of such document duly authenticated under the provisions of the Authentication of Documents Law, 1964 may be registered in lieu of such document without further authentication.

Copies to be furnished

87. Every document presented for registration shall be accompanied by a copy thereof and of any map or plan annexed thereto for deposit in the Records Office.

Details of registration

88. Registration of a document shall consist of the filing of the original or a copy thereof certified by the Registrar to be a true copy and of the entry in the register of the following items –

- (a) the names of the parties to the document;
- (b) the date of the document;
- (c) the date of registration of the document;

(d) the nature of the document.

Order of filing and numbering

89. The Registrar shall file the originals or certified copies of the documents to be registered in the order in which they come into his hands and shall number every copy so filed consecutively writing the day, month and year when it is registered.

Memorandum of registration

90. There shall be endorsed on every document registered a memorandum signed by the Registrar containing sufficient reference to the number and position of the document in the register and every memorandum so signed shall, in the absence of evidence to the contrary, be proof of due registration of the document.

Power of registrar if consideration understated

91. (1) If it shall appear to the Registrar that the consideration upon which duty is payable under the provisions of this Part is understated in any document presented for registration it shall be competent for the Registrar to refuse to register such document until he shall have been satisfied as to the proper amount upon which duty is payable and that the proper duty has been paid.

(2) For the purpose of ascertaining the proper amount upon which duty is payable and that the proper duty has been paid, the Registrar may make such inquiry or cause valuation to be made or require such proof of any matter as he shall think proper and may make such order as to the costs of such proceedings as shall be just.

(3) The Registrar may for the purpose of this section take statutory declarations.

(4) Any person aggrieved by the refusal of the Registrar to register a document under the provisions of this section may appeal therefrom, including any order as to costs to the High Court within thirty days after the date of such refusal or order.

Documents in foreign language to be accompanied by translation

92. If any document presented for registration under this Part is not in the English language it shall be accompanied by a translation duly certified as being a correct translation by some person whose competency has been approved by the Registrar.

Defect in document not cured by registration

93. Registration shall not cure any defect in any document registered or confer upon it any effect or validity other than that provided by this Act.

Admissibility of certified copy or extract of registered document

94. (1) Every certified copy or extract of any registered document purporting to be signed by the Registrar shall be admissible in evidence in any proceedings, whether civil or criminal.

(2) In the event of the loss or destruction of any document registered under this Act, a copy certified under the hand of the Registrar to be a true copy, shall be admissible in evidence of its contents in any court subject to all just exceptions as to its validity or upon other grounds.

Search of register

95. Subject to such rules as may be prescribed any person may search in and examine the register kept under this Part and certified copies of any entry therein or of any Certificate, permit or licence issued by the Commissioner or Registrar may be obtained if required upon payment of the fee prescribed in the Third Schedule.

Registration of original grant of prospecting or mining right

96. Notwithstanding the provisions of section 79 no State Grant of a prospecting licence granted under the provisions of section 8, prospecting permit issued under the provisions of section 9, or State Grant of a mining lease granted under the provisions of section 24 shall be void by reason of any failure to register such document within the time prescribed in section 78:

Provided that the original, or duplicate original, of every such document shall be forwarded by the Commissioner to the Registrar for registration within fourteen days of the grant or issue thereof and the Registrar shall, on receipt thereof, register the document in the manner prescribed in this Part.

PART XII

MINING RECORDS OFFICE

Establishment of Mining Records Office

97. (1) There is hereby established a Mining Records Office the management and direction of which shall vest in the Minister.

(2) The custody of the records in the Mining Records Office shall vest in the Director.

Certain records to be lodged in the Mining Records Office

98. (1) The following documents shall be deposited in the Mining Records Office –

- (a) a copy of every document required to be registered under the provisions of Part XI of this Act;
- (b) any report or return made to the Commissioner under the provisions of this Act;
- (c) any document surrendered to the Commissioner under the provisions of section 101;
- (d) any record kept under the provisions of this Act;
- (e) such other documents in the custody of the Government of Botswana as the President may direct shall be kept in the Mining Records Office.

