

BUITENGEWONE

# OFFISIËLE KOERANT

VAN SUIDWES-AFRIKA.

# OFFICIAL GAZETTE



EXTRAORDINARY  
OF SOUTH WEST AFRICA.

UITGAWE OP GESAG.

PUBLISHED BY AUTHORITY.

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Woensdag, 12 Junie 1968

WINDHOEK

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## INHOUD

## CONTENTS

Bladsy/Page

### GOEWERMENSKENNISGEWING:

### GOVERNMENT NOTICE:

No. 83 Ordonnansie 1968: Uitvaardiging van . . . . .

Ordinance, 1968: Promulgation of . . . . .

965

## Goewermentskennisgewing

## Government Notice

Die volgende Goewermentskennisgewing word vir algemene inligting gepubliseer.

The following Government Notice is published for general information.

J. J. KLOPPER,  
*Sekretaris van Suidwes-Afrika.*

J. J. KLOPPER,  
*Secretary for South West Africa.*

Kantoor van die Administrateur,  
Windhoek.

Administrator's Office,  
Windhoek.

No. 83.] [12 Junie 1968

No. 83.] [12 June 1968

### ORDONNANSIE, 1968: UITVAARDIGING VAN

### ORDINANCE, 1968: PROMULGATION OF

Dit behaag die Administrateur om sy goedkeuring te heg, ooreenkomstig artikel 27 van die Wet op die Konstitusie van Suidwes-Afrika 1968 (Wet 39 van 1968) aan die volgende Ordonnansie wat hierby vir algemene inligting gepubliseer word, ooreenkomstig artikel 29 van gemelde Wet:—

The Administrator has been pleased to assent, in terms of section 27 of the South West Africa Constitution Act, 1968 (Act 39 of 1968) to the following Ordinance which is hereby published for general information in terms of section 29 of the said Act:—

No.	Titel	Bladsy	No.	Titel	Page
No. 20	Ordonnansie op Myne, Bedrywe en Minerale 1968	966	No. 20	Mines, Works and Minerals Ordinance, 1968	967

No. 20 of 1968.]

## ORDINANCE

To consolidate and amend the laws in force in the Territory of South West Africa relating to minerals and to the operating of mines, works and machinery; to amend the Deeds Registry Proclamation, 1939 to provide for the application of its provisions in respect of mining areas also to grant areas and to amend the Land Survey Ordinance, 1963 to provide for the application of its relevant provisions also to beacons required by or constructed under this ordinance and to diagrams of mining areas.

(Assented to 27th May 1968)

(English text signed by the Administrator)

### ARRANGEMENT OF SECTIONS.

	<i>Sections.</i>
PRELIMINARY . . . . .	1— 3
CHAPTER I Administration . . . . .	4—15
CHAPTER II Prospecting . . . . .	16—39
CHAPTER III Mining . . . . .	40—59
CHAPTER IV Special grants of prospecting and mining rights, permits to prospect or mine beyond the Police Zone, in game parks, the Rehoboth <i>Gebiet</i> and on land reserved or set apart under any law for the sole use of and occupation by Coloured persons . . . . .	60—64
CHAPTER V Respective rights of prospector and holder or owner of a claim or mining area or grant area and an owner of private land . . . . .	65—72
CHAPTER VI Survey and registration of mining areas . . . . .	73—78
CHAPTER VII General and miscellaneous . . . . .	79—102
SCHEDULE . . . . .	

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section 26 of the South West Africa Constitution Act, 1925 (Act 42 of 1925), of the Parliament of the Republic of South Africa as follows:—

## PRELIMINARY.

1. In this ordinance, unless the context otherwise indicates — Interpretation of terms.

- (i) "accessory works" means dams, wells, boreholes, pump stations, pipe-lines, tram-lines, roads, gates and dumping sites for tailings and slimes, and shall also include plant and buildings for the dressing, treating or smelting of ore and for residential purposes; (vi)
- (ii) "aerodrome" means an aerodrome as defined in section 1 of the Aerodrome Ordinance, 1963 (Ordinance 12 of 1963); (xlv)
- (iii) "attachment" means attachment of any movable assets by any messenger of the magistrate's court or any sheriff or deputy sheriff of the South West Africa Division of the Supreme Court of South Africa in the execution of any judgment of such court; (iii)
- (iv) "base mineral" means all minerals other than precious minerals; (xxix)
- (v) "block of claims" means a block of not more than four claims, pegged individually on the same day, under the same prospecting licence, with the side of adjacent claims in that block coincident and conterminous and with the block not exceeding 72 hectares; (xvii)
- (vi) "claim" means an area of land which has in conformity with the provisions of this ordinance or a prior law been lawfully pegged as a claim and in respect of which the right to prospect for and mine minerals has been lawfully obtained; (xvi)
- (vii) "Coloured person" means a person who is not a white person or a Native and who is generally accepted as a Coloured person, and includes a Burgher of the Rehoboth Gebiet, but does not include a person, who although a Coloured person by descent, is generally accepted as a native; (xix)
- (viii) "continental shelf" means the continental shelf as defined in the Convention on the Continental Shelf signed at Geneva on the twenty-ninth day of April, 1958, or as it may from time to time be defined by international convention accepted by the Republic of South Africa; (xliii)
- (ix) "conversion" means conversion of claims into mining areas in accordance with the provisions of this ordinance; (xxviii)
- (x) "diagram" means a diagram as defined by the Land Survey Ordinance, 1963 (Ordinance 9 of 1963), and shall include a document which has prior to the commencement of this ordinance been accepted as a diagram in the Mines Division of the Administration; (xv)
- (xi) "Director" means the person appointed as Director of Mines in terms of this ordinance or any person lawfully acting in that capacity; (vii)
- (xii) "game park" means any area declared to be a game park in terms of sections 37 and 38 of the Nature Conservation Ordinance, 1967 (Ordinance 31 of 1967); (xlvii)
- (xiii) "grant area" means the defined area in respect of which an exclusive prospecting or mining right has been granted in terms of this ordinance; (xlii)
- (xiv) "holder of a claim" means the person or company registered as the owner of a claim in the claims

register kept in the office of the mining commissioner; (xviii)

- (xv) "holder of a grant area" means the person or company holding a deed of grant in respect of an exclusive prospecting or mining right granted in terms of section 60 or 61 of this ordinance or a prior law; (xii)
- (xvi) "inspector" means any person appointed as an inspector of mines or machinery in terms of this ordinance and shall include an inspector of explosives appointed in terms of the Explosives Ordinance, 1962 (Ordinance 31 of 1962) or any person legally acting in such capacities; (xiv)
- (xvii) "land surveyor" means a land surveyor as defined in section 1 of the Land Survey Ordinance, 1963 (Ordinance 9 of 1963); (xx)
- (xviii) "lapse" means, in relation to any claim, that the land in respect of which such claim was held, is again open to prospecting and pegging; (xliv)
- (xix) "lessee" in relation to land, means a person to whom the land has been allotted under any law relating to land settlement and who has exercised the right to purchase that land; (xiii)
- (xx) "local authority" means a municipal council or a village management board; (xxxiii)
- (xxi) "machinery" means any engine, boiler or appliance or combination of appliances which is used or intended to be used for generating, developing, receiving, storing, converting, transforming or transmitting any form of power or energy, or for conveying persons, material or minerals, and which is situated at a mine or works and used or intended to be used in connection with operations at, and pertaining to, such mine or works; (xxi)
- (xxii) "mine" when used as a noun, means any excavation in the earth, whether abandoned or being worked, made for the purpose of searching for or winning any mineral, and any place where any mineral deposit is being worked and any quarry, but if two or more such excavations or places are being worked in conjunction with one another, they shall be deemed to constitute one mine, unless the Director notifies its owner in writing that such excavations or places shall constitute two or more mines, and any place at or near a mine where any building, construction, dump, dam, machinery or appliance is used or intended to be used by the owner of the mine for any of the following purposes, or for any purpose necessary or incidental thereto, shall form part of such mine:—
- (a) searching for, or winning, a mineral;
  - (b) crushing, reducing, dressing, concentrating or smelting a mineral;
  - (c) producing a product of commercial value, other than a clay or earthenware product or cement from a mineral; or
  - (d) extracting, concentrating or refining any constituent of a mineral;

and, when used as a verb, means any operations with the object of winning minerals from the earth or from water in or under the earth or from the sea or the seabed, and shall include all excavation work whether by underground or open working or otherwise, and any boring and other operations necessary for, or incidental to such winning, and shall include the collecting of sea bird guano; (xxiii)



- (xxiii) "mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or bed of the sea and having been formed by or subjected to a geological process, and shall include sea bird guano, but does not include water, not being water taken from the earth or sea for the extraction therefrom of a mineral: Provided that subject to the provisions of section 16 (2), the term "mineral" shall not apply to soil, sand, clay, gravel or stone (other than limestone or marble) if these substances are *bona fide* required for —
- (a) agriculture;
  - (b) building;
  - (c) fencing;
  - (d) Road making;
  - (e) the manufacture of bricks and tiles;
  - (f) the construction of sports or air fields;
  - (g) the construction of bridges, dams, reservoirs, weirs, canals, or other irrigation works;
  - (h) railway construction;
  - (i) any other purpose so declared by the Administrator by notice in the Official Gazette;
- (xxii)
- (xxiv) "mining area" means an area of land which has been converted into a mining area in accordance with the provisions of this ordinance or a prior law and in respect of which a deed of conversion duly registered in the Deeds Registry of the Territory has been issued; (xxiv)
- (xxv) "mining commissioner" means any person appointed as such under this ordinance or any person lawfully acting in that capacity; (xxv)
- (xxvi) "Native" means a person who is a member of an aboriginal race or tribe of Africa, or who is generally accepted as such; (xxvi)
- (xxvii) "Native reserve" means any land and area in the Territory mentioned in section 4 (i) of the South West Africa Native Affairs Administration Act, 1954 (Act 56 of 1954) of the Republic of South Africa; (xxvii)
- (xxviii) "natural oil" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits; (i)
- (xxix) "open land" means land that is open for prospecting; (xxx)
- (xxx) "owner", in relation to —
- (a) a claim or mining area or grant area or mine or works or machinery, means any person who is the immediate holder or owner of a claim or mining area or grant area or mine or works or machinery or part thereof, as the case may be, or tributor for the working of a claim or mining area or grant area or mine or works or machinery and shall include the lessee of such claim or mining area or grant area or mine or works or machinery;
  - (b) private land means the person in whose name the land is registered in the Deeds Registry and shall include also a lessee of land owned by the

- Administration but shall not include the holder of a grazing licence;
- (c) the Rehoboth *Gebiet* means the magistrate of Rehoboth in his capacity as *Kaptein* of the Rehoboth Baster Community.
- (d) a Native reserve means the South African Bantu Trust;
- and shall include the trustee in any insolvent estate, the liquidator of a company which is an owner and the representative recognised by law of an owner who has died or who is a minor or is of unsound mind or is otherwise under disability, as long as such trustee, liquidator or legal representative is acting within the authority conferred upon him by law, and if the holder or owner or lessee referred to in paragraph (a) above is a company, the term "owner" shall include every director or secretary or representative or agent of the company in the Territory or the Republic of South Africa, or is an unincorporated body of persons the term "owner" shall include every member of that body in the Territory or the Republic of South Africa; (ix)
- (xxxix) "owner of a mining area" means the person or company registered in the Deeds Registry as owner of a mining area; (x)
- (xxxix) "Police Zone" means the line or boundary defined as such in the First Schedule of the Prohibited Areas Proclamation, 1928 (Proclamation 26 of 1928) or any amendment thereof; (xxxiv)
- (xxxix) "precious minerals" means —
- (a) the precious metals (gold, silver, platinum and irridium, and any other metals of the platinum group and the ores of the said metals) as well as slimes, concentrates, slag, tailings, residues or amalgam containing such metals;
- (b) precious stones (diamonds, rubies, emeralds, and sapphires) as well as ores, concentrates, gravels or conglomerates containing such precious stones;
- (c) any other metals or substances declared by the Administrator by notice in the *Official Gazette* to be precious minerals for the purposes of this ordinance; (viii)
- (xxxix) "prescribed" means prescribed by this ordinance; (xlvi)
- (xxxix) "private land" means land other than state land and for the purposes of this ordinance the term private land shall include the Rehoboth *Gebiet* and any Native Reserve, and shall further include land leased from the Administration under any law relating to land settlement when the lessee has exercised his option to purchase; (xxxv)
- (xxxix) "prospecting" means intentionally searching for minerals in or on the earth or sea or bed of the sea and includes all excavating necessary for the purpose whether by underground or open working or otherwise, as well as boring and all work necessary for or incidental to such searching, but does not include mining; (xxxvi)
- (xxxix) "prospector" means the person or company by whom a prospecting licence is held under this ordinance or any prior law and shall include a holder of a claim or a holder of a grant area in respect of which exclusive prospecting rights are held; (xxxvii)
- (xxxix) "public road" means any road, street or thoroughfare which the public has a right to use

or has used without hindrance for a period of at least twelve months and shall include those parts adjoining the roadway defined as the road reserve in the Roads Ordinance, 1962 (Ordinance 28 of 1962); (xxx)

- (xxxix) "regulation" means a regulation made or in force under this ordinance; (xxxviii)
- (xl) "Rehoboth *Gebiet*" means the territory referred to as the *Gebiet* in the Agreement contained in the Schedule to the Proclamation of the Administrator dated the twenty-eighth day of September, 1923, (Proclamation 28 of 1923) or any amendment thereof; (xxxix)
- (xli) "source material" means source material as defined in section 1 of the Atomic Energy Act, 1967 (Act 90 of 1967) of the Republic of South Africa; (v)
- (xlii) "South African Bantu Trust" means the South African Bantu Trust constituted by section 4 of the Bantu Trust and Land Act, 1936 (Act 18 of 1936) of the Republic of South Africa; (xl)
- (xliii) "surveyed" means surveyed by a land surveyor; (xxxii)
- (xliv) "territorial waters" means the territorial waters referred to in section 2 of the Territorial Waters Act, 1963 (Act 87 of 1963) of the Republic of South Africa; (xli)
- (xlv) "this ordinance" includes the regulations; (xi)
- (xlvi) "white person" means a person who in appearance obviously is, or who is generally accepted as a white person, but does not include a person who, although in appearance obviously a white person, is generally accepted as a Coloured person; (iv)
- (xlvii) "works" means any place, not being a mine or part of a mine, where any of the following operations and any operation necessary or incidental thereto are carried out and constitute the main operation at such place —
- (a) the crushing, screening, washing, classifying or concentrating of any mineral;
  - (b) the treating of any mineral, in the form obtained from a mine, for the production of coke, or for the production of a base mineral in any shape or form, including ingots, billets and rolled sections;
  - (c) the working and treating of any mine tailings deposit or mine dump for the recovery of any valuable content thereof;
  - (d) the extracting of any precious mineral from any mineral or concentrate;
  - (e) the refining of any precious mineral;
  - (f) the drying or calcining of any source material;
  - (g) the generating of any form of power and transmitting and distributing it to the terminal point of bulk supply to any consumer or, where the supply is not in bulk, to the power supply meter on the consumer's premises, if more than fifty per cent of the power generated is used in connection with a mine;
  - (h) the transmitting and distributing of any form of power from a generating source, other than a generating source contemplated in paragraph (g), to any mine, if any of the power supplied to the mine is used for winding, pumping or ventilating purposes;



- (i) the transmitting and distributing, to any other consumer, of any form of power from a mine by the owner thereof to the terminal point of bulk supply or, where the supply is not in bulk, to the power supply meter on such consumer's premises;
- (j) the conserving of water in any dam or reservoir, and its distribution, if more than fifty per cent of the water distributed from such dam or reservoir is used in connection with a mine or a place referred to in paragraph (a), (b), (c), (d), (e), (f) or (g), but excluding the conserving and distributing of water by a public utility undertaking or a local authority; or
- (k) the manufacturing of explosives for use in mines; (ii)

2. (1) Subject to the provisions of subsection (2) the right of prospecting and mining for and disposing of precious and base minerals in the Territory, including its territorial waters and continental shelf is vested in the Administration.