(2) It shall be the duty of the Registrar to supply the Commissioner with such information as he may require for the maintenance of adequate records relating to mining and prospecting operations in Botswana including a copy of every notice served on him or given by him under the provisions of this Act.

(3) In place of retaining the original or other copy of any document required to be deposited in the Records Office under the provisions of this Part the Commissioner may cause to be retained a microfilm or other adequate copy thereof.

Access to Mining Records Office

99. Subject to the provisions of sections 20 (2) and 106 (3) the public shall have access to the records in the Records Office in such manner and subject to the payment of such fees as may be prescribed.

PART XIII

ADDITIONAL AND SUPPLEMENTARY

Amalgamation of prospecting and mining rights

100. (1) Areas held under a special prospecting licence or which are subject to mining rights may be amalgamated subject to such conditions and restrictions as may be prescribed:

Provided that no more than –

- (a) one mining claims in respect of precious metals or precious stones;

(b) thirty mining claims other than in respect of precious metals or precious stones;

may be so amalgamated.

(2) Any such amalgamation shall be registered under the provisions of Part XI in such manner as the Commissioner may direct.

(3) Where the Commissioner is satisfied that the holder of a mining or prospecting right whose mining or prospecting areas have been amalgamated under the provisions of this section is not carrying out his obligations in terms of the prescribed conditions and restrictions he may by notice served on the holder of the right and on the Registrar direct that the aforesaid areas shall cease to be so amalgamated.

Surrender of documents

101. (1) On the lapse of any mining or prospecting right the holder of the right shall surrender to the Commissioner the original, or a true copy thereof, for deposit in the Records Office of –

- (a) any record or report which the holder is obliged, under this Act, to make or maintain;
- (b) any plan or geological map of the area to which the mining or prospecting right relates or of any working thereon;
- (e) such other documents relating to such right as the Commissioner may direct shall be surrendered or which may be prescribed for the purposes of this section and which have not previously been lodged with the Commissioner in accordance with the provisions of this Act.

(2) Any person who fails to surrender any document which he is required to surrender under the provisions of subsection (1) within fourteen days of being called upon so to do by the Commissioner shall be guilty of an offence and shall be liable on conviction, to the penalties prescribed in section 116.

Retention of cores and samples

102. (1) No core or geochemical sample obtained in the course of prospecting or mining operations shall be destroyed or otherwise disposed of other than for purposes of assay, identification or geochemical analysis without the permission in writing of the Commissioner who may grant such permission subject to such conditions as he sees fit to impose.

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

(3) Any person who destroys or disposes of a core or sample in contravention of the provisions of subsection (1) or who fails to maintain a record in the manner prescribed in subsection (2) shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

(4) For the purposes of this section "geochemical sample" shall be deemed to include every sample taken under the provisions of section 106 (2):

Provided that no such sample may be destroyed or disposed of for purposes of assay, identification or geochemical analysis except on the written authority of the Commissioner.

Discovery of economic minerals to be notified

103. (1) The holder of a prospecting or mining right shall notify the Commissioner of the discovery of any mineral of economic value within a period of thirty days after such discovery.

(2) Any person failing to so notify the Commissioner shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 116.

Export of radioactive minerals

104. (1) No person shall export from Botswana any radioactive mineral except under and in accordance with a permit granted by the Minister in that behalf.

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

(3) Every permit issued under subsection (1) shall be in such form and for such period and be subject to the payment of such fee as the Minister may determine and shall contain such terms and conditions as he may think fit to impose.

(4) Any person who exports any radioactive mineral in contravention of the provisions of subsection (1) or who fails to comply with the terms or conditions of a permit issued under the provisions of that subsection shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 116.

Trading on mining areas

105. (1) No person shall, on any mining area, carry on any business for which a licence is required under the provisions of the Trading Act, 1966, without the permission in writing of the Minister:

Provided that such permission shall not entitle any person to carry on any business save under and in accordance with the provisions of the Trading Act, 1966.

(2) Subject to the provisions of section 62 no person shall within any claim or mining area erect any building or other structure for the purpose of car-

rying on any business without the consent in writing of the holder of the claim or mining right concerned.