Right of prospecting and mining for and disposing of minerals.

(2) The right of prospecting and mining for and disposing of base minerals, excluding natural oil and source material, in any Native reserve is vested in the South African Bantu Trust.

(3) The provisions of this ordinance governing prospecting and mining for and the disposal of base minerals shall not affect the provisions of any other law relating to prospecting for and the winning and disposal of source material.

3. (1) Subject to the provisions of subsection (2) the laws mentioned in the Schedule to this ordinance are hereby repealed to the extent set out in the third column of that Schedule.

Repeal of laws.

(2) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, given, granted or taken under the corresponding provision of this ordinance.

## CHAPTER I.

### ADMINISTRATION.

4. (1) The Mines Division of the Territory of South West Africa shall, subject to the direction and authority of the Administrator, through the Secretary of the Territory supervise and control the mining industry and exercise all rights, powers and jurisdiction vested in the Administration, or conferred upon officers of the Administration by any law in regard to minerals, mines and works in the Territory: Provided that nothing in this section contained shall be deemed to fetter or restrict any discretion vested in the Director, an inspector or the mining commissioner in terms of the provisions of this ordinance.

Mines Division and appointment of Director of Mines, Inspectors of mines, mining commissioner and other officers.



## (2) The Administrator shall —

- (a) appoint a Director of Mines who shall be a member of the public service and who shall exercise the powers and perform the functions and duties conferred or imposed upon him by this ordinance or as may lawfully be assigned to him by the Administrator through the Secretary for the Territory and who shall exercise general supervision of all mines and works and machinery in the Territory;
- (b) appoint properly qualified inspectors of mines and of machinery to assist the Director and who shall have and exercise the powers and duties specially conferred and imposed upon inspectors of Mines and of Machinery by this ordinance;
- (c) appoint a mining commissioner to assist the Director and who shall have and exercise the powers and duties specially conferred and imposed upon him by this ordinance;
- (d) appoint claim inspectors to assist the mining commissioner; and
- (e) designate officers or employees in the public service who shall in addition to their other duties, exercise the powers and perform the functions and duties which in terms of this ordinance or any other law are required to be exercised or performed by the Director, an inspector or the mining commissioner.

(3) Any appointment under paragraph (a), (b), (c) or (d) of subsection (2) shall be subject to the laws governing the public service.

(4) No action for injury or wrong shall lie in any court against the Director or the officers acting under his instructions for any act done reasonably and in good faith by the Director or any such officer in the exercise of the powers and duties vested by this ordinance in the Director or any such officer.

5. (1) The Director or any inspector of mines, machinery or explosives may enter upon any mine or works and inspect or examine the same or any part thereof or any machinery thereon at any hour of the day or night, provided that he does not unnecessarily impede, slow up or stop the working of the mine or the carrying on of the works.

Powers of Director or any Inspector to enter upon and inspect mines and works and give instructions regarding safety or health.

(2) Whenever the Director or any inspector finds at any mine or works that any thing or any practice in any way connected therewith is dangerous or defective or that the absence of any thing or practice is likely to cause bodily injury to or be injurious to the health of any person and no provision exists in any law, regulation, or special rule requiring any such thing to be done or not to be done, or requiring any such practice to be observed or forbidding any such practice, he shall give notice in writing to the manager of the mine or works stating the particular thing, matter or practice which he requires to be done or not to be done or observed or discontinued and may give such instructions about it as he may deem expedient.

6. Any person who obstructs or hinders any officer of the Mines Division in the discharge of his duty or disobeys any lawful order given by any such officer or refuses or neglects to furnish any such officer with the means and assistance necessary for making an entry, inspection, examination or inquiry under this ordinance or any regulation thereof or to attend, when required, any such inspection or examination shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred

Penalty for obstruction of Mines Division officers.

rand or, in default of payment, to imprisonment for a period not exceeding twelve months.

7. (1) Any person who contravenes any provision of this ordinance or of any regulation, or who fails to comply with the terms of any notice or instruction given by an officer of the Mines Division under the provisions of this ordinance or any regulation thereof, shall, if no penalty be expressly provided by this ordinance or by the regulation for the contravention thereof or failure to comply therewith, be liable on conviction to a fine not exceeding four hundred rand, or, in default of payment to imprisonment for a period not exceeding twelve months.

Penalty for breach of provisions of this Ordinance or a regulation thereunder.

(2) A Magistrate's court shall have special jurisdiction to impose the maximum penalties mentioned in this section, notwithstanding anything to the contrary in any other law.

8. If any person be guilty of any act or omission or contravenes any of the provisions of this ordinance, or of the regulations, or of any special rules under section 12, whereby —

Penalty for an act that imperils safety or causes injury or death.

(a) the safety of any person is endangered or likely to be endangered, he shall be liable on conviction to a fine not exceeding four hundred rand, or, in default of payment, to imprisonment for a period not exceeding twelve months;

(b) serious bodily injury is caused to any person, he shall be liable on conviction to a fine not exceeding eight hundred rand, or, in default of payment, to imprisonment for a period not exceeding two years;

(c) the death of any person is caused, he shall be liable on conviction to a fine not exceeding two thousand rand, or in default of payment, to imprisonment for a period not exceeding five years, or to such imprisonment without the option of a fine:

Provided that nothing in this section or in section 12 contained shall be construed as exempting any person from prosecution for an offence under the common law or any other statute, or as preventing the imposition on such a person, if convicted for such an offence, of a more severe penalty than is prescribed for a contravention of this ordinance or the regulations.

9. (1) The Director or every inspector of mines, machinery or explosives acting under his instructions may try any breach of a regulation or of any special rule in force under section 12 unless the death of any person has been directly caused by the breach.

Powers of Director to try breaches or regulations and special rules and impose penalties.

(2) The Director or any inspector, when acting under this section may, on finding a person guilty of a breach of a regulation or special rule, impose a fine not exceeding thirty rand and in default by the offender of payment of the fine, the Director or inspector shall notify the amount to the offender's employer, who shall withhold the amount so notified from any wages due or to become due to the offender, and pay it over to the officer concerned for the benefit of the Territory Revenue Fund.

(3) At every such trial the Director or every such inspector shall, with the assistance, if necessary, of an interpreter, take down the evidence in writing and record his finding and sentence in writing and transmit it to the

magistrate of the district concerned and an appeal shall lie to that magistrate against any such finding or sentence, if, within twenty-one days after the date of the sentence, notice stating the grounds of appeal be given in writing to the magistrate and the Director. The decision of the magistrate on any such appeal shall be final.

10. (1) Whenever any accident, causing death or grievous bodily harm to any person occurs at a mine or upon any works the Director or an inspector of mines, machinery or explosives shall hold an inquiry into the cause of the accident, and whenever in any other circumstances the Director deems it necessary such an inquiry may be held.

Powers and duties of Director and inspectors in holding inquiries.

(2) The Director or an inspector of mines, machinery or explosives or any other officer deputed by the Administrator may hold an inquiry whenever the Director, such inspector or other officer has reason to believe that any regulations or special rules made under this ordinance have been contravened, or whenever in the opinion of the Administrator it is for any other reason expedient that an inquiry be held as to occurrences at any mine or works.

(3) The evidence at every inquiry held in terms of subsection (1) shall be taken down in writing by the Director or inspector concerned and in the case of such an inquiry being held by such an inspector, such inspector shall submit such evidence with his report to the Director who in the case of an accident caused by a breach of the provisions of this ordinance or whenever a human life has been lost, shall transmit the evidence taken at any such inquiry, any report thereon and his remarks thereon, to the Attorney-General.

(4) The evidence at every inquiry held in terms of subsection (2) shall be taken down in writing by the Director, inspector or other officer concerned and in the case of such an inquiry being held by such inspector or other officer, such inspector or other officer shall submit such evidence with his report to the Director who shall transmit the evidence taken at any such inquiry, any report thereon, and his remarks thereon, to the Administrator and to the Attorney-General. Upon consideration of such evidence, report and remarks, the Administrator may in his discretion order a further inquiry to be held by another inspector of mines, machinery or explosives or other person.

(5) Nothing contained in this section shall be deemed to affect the law in force requiring and regulating inquests or other inquiries in case of death from other than natural causes, and in every case of death, caused by such accident as aforesaid there shall be held, in addition to any inquiry required by this section, such inquest or other inquiry as required by other laws of the Territory.

11. (1) For the purpose of any trial mentioned in section 9 or inquiry mentioned in section 10 the person who conducts such trial or inquiry may, in manner prescribed by regulation, summon witnesses to give evidence or to produce documents or any article or thing which he may deem requisite for properly conducting the trial or inquiry.

Procedure at trial or inquiry.

(2) Whenever at any inquiry evidence has been given wherefrom any person is of opinion that he may be charged with contravening any provision of this ordinance or a regulation, or may be held responsible in any manner for the accident forming the subject of the inquiry, such person may cross-examine any witness, or may require the



person conducting such inquiry to summon any witness on his behalf either to give evidence or to produce documents or any article whatsoever and every such person may appoint any other person to represent him at the inquiry.

(3) Any person so summoned who fails, without reasonable excuse, to comply with the terms of the summons, shall be guilty of an offence and liable on conviction before a court of a magistrate to a fine not exceeding thirty rand or, in default of payment, to imprisonment for a period not exceeding one month.

(4) Any person, whether summoned or not, who while under examination refuses to answer to the best of his knowledge or belief all questions lawfully put to him by or with the concurrence of the person conducting such trial or inquiry or who at such trial or inquiry wilfully insults such person conducting such trial or inquiry or wilfully interrupts the proceedings, shall be guilty of an offence and liable on conviction to the penalties mentioned in subsection (3).

(5) At any such trial the person conducting such trial shall, and at any such inquiry the person conducting such inquiry, may administer an oath or affirmation in lieu thereof to witnesses, and if any witness to whom an oath or affirmation has been so administered gives false evidence, he shall be guilty of an offence and liable on conviction to the penalties prescribed by section 7.

(6) Any such witness shall have the same privileges in respect of answering questions or producing documents as he would have under the same circumstances if he were summoned as a witness before a superior court.

12. (1) The manager of a mine may make special rules, not inconsistent with this ordinance or any regulation, for the maintenance of order and discipline, and the prevention of accidents in or on any such mine. The rules, when made, shall be submitted through the Director to the Administrator for approval, and when so approved by him they shall take effect after they have been posted up in a conspicuous place at such mine for fourteen clear days.

**Mine Manager's power to make special rules.**

(2) The Administrator, if he considers any such rule unreasonable, unnecessary or otherwise undesirable may disallow it, amend it or at any time require it to be altered.

(3) Any objection to such rules may be lodged at the office of the Director and shall be forwarded by him with his remarks thereon to the Administrator, who may either confirm or alter the rule regarding which the objection may have been lodged.

(4) All such rules, when and so long as they are posted up and are legible, shall, until so disallowed and save in so far as they may be altered, have the same force and effect as the regulations, and any person who contravenes or fails to comply with any such rule shall be liable on conviction to a fine not exceeding thirty rand, or in default of payment, to imprisonment for a period not exceeding one month.

13. (1) No person who is resident outside the Territory or the Republic of South Africa shall be registered as the holder of a claim or a holder of a grant area or as the owner of a mining area, unless he has registered at the office of the mining commissioner an accredited agent resident in the Territory or in the Republic of South Africa.

**Registration of agent by prospecting or mining title holder resident outside the Territory or the Republic of South Africa.**

(2) Should any holder of a claim or holder of a grant area or owner of a mining area take up residence outside



the Territory or the Republic of South Africa he shall within one month of taking up such residence register at the office of the mining commissioner an accredited agent resident in the Territory or in the Republic of South Africa.

(3) An agent referred to in subsections (1) and (2) shall be a person approved by the Director and such agent shall, on being registered by the mining commissioner, be personally responsible under the provisions of this ordinance for all matters, acts and omissions in connection with the claims, grant areas or mining areas held by his principal in the same manner as if such claims, grant areas or mining areas were registered in his name: Provided that prior to the registration of an agent as aforesaid such agent shall have informed the Director in writing that he is prepared to accept such responsibility.

(4) Any holder of a claim or holder of a grant area or owner of a mining area may at any time revoke the registration of his accredited agent and shall within one month of such revocation register another person approved by the Director as his accredited agent as aforesaid.

(5) A registered accredited agent may at any time resign his appointment as such by giving notice in writing to the mining commissioner. The resignation shall not take effect until the expiration of one month after the receipt of such notice by the mining commissioner, or until some other person has been registered as an accredited agent in his place.

(6) Any such holder of a claim or holder of a grant area or owner of a mining area, shall, within one month after receipt of notice from the mining commissioner of the fact of the resignation of his registered accredited agent, register some other person as his accredited agent.

(7) Nothing in this section contained shall be taken in any way to relieve any holder of a claim or holder of a grant area or owner of a mining area of any liability incurred under this Ordinance or of any responsibility for any duty imposed by it in regard to his claims or grant areas or mining areas, as the case may be.

(8) The Administrator may at any time, at the request of the Director, cancel claims or grant areas or mining areas registered in the name of any person or company, if such person or company refuses, fails or neglects to comply with any of the provisions of this section.

14. (1) Save as is otherwise provided in this Ordinance any notice or other document required by this ordinance to be served upon any person shall be deemed to be duly served if delivered to such person personally or sent by registered post to his last known postal or business address or ordinary residence or if he is absent from the Territory or the Republic of South Africa by such service as aforesaid on any duly registered accredited agent of such person in the Territory or the Republic of South Africa.

Service of  
process.

(2) Save as is otherwise provided in this Ordinance, all public notices issued by the Director, an Inspector or mining commissioner, shall be posted on the official notice board of the office of the Director for a period of one month and shall also be published once in the *Official Gazette*.

(3) Any application, objection, or notification made to the Director, an inspector or the mining commissioner, in terms of this ordinance shall be made in writing.

15. (1) If any person is dissatisfied with any act done or decision given by the Director, an inspector or the mining commissioner in the course of the exercise of his powers and the performance of his duties, such person may within twenty-one days from the date of the doing of such act or the giving of such decision, appeal to the Administrator and such appeal shall be heard by a special commission whose decision shall be final.

Appeal against decision given by the Director, an Inspector or the Mining Commissioner.

(2) The appellant shall set out the grounds of his appeal in writing and deposit a sum of R200 with the Administrator.

(3) The special commission shall be constituted by the Administrator and shall consist of the following five members:—

The Administrator, or his representative, who shall be a member as well as the Chairman, two members nominated by the appellant and two by the Administrator; of these last two members, one shall be chosen from amongst the mine managers in charge of mines in the Territory.

(4) If the decision of the special commission is against the appellant in any respect he may be ordered to pay the entire cost of the commission, or such proportion thereof as the commission may determine, as well as any fees payable to any witness who may have been summoned to appear, and the deposit lodged with the Administrator may be forfeited in whole or in part for these purposes.

(5) If the decision of the special commission is in favour of the appellant the sum deposited by him shall be returned forthwith.

(6) The members of such commission, who are not public servants, shall each receive such remuneration and such reasonable travelling allowances, while actually engaged in the work of the commission, as the Administrator may determine.

## CHAPTER II.

### PROSPECTING.

16. (1) Subject to existing prospecting and mining rights and, save as may otherwise be specially provided under this ordinance, prospecting under the authority of a prospecting licence may be carried on anywhere in the Territory.