(3) Any person who carries on business in contravention of the provisions of subsection (1) or who erects any building or other structure in contravention of the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 116.

Shaft sinking

106. (1) Before any person sinks, deepens or constructs for mining or prospecting purposes any shaft, borehole, adit or tunnel he shall give the Director notice in writing of his intention to do so; and shall keep in a form approved by the Director a record of the progress of the work, which shall include measurements of the strata passed through and of the levels at which water is struck and subsequently rests.

(2) Any such person shall further keep adequately labelled samples of the superficial deposits and strata passed through taken at every change in formation or, in uniform formations, at every ten feet.

(3) Records and samples supplied under the provisions of subsections (1) and (2) shall, so long as the person supplying the same or his successors in title retain a mining or prospecting right over the area to which the records relate be treated as confidential, and any person who, during the period aforesaid and without the consent of the person supplying such record or samples or of his successor in title communicates the contents of such record, or of any part thereof, or the nature of such sample to any person otherwise than in the course of his duty or on the instructions of a court of law shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 116:

Provided that where, in the opinion of the Minister, the consent of the person supplying such records or samples or of his successor in title is unreasonably withheld the Minister may authorise the communication of the contents of such record or of any part thereof, or of the nature of such sample, to such person or persons as he may specify.

(4) Any person failing to give notice or keep a record under the provisions of subsection (1) or keep a sample in accordance with the provisions of subsection (2) shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Poisonous substances

107. (1) Every miner shall securely fence in any water containing cyanide of potassium or other poisonous or injurious solutions of chemicals used in the treatment of minerals, tailings or concentrates, in connection with his mining area and shall put up in suitable places notice boards warning persons against using

such water and shall not permit such water to escape beyond the limits so fenced without having previously rendered it harmless.

(2) Every miner who is mining or treating arsenical ores shall –

- (a) ensure in respect of all arsenical ores roasted by him that arsenious oxide emanating from such roasting is collected in adequate flues or by other means in a properly designed and constructed roasting plant ;
- (b) take adequate measures to prevent any arsenical compound exposed in or derived from his mining operations from becoming a danger to man or beast.

(3) Every miner shall take all reasonable precautions, and shall comply with such directions as may be given by the Commissioner for such purpose, to ensure that no poisonous or injurious substance is allowed to escape beyond the boundaries of his mining area.

(4) Any person who contravenes the provisions of this section or who fails to comply with any direction of the Commissioner under subsection (3) shall be guilty of an offence and liable, on conviction, to the penalties prescribed in section 116.

Inspections etc.

108. (1) The Commissioner, Director or other official duly authorised thereto by either of them may at all times enter upon any mining area and the buildings, structures and workings thereon for the purpose of –

- (a) generally inspecting such mining area and the buildings, structures and workings thereon and examining the mining operations or treatment of minerals performed thereon ;
- (b) ascertaining whether the provisions of this Act or of any other law relating to mining, explosives or employment are being carried out ;
- (c) ascertaining whether any nuisance exists upon such mining area ;
- (d) examining into and making enquiry respecting the condition and ventilation of any building or workings, and all matters relating to the health and safety of the persons employed ;
- (e) inspecting and examining the state of the external parts of the machinery used upon or in the mining area or in the working thereof, and the state of all plant works and ways ;
- (f) examining all books, accounts, vouchers and documents relating thereto and any minerals obtained from the mining area ;
- (g) inspecting the storage of explosives.

(2) If in any respect such officer finds any mining area or any building, structure or working thereon, or any matter thing or practice in or connected with

mining or prospecting operations, to be dangerous or defective so as in his opinion to threaten or tend to threaten the bodily injury of any person, he shall give notice in writing to the holder of the right or his agent in charge of the mining area or operations and shall state in such notice the particulars in which he considers such mine, matter, thing or practice to be dangerous or defective, and shall require the same to be remedied, either forthwith or within such time as he may specify, and may order work to be suspended until the danger is removed to his satisfaction.

(3) On receipt of such notice, the holder of the mining right or his agent shall comply therewith, or if he intends to object thereto, as provided by the following subsection, he shall cease to use the said mining area, building, structure or working, machine, plant, matter, thing or practice, as to which such notice shall have been given, and shall forthwith withdraw all men from the danger indicated by such officer until such time as the matter shall have been determined by the Commissioner :

Provided that if, in the opinion of such officer, there be no immediate danger, he may allow work to proceed during such period, under such restrictions and upon such conditions as he may consider necessary and shall specify in writing to ensure the safety of the workmen.

(4) If the holder of the mining right or his agent objects to remedy the matter complained of in any notice under subsection (2), he may, immediately after the receipt thereof, state his objection in writing to the Commissioner, and thereupon the matter shall be submitted to and determined by the Commissioner or by such officer as he may appoint in that behalf.

(5) Any person who fails, neglects or refuses to provide all reasonable facilities and assistance to the Commissioner, Director or other authorized official when acting under this section, or to comply with any notice as aforesaid of the Commissioner, Director or duly authorized official, or who commits a breach of any duty imposed on him thereunder, shall be guilty of an offence and liable to the penalties prescribed in section 116 ; and the court may, in addition to imposing such penalties order him to provide such facilities and assistance or to comply with such direction or to perform such duty, as the case may be, within such period as the court may specify, and if within the period so specified he fails to comply with such order the Commissioner may recover from him by way of penalty the sum of R20 for each day or portion of a day he fails to comply with such order after the expiry of such period.

Geological survey

109. (1) The Director, the Commissioner and any person duly authorised in writing by either of them, may for the purpose of carrying out a geological survey of Botswana or any part thereof -

- (a) enter at all reasonable hours upon any land with such persons, animals, vehicles, appliances, instruments and materials as are necessary for such survey;
- (b) break up the surface of any part of such land for the purpose of ascertaining the rocks, strata or minerals within or under the same;
- (c) take and carry away samples and specimens of the rocks, strata or minerals found therein;
- (d) fix any post, stone, mark or object to be used in the survey of any such land;
- (e) dig up any ground for the purposes of fixing such post, stone, mark or object; and
- (f) enter into or upon any land through which it may be necessary to pass for the purposes of such survey;

Provided that –

- (i) it shall not be lawful to fix any object post, stone or mark within any walled or fenced garden or orchard without the consent of the owner or occupier thereof;
- (ii) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or the occupier of such land unless such land is unoccupied State land:

Provided that in any tribal territory notice to the Chief thereof shall be deemed to be adequate notice for the purposes of this paragraph; and

- (iii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section and such owner or occupier shall be entitled to compensation for any damage sustained in the execution of the powers conferred in this section.

(2) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1) or who displaces, defaces or destroys any stone, post, mark or object set up and placed for the purposes of any geological survey shall be guilty of an offence and liable to the penalties prescribed in section 116.

Register of employees

110. (1) Registers shall be kept at every mining area or block of mining areas worked as a single mine or under the control of one manager, and shall at all reasonable times be open to the inspection of the Commissioner or other duly authorised official.

(2) In such registers there shall be duly entered –

- (a) the name, age and nationality of every person employed on such mining area;
- (b) the dates of commencement and termination of the service of such employees and the nature of such services;
- (c) in the case of the death of any employee, the place, the date of death and, as far as it can be ascertained, the cause of death.

(3) If any holder of a mining right or his agent or manager fails to keep a register in accordance with the provisions of subsection (1) he shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Employment of persons who are not citizens of Botswana

111. (1) The President may by order in the *Gazette* prohibit the employment of persons who are not citizens of Botswana in unskilled occupations or any class thereof who are employed in mining operations or in any work in connection therewith, except as overseers or when the President is satisfied that their services are essential to the efficient conduct of such operations.

(2) The Minister may demand from the holder of any mining right a deposit sufficient to cover the cost of repatriation of any persons who are not citizens of Botswana employed by such holder.

(3) Any person who employs any person in contravention of the provisions of an order made under the provisions of subsection (2) or who fails to make a deposit within such reasonable time as the Minister may specify under subsection (2) shall be guilty of an offence and shall be liable, on conviction, to the penalties prescribed in section 116.