Where prospecting may be carried out.

(2) The Administrator may by notice in the *Official Gazette* declare for the whole Territory or any portion thereof that where the mining or working of stone, clay, soil, sand or gravel is for a purpose of disposal to another party for profit, such mining or working shall be subject to the provisions of this ordinance in whole or in part.

17. (1) The Administrator may upon written application withdraw any specified area from prospecting and/or pegging in respect of one or more specified minerals for such period or periods as he may deem fit.

Areas withdrawn from prospecting or pegging.

(2) If the Director has reason to believe that, as a result of prospecting operations, a discovery of possible commercial value has been made, he may, on application by or on behalf of the person who made such discovery, and subject to the provisions of subsection (3), immediately withdraw an area specified in such application and covering the area of such discovery from pegging of claims in respect of one or more specified minerals for a period not exceeding six months and such withdrawal shall take effect from the time such application has been granted by the Director.

(3) Any application under subsection (1) or (2) shall be accompanied by —

- (a) documentary proof which in the opinion of the Director is adequate proof of a discovery of one or more minerals of possible commercial value; and
- (b) a withdrawal fee calculated at two rand per month for every 1000 hectares or portion thereof:

Provided that an application for a withdrawal by the Administrator for public purposes or for purposes of a grant of exclusive prospecting rights in terms of section 60 (8) (a) need not be accompanied by such proof and no fee shall be payable in respect of such withdrawal.

(4) The withdrawal fee shall be paid monthly in advance as from the date on which the said withdrawal has taken effect as aforesaid.

(5) The person in whose favour a withdrawal has been granted in terms of subsection (2), shall have the exclusive right either —

- (a) to peg claims on the specified area so withdrawn during the currency of such withdrawal notwithstanding the provisions of section 18 (1) (a) (iv); or
- (b) to apply in terms of section 60 not later than thirty days before the date of expiry of such withdrawal, for an exclusive right to prospect within the specified area so withdrawn.

(6) The Director shall by official notice declare the specified area withdrawn by him under this section open to the pegging of claims when —

- (a) the monthly fee payable in terms of subsection (4) is more than twenty-one days in arrear; or
- (b) the person who has made the discovery as aforesaid notifies the Director that he no longer requires the protection of such withdrawal.

(7) Any withdrawal or any official notice by the Director under this section shall be posted at the office of the Director and be published once in the *Official Gazette*.

18. (1) No person shall prospect or peg claims —

- (a) in, on or under any —
  - (i) town, village or location;
  - (ii) land comprising a public road, aerodrome, railway or cemetery;
  - (iii) land used or reserved for any government or public purpose;

Land on which prospecting or pegging is restricted.

- (iv) land withdrawn from pegging and/or prospecting under this ordinance or any prior law;

except with the written consent of the mining commissioner and subject to such conditions as he may prescribe; or

- (b) in, on or under any land —

(i) used as a garden, orchard, vineyard, nursery, plantation or which is otherwise under cultivation;

(ii) on which accessory works have been erected under this ordinance;

(iii) within a horizontal distance of one hundred metres of any spring, well, borehole, reservoir, dam, dipping-tank, waterworks, perennial stream, artificially constructed watercourse, kraal, building or any structure whatever; or

(iv) within a horizontal distance of three hundred metres from any point on the nearest boundary of any erf as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963) if such erf has been surveyed for the purpose of inclusion in a township as defined in the said section 1,

without the written permission of the owner of the land on which it is proposed to prospect or peg, or of the owner of the accessory works where such accessory works are concerned.

(2) No prospector shall prospect or peg claims on private land until he has produced the prospecting licence concerned to the owner or occupier of that land for endorsement, and on such production such owner or occupier shall endorse such licence. If such owner or occupier is not available, such prospector shall by means of a registered letter advise such owner or occupier of his intention to prospect or peg and shall produce proof at the office of the mining commissioner or nearest police station of the posting of such registered letter. The mining commissioner or a member of the South African Police shall record the number of the receipt issued by the post office in respect of the said registered letter and shall endorse the said licence accordingly.

(3) Any person contravening any of the provisions of this section shall be guilty of an offence.

19. (1) Any person who prospects for minerals, or pegs a claim, without being in possession of a current prospecting licence duly issued in accordance with the provisions of this ordinance, shall be guilty of an offence.

Prospecting without licence unlawful.

(2) The Director may demand from such person payment of the value of any minerals that may have been won as a result of such unlawful prospecting or pegging of a claim, or he may, in his discretion confiscate such minerals for the benefit of the Administration.

(3) Except insofar as his prospecting licence may have been cancelled or suspended in terms of this ordinance, any person who is a holder of a claim without being in possession of a current prospecting licence shall be guilty of an offence.

(4) When the prospecting licence of any person or company has been cancelled in terms of this ordinance, the Administrator may, at the request of the Director, cancel any claim or claims held by such person or company.



20. (1) Subject to the provisions of this ordinance, a prospecting licence may, upon application, be issued by the mining commissioner in respect of any portion of the Territory in which prospecting is permitted. Every prospecting licence shall be in the form prescribed by regulation.

Issue of prospecting licence.

(2) The issue of a prospecting licence to, or the cancellation or suspension of such a licence already issued to, a person who has been convicted of an offence under this ordinance or any other existing or prior law of the Territory or any law of the Republic of South Africa relating to the prospecting or mining for precious or base minerals or the Diamond Industry Protection Proclamation, 1939 (Proclamation 17 of 1939), or any law of the Republic of South Africa relating to the control and protection of the diamond industry, shall be in the discretion of the Director.

(3) A prospecting licence shall be issued for a period of twelve months and shall be in force from the date of its issue.

(4) On every such licence issued there shall be payable a fee of 25 rand per annum.

21. (1) A prospecting licence may be issued to —

Who may obtain prospecting licences.

- (a) a person of eighteen years or older;
- (b) a company registered under the provisions of the Companies Ordinance, 1928 (Ordinance 19 of 1928); or
- (c) a foreign company which has complied with the requirements of the Companies Ordinance, 1928 (Ordinance 19 of 1928): Provided that —
  - (i) a woman married in community of property may not hold a prospecting licence, unless her husband has given his written consent thereto;
  - (ii) a prospecting licence issued to a Burgher of the Rehoboth *Gebiet* shall confer on such Burgher the right to prospect and peg claims in the Rehoboth *Gebiet* only and a prospecting licence issued to a Native shall confer on such Native the right to prospect and peg claims in only the Native reserve in which he is lawfully resident and a prospecting licence issued to a Coloured person shall confer on such Coloured person the right to prospect and peg claims only on any land reserved or set apart under any law for the sole use of and occupation by Coloured persons.

(2) Where a prospecting licence is inadvertently or wrongly issued to a person who is not qualified to hold such a licence in terms of this section, such licence shall be deemed to be null and void *ab initio*, and the person to whom the licence has been issued shall suffer no penalties in that regard if, upon demand by the mining commissioner or by any member of the South African Police, the said licence is surrendered forthwith.

22. (1) Subject to the provisions of sections 18, 21, 63 and 64 a current prospecting licence shall entitle a prospector to peg off claims in such parts of the Territory as may be open to pegging and, subject to any restriction in force in terms of this ordinance, a prospector shall have the sole right to prospect for minerals on claims re-

Prospecting licence.

gistered in his name or to transfer such claims to any other person holding a valid prospecting licence.

(2) Save as provided in section 38, the holder of a claim shall have no right to remove or dispose of any minerals from such claim.

23. (1) Claims shall be pegged by pegging the middle points of the long sides in the manner prescribed by regulation and the date appearing on the beacon plates as prescribed by regulation shall be presumed to be the date of pegging until the contrary is proved. The corners of a claim or if the claim forms one of a block of claims, the corners of the block of claims, shall be clearly demarcated by beacons in the manner prescribed by regulation within seven days of the date of pegging.