Proceedings in the case of accidents

112. (1) Whenever an accident shall occur in connection with mining or prospecting operations causing or resulting in loss of life or serious injury to any person the person in charge of the operation shall report in writing with the least possible delay the facts of the matter so far as they are known to him to the District Commissioner of the district in which the accident occurred and to the Commissioner.

(2) In the event of any such accident the Commissioner or such officer as may be nominated by him thereto shall hold an inquiry into the cause thereof.

(3) The officer holding the inquiry shall, for the purposes of an inquiry under subsection (2), have the powers of a subordinate court to summon witnesses, and examine the parties concerned on oath.

(4) Any person summoned to attend or to produce books or documents as aforesaid, and refusing and neglecting to do so, or refusing to answer any ques-

tion put to him by or with the concurrence of the officer holding the inquiry, shall be guilty of an offence and liable to the penalties prescribed in section 116:

Provided that no person shall be bound to incriminate himself, and every witness shall, in respect of any evidence given by him at such inquiry, be entitled to the same privileges to which he would have been entitled if giving evidence before a court of justice.

(5) Any witness attending at the request of or upon summons by an officer holding such inquiry shall, subject to any order made by such officer, be entitled to like expenses as if summoned to attend the High Court in a criminal trial, and payment shall be made in such manner as the Minister may direct.

(6) At the conclusion of any inquiry under the provisions of this section the officer holding the inquiry shall report thereon to the Minister stating what, in his opinion, were the causes of the accident, the person or persons responsible therefor and the steps which should be taken to prevent the recurrence of accidents of similar nature.

(7) An inquiry under this section may be held in conjunction with an inquest under the provisions of the Inquests Proclamation (Chapter 34) and, in such event, save that the Commissioner or other officer acting under the provisions of this section shall preside jointly with the person holding the inquest under the provisions of that Proclamation and shall make separate report at the conclusion thereof under the provisions of subsection (6), the proceedings shall be deemed to be an inquest.

Government officers prohibited from acquiring rights

113. (1) No person while in the service of the Government of Botswana shall directly or indirectly acquire any right or interest in any prospecting or mining right and any document or transaction purporting to confer any right or interest in any such officer shall be null and void:

Provided that a temporary employee may retain rights and interests acquired prior to accepting Government employment.

(2) No person in the office of the Director shall acquire or retain any share in a company carrying on prospecting or mining operations in Botswana:

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

Forms

114. Any document or certificate required to be used for the purposes of this Act shall, unless the form thereof is prescribed, be in such form as the Commissioner, in consultation with the Attorney-General, may determine.

Regulations

115. (1) Subject to the provisions of this Act the Minister may make regulations in connection with the following matters or purposes –

- (a) prescribing anything which in terms of this Act is to or may be prescribed;
- (b) providing for the special registration of a mining right or mining area, the legal effect of such registration and the fees payable in connection therewith;
- (c) for making of returns of precious stones won and for the valuation of such stones;
- (d) the manner in which applications under this Act shall be made, and the information to be supplied by applicants;
- (e) the shape of the areas over which special prospecting licences and mining leases may be granted;
- (f) the size and shape of the areas over which mining leases may be granted;
- (g) the manner in which areas and boundaries shall be marked, beaconed and surveyed and the fees payable in respect of such survey;
- (h) working conditions on mining areas;
- (i) the construction and use of roads, tramways and railways;
- (j) the safe construction and erection of houses, pits, shafts, machinery and other works to be used for prospecting or mining purposes;
- (k) the fencing off or rendering secure of any shaft, tunnel, drive or other works constructed, erected or made for prospecting or mining purposes;
- (l) the grazing of cattle or other animals, the gathering of fuel and the cutting down and use of timber for the purposes of carrying on prospecting and mining operations;
- (m) the safety of persons employed in mines and the carrying on of prospecting or mining operations in a safe, proper and effectual manner;
- (n) the renewal, transfer, assignment and surrender of mining and prospecting rights;
- (o) the registration of mining leases, claims and special prospecting licences and instruments under which any right or interest thereunder is transferred or surrendered and the fees payable on such registration;
- (p) the returns to be rendered and the nature of the accounts, books and plans to be kept by mining lessees and the holders of claims and of special prospecting licences;
- (q) the rates of royalties to be paid to Government, the method of calculation of the amount of such royalties and the manner and time of payment thereof;

- (r) the disposal of sludge and tailings and declaring any waterways to be sludge channels;
 - (s) the disposal of any poisonous or noxious products resulting from mining operations;
 - (t) the procedure on an appeal to the Minister;
 - (u) the fees to be paid in respect of any matter or thing done under this Act;
 - (v) the amalgamation of mining or prospecting rights;
 - (w) the contribution by parties benefited of a fair share of the cost of pumping in cases where pumping in one mine benefits other mines;
 - (x) the defiling or wasting of water, wherever situated and wherever obtained;
 - (y) the restriction or prohibition of prospecting operations in any river, pan, lake or stream;
 - (z) the nature and adequacy of any sketch plan required for the purposes of this Act;
- and generally for the carrying into effect of the purposes of this Act.

(2) Regulations under this section which provide for a reduction in the rate of any royalty may be made with retrospective effect; and where any royalties have already been paid in respect of any period to which regulations so made relate, the Accountant-General on the warrant of the President, may refund to the respective persons who paid such royalties the difference between the royalties already paid and the royalties payable by them under the said regulations.

- (3) Regulations under paragraph (q) of subsection (1) of this section may –
- (a) prohibit the export of any mineral unless or until the royalty payable thereon has been paid or secured;
 - (b) specify the person or persons by whom royalty shall be payable and may specify whether two or more persons are jointly and severally liable to pay such royalty;
 - (c) provide for the examination of mineral consignments and the issue of export permits in respect thereof;
 - (d) provide for the remission or refund of royalty or any part thereof in any case or class of case and the manner in which and conditions on which such remission or refund may be made;
 - (e) confer upon any public officer specified therein such powers of inspection and inquiry as may be reasonably necessary for the proper carrying out thereof.

(4) A regulation made under the provisions of this section may provide a penalty for the contravention thereof in an amount not exceeding R500 or imprison-

ment for a period not exceeding six months or both such fine and such imprisonment.

Penalties

116. (1) Any person who contravenes the provisions of Sections 6 (4), 10 (3), 22 (5), 27 (4), 56 (7), 57 (1), 103 (2), 107 (4) or 108 (5) shall be liable to a fine not exceeding R1,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person who contravenes the provisions of sections 7 (8), subsections (2) or (3) of section 20, 21 (5), 30 (2), 31 (3), 32 (7), 40 (2), 50 (3), 51 (3), 53 (5), 63 (3), 64 (3), 66 (2), 101 (2), 102 (3), 104 (4), 105 (3), subsections (3) and (4) of section 106, 109 (2), 110 (3), 111 (3), or 112 (4) shall be liable to a fine not exceeding R500 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Savings

117. Nothing in this Act shall affect the continuing validity of any Crown or State Grant made in terms of the Mines and Minerals Proclamation (Chapter 122) prior to the date of coming into operation of this Act or the continuing validity of any Mineral Concession registered under the provisions of section 4 of that Proclamation:

Provided that –

- (a) such Crown or State Grant or Concession shall be deemed for the purposes of this Act to be a State Grant of a Special Prospecting Licence issued under the provisions of section 8, in so far as it confers a prospecting right, and a State Grant of a mining lease issued under the provisions of section 24 in so far as it confers a mining right;
- (b) in the event of any conflict between the terms and conditions of any such Crown or State Grant or Concession (being terms and conditions which might lawfully be contained in such Crown or State Grant or Concession under the provisions of the mines and Minerals Proclamation (Chapter 122)), and the provisions of this Act the terms and conditions of such Crown or State Grant or Concession shall continue to be valid and enforceable notwithstanding the provisions of this Act and, where provision is made in such Crown or State Grant or Concession for its extension or renewal such terms and conditions may be incorporated in the Grant or Concession as extended or renewed by State Grant under this Act notwithstanding that such extension or renewal is, in other respects, subject to the provisions of this Act.