Manner of pegging of claims.

(2) No person shall peg a claim —

(a) between sunset and sunrise or on a Sunday or on any public holiday mentioned in the Second Schedule to the Public Holidays Act, 1952 (Act 5 of 1952) of the Republic of South Africa;

(b) unless the holder of the relative prospecting licence, or his representative, duly authorized in writing is present with the licence, or a certified true copy thereof certified as such by a commissioner of oaths, or a photographic copy thereof, on the land on which the claim is pegged.

(3) No claim or block of claims shall be deemed to have been duly pegged or beacons if the requirements prescribed by this section and by regulation have not been observed to the satisfaction of the mining commissioner: Provided that until the mining commissioner is so satisfied the claim or block of claims shall be presumed to have been duly pegged or beacons.

(4) Save as hereinafter provided, every claim shall be of rectangular shape, the longer and shorter sides of the claim not exceeding six hundred and three hundred metres respectively.

(5) Deviation from the rectangular shape shall only be permissible where the proximity of claims previously pegged or mining areas or grant areas previously acquired renders this shape impossible and in such case such prior claims or areas shall be excluded from the claim or block of claims by beacons erected along the boundaries of such prior claims or areas so as to avoid any encroachment. Where, owing to the proximity of such prior claims or areas, a prospector is compelled to beacon off a claim in a shape other than that of a rectangle such claim shall not be rendered invalid by reason of the fact that one of its sides exceeds the maximum length as prescribed in subsection (4), provided always that the area of such claim shall not exceed eighteen hectares.

(6) If at any time it is found that the area of any claim is larger than the area prescribed in subsection (4) the mining commissioner shall serve written notice on the holder of such claim, to either move the beacons of such claims to exclude the land pegged in excess or to peg the excess area as additional claims within a period to be stated in such notice.

(7) Areas of land which are not contiguous to each other may not be included in one claim or block of claims.

24. The mining commissioner shall have authority to decide —

Authority of mining commissioner to decide pegging and beaconing matters.

- (a) whether or not a claim as pegged and beaconed differs materially from the shape and dimensions prescribed, and whether or not the beacons of any claim conform to the prescribed requirements;
- (b) any question that may arise in regard to the validity of the pegging or beaconing of any claim or block of claims;
- (c) any dispute arising through overpegging, or alleged overpegging.

25. Subject to the provisions of section 23 (3) the mining commissioner shall have authority to allow any corner or line beacon erected along the boundaries of prior claims or areas referred to in section 23 (5) to be shifted, so as to place such beacons on line without encroaching on such prior claims or areas or leaving open spaces between a claim pegged and such prior claims or areas.

Mining commissioner may allow beacons to be moved under circumstances.

26. (1) Every prospector who has pegged a claim, whether personally or by means of an agent or employee, shall within twenty-eight days from the date of pegging notify the mining commissioner of such pegging, on a form prescribed by regulation and shall pay the prescribed claim fees due for a period of six months in respect of each claim pegged.

Notification of pegging.

(2) Any person who fails to comply with the provisions of subsection (1), shall be guilty of an offence and shall in addition forfeit all rights in respect of any claim concerned, unless the non-compliance with such provisions is due to *vis major*.

(3) (a) In any criminal proceedings under the provisions of subsection (2), it shall be presumed that the accused is responsible for the pegging that forms the subject of the charge, until the contrary is proved: Provided that no such proceedings shall be instituted except on the written authority of the Attorney-General.

(b) The court by which such accused is convicted may furthermore give judgment in favour of the Administration for any claim fees which it shall find to be due in terms of the provisions of subsection (1) and any such judgment may be executed as a civil judgment of the court.

(4) The notification referred to in subsection (1) shall include —

- (a) the full name and postal address of the prospector concerned;
- (b) the number of the prospecting licence;
- (c) what specific mineral or minerals it is expected to find on the land which has been pegged;
- (d) the date of pegging;
- (e) the ordinal number or numbers of the claim or claims;
- (f) the name and number of the farm whereon and the magisterial district wherein the claim is situated and the name and postal address of the owner of the land on which the claim has been pegged;
- (g) a sketch plan in quadruplicate of the claim concerned drawn to conform with the requirements of the regulations and to the satisfaction of the mining commissioner.



(5) On receipt of the notification of pegging the mining commissioner shall, if satisfied that the provisions of this ordinance relating to pegging and notification thereof have been properly observed, register the claim concerned and inform the owner of the land concerned in writing thereof and shall send to the address of such owner notified in terms of subsection 4 (f) a copy of the sketch plan submitted in accordance with subsection (4) (g).

(6) The mining commissioner may extend the period of twenty-eight days referred to in subsection (1) for the notification of pegging of claims on good cause shown.

27. If, before or after the lodging of any sketch plan in terms of section 26, the mining commissioner considers it necessary or expedient that a diagram of the claims affected should be lodged at his office, he may by notice in writing call upon the holder of the relevant claims to lodge such a diagram with him within three months of the date of such notice or within such further period as the mining commissioner may allow.

Mining commissioner may require diagram.

28. No mining may be carried out on any land until such land is pegged off and registered as a claim and, in the case of private land, until the holder of such claim or the person or company to whom such claim is subsequently transferred, has entered into a written agreement with the owner of such private land as to the terms under which such owner shall be compensated in terms of section 67 and holds a permit from the mining commissioner authorising mining on such claim. The mining commissioner shall not issue such a permit until a copy of the said agreement is lodged with him. Such permit shall be in a form prescribed by regulation.

Claim to be registered before mining is allowed.

29.(1) A register shall be kept in the office of the mining commissioner to be styled the "claims register" in which shall be registered the pegging, abandonment, cancellation and transfer of all claims as have been notified to the said office.

Registration of claims.

(2) The pegging or transfer of any claim shall not be registered unless the provisions of this ordinance and the regulations relating to the notification of pegging or transfer of claims have been carried out to the satisfaction of the mining commissioner.

(3) On the registration of the pegging or transfer of a claim the mining commissioner shall issue a certificate of registration on the form prescribed by regulation to the holder of such claim.

(4) The claims register shall be open for inspection by the public free of charge during the official office hours.

30. (1) As from the first day of the month during which any claim was pegged, or as from the first day of the month of commencement of this ordinance, whichever is the later, claim fees at the rate of two rand per claim per month shall be payable by the holder of such claim at the office of the mining commissioner until such claim lapses or, in the case of conversion, until a mining area fee becomes payable in terms of section 47.

Claim fees.

(2) (a) The initial payment of fees in respect of any claim shall be for a period of six months and falls due within the period within which pegging must be notified in terms of section 26.



(b) Subsequent payments of fees may be accepted for a maximum period of twelve months in advance, but shall, in any event, be made at least monthly in advance on the first day of every month and shall carry a penalty of one fourth of the amount payable if overdue.

(c) If such payments, together with penalties which may have accrued, are not made on or before the last day of the calendar month in which they fall due, all rights in the claim in respect of which such payments are due shall lapse and the land over which such claim was held shall become open to prospecting and pegging.

(d) For the purpose of paragraph (c) mining areas shall be treated as claims until the first mining area fee becomes payable in terms of section 47.

31. (1) Every holder of a claim shall maintain the beacons defining his claim in proper repair and in accordance with the regulations and if any beacons are found to be out of repair the mining commissioner shall serve written notice upon the holder concerned calling upon him to put the beacons in proper repair within a period to be stated in the notice.

Maintenance of claim beacons.

(2) A holder of a claim or his representative shall point out free of charge the middle and corner beacons of his claim on being requested to do so by the Director, an inspector, the mining commissioner, a claim inspector, a member of the South African Police, the owner or occupier of the land on which such claim is situated or by any prospector who may desire to peg an adjoining claim: Provided that where it is found that the sketch plan of the claim concerned, filed in the office of the mining commissioner or the copy thereof sent to the owner of the land concerned under section 26 (5), is sufficiently accurate to enable the position of such claim to be located therefrom and that the beacons defining such claim are properly erected on such land, any such prospector or owner or occupier who has required such beacons to be pointed out to him in terms of the provisions of this subsection, shall be liable to the holder of such claim for any expenses incurred thereby.