- (c) notwithstanding the provisions of paragraph (b) of this proviso any moneys payable in terms of such Crown or State grant to any tribe, tribal authority or District Council shall be paid to the Government at the office of the Commissioner;

Repeals

118. The Mines and Minerals Proclamation (Chapter 122) and every statutory instrument thereunder is repealed.

FIRST SCHEDULE

(section 34)

- (1) None of the following shall count as development work –
 - (a) any shaft, winze, rise, drive, adit or tunnel of less superficial area than 15 square feet;
 - (b) any shaft which has been sunk to a total vertical or incline depth of less than 20 feet from the surface;
 - (c) any borehole which has been sunk to a total vertical or incline depth of less than 50 feet from the surface;
 - (d) any borehole from which a core is unobtainable and boreholes used for blasting;

Provided that where intensive and systematic drilling of shallow boreholes has been carried out through overburden to prove the economic potentialities of mineral deposits, the Commissioner may, notwithstanding the provisions of subparagraphs (c) and (d) authorise such work to count as development work.

- (2) Subject to the above conditions –
 - (a) each foot of any shaft, winze or rise of 15 to 40 square feet superficial area shall count as one foot development work;
 - (b) each foot of any shaft, winze or rise of over 40 and up to 65 square feet superficial area shall count as two feet of development work;
 - (c) each foot of any shaft, winze or rise of over 65 square feet superficial area shall count as three feet of development work;
 - (d) each foot of any drive, adit or tunnel from surface of 48 square feet superficial area and over shall count as two feet of development work.

Depth

Each foot of any portion of a shaft, winze or rise, or any drift the floor of which is not more than 60 feet below the natural surface at the working point, shall count as one foot of development work; exceeding 60 feet and up to 100 feet, as one and a half feet; exceeding 100 feet and up to 200 feet, as two feet, exceeding 200 feet and up to 300 feet, as three feet; exceeding 300 feet and up to 400 feet as four feet; exceeding 400 feet and up to 500 feet, as five feet; and exceeding 500 feet, as six feet.

Distance from entrance

Each foot of any portion of an adit or tunnel from surface which is 100 feet to 300 feet from a point in the centre of the roof at the entrance shall count as one and a half feet of development work, and each foot or any portion of 300 feet or more from such point shall count as two feet of development work.

General

All dimensions shall be taken at right angles to the line of direction of the work, and in the clear between outside timbers if in position or allowing for them if they are to be put in later.

Depth in incline work shall be measured on the incline. The allowances for dimensions and depth or distance from entrance shall be cumulative, viz: each foot of any portion of a shaft of over 65 square feet superficial area, which is more than 100 feet but not more than 200 feet from surface, shall count as six feet of development work.

Allowance for Boreholes

Each foot drilled below the natural surface for a distance of 300 feet shall count as one foot of development work; exceeding 300 feet and up to 600 feet, as two feet; exceeding 600 feet and up to 900 feet, as three feet; exceeding 900 feet and up to 1,200 feet, as four feet; exceeding 1,200 feet, as five feet.

Allowance for Trenching

See subsection (3) of section 34.

Geochemical and Geophysical Work

Every R4 spent on such work shall count as one foot of development work.

SECOND SCHEDULE

(section 53)

1. The royalties payable on –

- (a) any mineral or mineral products won, excluding coal, oil shale, natural oil or natural gas, precious metals and precious stones, shall be three per centum of the gross market value;
- (b) coal shall be 2½ cents per ton of 2,000lb ;
- (c) oil shale shall be 3 cents per ton of 2,000lb. ;
- (d) natural oil and natural gas shall be at the rate prescribed;
- (e) precious stones shall be ten per centum of the gross market value :

Provided that –

- (i) if the total monthly gross market value does not exceed R2,000 no royalty shall be payable in respect of the mineral or mineral products won during that month ;
- (ii) if the total monthly gross market value of the mineral or mineral products won exceeds R2,000 but does not exceed R4,000, royalty shall be payable only on twice the amount by which the gross market value exceeds R2,000.