32. The Director may give notice to the holder of any claim that within a period to be fixed in such notice, which shall not be less than three months, he shall execute prospecting operations as are in the opinion of the Director appropriate to the character of the mineral deposit on such claim.

Holder of claim to carry out operations when required to do so.

33. (1) If the holder of a claim fails to comply with any requirement of the Director or mining commissioner, under section 31 (1) or 32 acceptance of further payment of claim fees may be refused by the mining commissioner until such requirement has been complied with.

Procedure to be followed in case of failure to comply with provisions as to beacons and prospecting.

(2) Any claim which lapses as a result of the refusal to accept further payment of claim fees in terms of subsection (1) may not be pegged or registered in the name of the same prospector within a period of twelve months from the date of lapsing of such claim: Provided that the Administrator may on good cause shown, grant special permission to such prospector to repeg and register the said claim in his name.

34. (1) Every prospector shall, to the satisfaction of the Director, maintain his workings in a safe condition and shall repair or make safe to the satisfaction of the

Preservation of the surface of land.

Director the surface of any land which has been rendered unsafe by prospecting or mining operations for which such prospector is responsible or has become responsible in terms of section 79.

(2) If any prospector fails to repair or make safe the surface of any land as aforesaid, he shall be guilty of an offence.

(3) In any criminal proceedings instituted under the provisions of subsection (2) it shall be presumed that the accused is responsible for the surface damage that forms the subject of the charge until the contrary is proved: Provided that no such proceedings shall be instituted as aforesaid except on the written authority of the Attorney-General.

35. (1) Subject to the provisions of section 64, the holder of a claim may transfer his rights to such claim to a person who is the holder of a prospecting licence.

Transfer of claims.

(2) Such transfer shall be by written agreement executed on the form prescribed by the regulations and shall be absolute and unconditional.

(3) Such transfer shall not be registered until the mining commissioner is furnished with a copy of such agreement together with a sketch plan in quadruplicate of the claim it is intended to transfer.

(4) Transfer of a claim shall not take effect until the certificate provided for under section 29 (3) has been issued to the transferee.

(5) The mining commissioner shall notify the owner of private land of the transfer of any claim situate on his land.

36. (1) The holder of a claim may abandon his rights to such claim by giving notice of such abandonment to the mining commissioner and on receipt of such notification the mining commissioner shall cancel such claim in the claims register whereupon the said claim shall be deemed to have lapsed.

Abandonment of claims.

(2) Abandonment of a claim shall not affect the responsibility of the holder of such claim in regard to the observance of the provisions of section 34.

37. When a claim has lapsed, the holder thereof shall within thirty days of the date of lapsing remove all beacons and trenches marking such claim or block of claims in such a manner as to leave no doubt that the claim area concerned is again open to pegging and if such holder fails to fulfil his obligations in terms of this section, he shall be guilty of an offence.

Removal of beacons when claims lapse.

38. (1) No prospector shall remove from the site of his prospecting operations any minerals which have been won in the course of such operations or dispose of such minerals without being in possession of a permit issued by the mining commissioner who may issue such permit subject to such conditions as he may deem fit: Provided that a prospector may remove to a place of safe-keeping in the Territory the minerals he has won from the site of his prospecting operations and upon such removal such prospector shall forthwith inform the mining commissioner in writing of such minerals, the quantity thereof and the place to which they have been removed and shall not dispose of such minerals without being in possession of a permit issued under this subsection.

Removal or disposal of minerals won by prospecting, unlawful without permit from mining commissioner.

(2) No permit under this section shall be issued to any holder of a claim who has not paid all claim fees due in respect of claims registered in his name.

(3) No person shall sell any base mineral sample unless he is in possession of a permit issued by the mining commissioner who may issue such permit subject to such conditions as he may deem fit and no such permit shall be issued for a period longer than twelve months and no base mineral sample weighing more than ten pounds shall be sold: Provided that the mining commissioner may issue a permit for the sale of samples weighing more than ten pounds on good cause shown.

(4) No person shall receive or purchase, whether as principal or agent, from any prospector or other person, any minerals, unless such prospector or other person can produce a permit from the mining commissioner authorising the removal or disposal of such minerals and in such case such permit shall be retained by the receiver or purchaser: Provided that the purchaser of a base mineral sample sold to him in terms of subsection (3) shall not be required to retain any such permit.

(5) Any person, other than the purchaser of a base mineral sample sold to him in terms of subsection (3), having received or purchased in the Territory any minerals from any prospector or other person shall, before consigning such minerals to a destination outside the Territory, return to the mining commissioner the permit referred to in subsection (4) in exchange for a permit in his own name and such exchange permit shall be available for production to the customs authorities at the time of consignment.

(6) Any person who contravenes the provisions of this section shall be guilty of an offence, and in addition the mining commissioner may demand from the persons concerned payment of the value of the minerals which have been unlawfully removed or disposed of or may confiscate such minerals for the benefit of the Administration and may further declare forfeited the claim from which such minerals have been recovered, and if such amount is not paid the mining commissioner may institute civil proceedings for its recovery.

39. (1) Every person who proposes to drill a borehole from the surface of any land for the purpose of prospecting for any mineral, or to resume the drilling of such borehole which has been discontinued for a period exceeding three months, shall give written notice of his intention to drill such borehole or to resume such drilling to the Director, and shall within one year after the completion of the borehole or, if such drilling is discontinued for a period exceeding three months, within one year of such discontinuation, give full and correct information to the Director as to the precise site of the borehole, its depth, the formations passed through and the widths and assay values of any ore bodies intersected together with such further information as may be prescribed by regulation.

Information to be furnished in regard to boreholes.

(2) The information to be disclosed to the Director in terms of subsection (1) shall be furnished in such form as the Administrator may from time to time determine and every statement or plan containing such information shall be submitted in triplicate.

(3) No statement or plan submitted to the Director pursuant to the provisions of subsection (1), shall be published or shown to any person not being an officer of the Mines Division or the Geological Survey Branch,



(2) No permit under this section shall be issued to any holder of a claim who has not paid all claim fees due in respect of claims registered in his name.

(3) No person shall sell any base mineral sample unless he is in possession of a permit issued by the mining commissioner who may issue such permit subject to such conditions as he may deem fit and no such permit shall be issued for a period longer than twelve months and no base mineral sample weighing more than ten pounds shall be sold: Provided that the mining commissioner may issue a permit for the sale of samples weighing more than ten pounds on good cause shown.

(4) No person shall receive or purchase, whether as principal or agent, from any prospector or other person, any minerals, unless such prospector or other person can produce a permit from the mining commissioner authorising the removal or disposal of such minerals and in such case such permit shall be retained by the receiver or purchaser: Provided that the purchaser of a base mineral sample sold to him in terms of subsection (3) shall not be required to retain any such permit.

(5) Any person, other than the purchaser of a base mineral sample sold to him in terms of subsection (3), having received or purchased in the Territory any minerals from any prospector or other person shall, before consigning such minerals to a destination outside the Territory, return to the mining commissioner the permit referred to in subsection (4) in exchange for a permit in his own name and such exchange permit shall be available for production to the customs authorities at the time of consignment.

(6) Any person who contravenes the provisions of this section shall be guilty of an offence, and in addition the mining commissioner may demand from the persons concerned payment of the value of the minerals which have been unlawfully removed or disposed of or may confiscate such minerals for the benefit of the Administration and may further declare forfeited the claim from which such minerals have been recovered, and if such amount is not paid the mining commissioner may institute civil proceedings for its recovery.