2. No royalty shall be payable in respect of precious metals.

3. The term “gross market value” shall for the purpose of this scale of royalties be defined as being the gross marketable value of the mineral or mineral products, less any costs incurred for transport of output prior to sale or disposal, for insurance and for selling agent’s normal commission and such other costs as the Minister may allow.

THIRD SCHEDULE

(Section 58)

<i>Nature of duty</i>	<i>Amount</i>
Endorsement under section 7 (1) (a)	
(a) in the case of a special prospecting licence.....	R 50
(b) in the case of a prospecting permit	R 1
Issue of Special Prospecting Licence under section 8.....	R100
Renewal of Special Prospecting Licence under section 8 (3).....	R 50
Issue of Prospecting Permit under section 9.....	R 2
(a) in the case of a mining lease	R 50
(b) in the case of a mining claim	R 5
On the grant of a mining lease under section 24	R100
Registration of mining lease under section 25	R100
Application under the provisions of section 27	R 1
Issue of Registration Certificate under section 29	R 0.50
Registration of name under section 31	R 0.50
Registration of an agent or manager under section 32.....	R 0.50
Renewal of State Grant under section 36 (1) (a).....	R 50
Renewal of Mining Lease under section 36 (1) (b).....	R 50
Issue of claim licence under section 41	R 5
Endorsement under section 44 (2)	R 5
Issue of Certificate of Registration under section 46 (2).....	R 10
Issue of Certificate of Abandonment under section 69	R 0.50
Issue of certified copy under section 95	R 10

On the Transfer of a Mining or Prospecting Right

Transfer of any mining or prospecting right or any interest therein	
where the consideration does not exceed R200	R 2.00
If the consideration exceeds R200, for every R200 or part thereof	R 2.00

Provided that if it be proved to the satisfaction of the Registrar that the transfer is merely for the purpose of carrying out the reconstruction of any company holding the mining or prospecting right or interest therein or the amalgamation of two or more companies holding the mining or prospecting right or interest therein one-half only of the duty above mentioned shall be payable.

Mortgage or Hypothec

Mortgage or hypothecation of a mining right or interest therein.

Amount secured not exceeding R20	20c
Exceeding R20 and not exceeding R40	30c
Exceeding R40 and not exceeding R60	50c
Exceeding R60 and not exceeding R100	75c
Exceeding R100 and not exceeding R200	R 1.00
Exceeding R200 and not exceeding R300	R 1.50
Exceeding R300 and not exceeding R400	R 2.00
Exceeding R400 and not exceeding R600	R 2.50
Exceeding R600 and not exceeding R800	R 3.00
Exceeding R800 and not exceeding R1,000	R 4.00
Exceeding R1,000 and not exceeding R1,200	R 5.00
Exceeding R1,200 and not exceeding R1,400	R 6.00
Exceeding R1,400 and not exceeding R1,600	R 7.00
Exceeding R1,600 and not exceeding R1,800	R 8.00
Exceeding R1,900 and not exceeding R2,000	R 9.00
And for every additional R200 or fraction of R200	50c

Transfer of mortgage or hypothec

For every R200 and also for any fractional part of R200 of the amount transferred exclusive of interest not in arrear..... 10c

Reconveyance, release, discharge, surrender or renunciation of any mortgage or hypothec or of the benefit thereof or of the money thereby secured

For every R200 and also for any fractional part of R200 of the amount or value of the money at any time secured..... 10c

Should the mortgage of any interest in any mining right be for the purpose of securing any issue of debentures, duty shall only be payable on such amount of debentures as shall actually be issued from time to time in respect of such location.

Lease of Agreement for Lease

Lease or agreement for lease of any mining right or any interest in mining right at a rental per annum –

Not exceeding R40	40c
Exceeding R40 but not exceeding R100	R1.00
Exceeding R100, for every R100 or fractional part thereof.....	R1.00

In addition in respect of the consideration, if any, the same duty as on a transfer of a mining right for the same consideration.

Matters not otherwise Specified

In respect of the registration of any matter in the registry, not otherwise specifiedR1.00.

Passed by the National Assembly this day, the 31st August, 1967.

G.T. MATENGE,
Clerk of the National Assembly.