39. (1) Every person who proposes to drill a borehole from the surface of any land for the purpose of prospecting for any mineral, or to resume the drilling of such borehole which has been discontinued for a period exceeding three months, shall give written notice of his intention to drill such borehole or to resume such drilling to the Director, and shall within one year after the completion of the borehole or, if such drilling is discontinued for a period exceeding three months, within one year of such discontinuation, give full and correct information to the Director as to the precise site of the borehole, its depth, the formations passed through and the widths and assay values of any ore bodies intersected together with such further information as may be prescribed by regulation.

Information to be furnished in regard to boreholes.

(2) The information to be disclosed to the Director in terms of subsection (1) shall be furnished in such form as the Administrator may from time to time determine and every statement or plan containing such information shall be submitted in triplicate.

(3) No statement or plan submitted to the Director pursuant to the provisions of subsection (1), shall be published or shown to any person not being an officer of the Mines Division or the Geological Survey Branch,



unless the person on whose behalf the borehole in question was drilled has consented thereto in writing.

(4) Any person who fails to comply with the provisions of subsection (1) or (2) or any person who publishes or affords access to, any statement or plan in contravention of subsection (3), shall be guilty of an offence and liable on conviction —

- (a) in the case of a contravention of subsection (1), to a fine not exceeding ten rand for every day on which the default continues;
- (b) in the case of a contravention of subsection (2), to a fine not exceeding fifty rand; and
- (c) in the case of a contravention of subsection (3), to a fine not exceeding two hundred rand.

### CHAPTER III.

#### MINING.

40. Notwithstanding anything in this ordinance contained, the Administrator may impose such conditions as he may deem fit in all cases where the mining of minerals on a claim or mining area is authorised in pursuance of the provisions of this ordinance.

Conditions may be imposed in all cases where mining is authorised.

41. Save as specially provided for in this ordinance, any person who mines or erects mining works for the purpose of winning base or precious minerals, except as the holder of a claim or holder of a grant area or owner of a mining area or with the permission of such holder of a claim or holder of a grant area or owner of a mining area and on the claim or grant area or mining area of such holder or owner, as the case may be, shall be guilty of an offence, and liable on conviction to a fine not exceeding six hundred rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment and in addition the Director may demand from such person payment of the value of any minerals which have been won as a result of mining operations carried on in contravention of this section, or he may confiscate such minerals for the benefit of the Administration and if such amount is not paid the Director may institute civil proceedings for its recovery.

Illegal mining.

42. If the Director is satisfied as a result of prospecting carried out by a holder of a claim in terms or section 22, that there are reasonable grounds for believing that any precious and/or base minerals exist in payable quantities on his claim or claims, such holder shall be entitled upon application to the Director to secure mining title over such claim or claims by the conversion thereof into a mining area or areas by a deed of conversion in terms of section 46.

Conversion of prospecting title into mining title.

43. If a mining area is situated on private land no owner of such mining area shall carry out any prospecting and/or mining operations thereon unless he has entered into a written agreement with the owner of such private land as to the terms under which such owner of such private land shall be compensated in terms of section 67 and holds a permit from the Director authorising prospecting and/or mining operations on such mining area and the Director shall not issue such a permit until a copy of such agreement has been lodged with him. Such permit shall be in a form prescribed by regulation.

When operations on mining area may commence.

44. (1) Subject to the provisions of this ordinance and to any prospecting or mining rights held by other persons in any mining area as at the date of commencement of this ordinance, the owner of such mining area shall have the exclusive right in his mining area to —

Mineral title and right to dispose of minerals.

- (a) prospect for, mine and dispose of all the minerals specified in the deed of conversion referred to in section 42;
- (b) take all necessary measures on and under the surface of his mining area for the purpose of prospecting for and/or mining such minerals.

(2) No owner of a mining area shall dispose of any minerals won by him during his mining operations except under the authority of and in accordance with the terms of a written permission issued by the mining commissioner.

(3) Permission in terms of subsection (2) shall not be issued to any owner of a mining area who is in arrear with any payment of mining area fees that have become due in terms of section 47 or who fails to discharge his duty in terms of section 53.

45. (1) Subject to existing mining or prospecting rights held by other persons, a mining area shall be rectangular and shall always be bounded by straight lines: Provided that the Director may permit deviation from the rectangular where he deems it necessary.

Size and shape of mining area.

(2) In depth the mining area shall be bounded by perpendicular planes in conformity with the sides of the mining area as determined by the position of the beacons on the land at the time of the conversion survey and the area shall be calculated in hectares on a horizontal plane.

46. (1) The holder of a claim entitled to mining title in terms of section 42 shall obtain confirmation from the mining commissioner that his title to the claims to be converted is good and ascertain whether the proposed name of the proposed mining area is acceptable to the mining commissioner on the grounds that it does not conflict with the name of any existing mining area and is acceptable for other good and proper reasons and thereafter such holder shall arrange for the proposed mining area to be surveyed, demarcated and a diagram thereof prepared at his own expense.

Conversion procedure.

(2) Upon receipt of the diagram, in quadruplicate, of the proposed mining area and a sum of money sufficient to cover the costs of advertising and registering in the Deeds Registry, as hereinafter provided, the Director shall advertise the proposed conversion once in the *Official Gazette* and once in a newspaper circulating in the magisterial district wherein the claim or claims to be converted are situated and such advertisement, a copy of which shall be posted on the official notice board of the office of the Director, shall contain the following particulars about the proposed mining area —

- (a) the full name and address of the holder of the claims;
- (b) the name of the proposed mining area and the number allotted to it by the Surveyor-General;
- (c) the numbers of the claims included in the proposed mining area;
- (d) the area as shown on the said diagram;
- (e) the situation; and
- (f) the mineral or minerals which the owner of the mining area shall be entitled to mine.

(3) The said advertisement shall furthermore call upon all persons who may be interested in the proposed conversion to lodge any objections they may have to the said conversion with the Director within thirty days of the date of publication of the said advertisement in the *Official Gazette* and such advertisement shall be specially served upon any person who is known by the Director to have rights that are or may be in conflict with the rights of the prospective owner of the proposed mining area.

(4) During the said period of thirty days, the said diagram shall be open to inspection by the public at the office of the Director during ordinary office hours.

(5) If no such objections are received at the office of the Director within the said period of thirty days, any conflicting rights aforesaid shall be deemed to have lapsed.

(6) If any objections are received, the Director shall adjudicate upon such objections at the expiry of the aforesaid period of thirty days.

(7) Any appeal against a decision given by the Director in terms of this section shall be made and dealt with in accordance with the provisions of section 15.

(8) A decision by the Director to effect the said conversion shall be advertised once in the *Official Gazette* by the Director who shall certify such conversion by a deed, styled "Deed of Conversion", which shall contain the following particulars relating to the mining area concerned —

- (a) the full name and address of the owner;
- (b) the name of the mining area and number allocated to it by the Surveyor-General;
- (c) the registered numbers of the claims converted;
- (d) the area as shown on the diagram;
- (e) the name and number of the farm or farms on which the mining area is situated and the registration division;
- (f) the minerals which may be mined;
- (g) the date of execution of the deed of conversion; and
- (h) the signature and official seal of the Director.

(9) The deed of conversion shall be prepared in triplicate, a copy of the diagram being attached to each copy, and when such deed has been signed by the Director the mining rights in the area therein described shall vest in the person stated in such deed to be the owner of the said mining area, except in so far as any rights may be specially reserved in such deed to any other person or to the Administration.

(10) After the Director has signed the deed of conversion, he shall submit such deed in triplicate to the Registrar of Deeds for purposes of registration in the mining area register and the said Registrar shall so register such deed and shall return two copies thereof to the Director, who shall hand the original duplicate stamped copy to the owner of the mining area concerned and retain the third copy for filing.

47. (1) As from the first day of the month of commencement of this ordinance, every owner of a mining area shall pay a mining area fee in respect of his mining area or areas at the rate of two rand per hectare or part of a hectare per annum. Mining area fees.

(2) The mining area fee shall be payable half yearly in advance on the first day of April and the first day of



October in each year at the office of the mining commissioner.

(3) In the case of a deed of conversion signed after the commencement of this ordinance the mining area fee shall be payable on the first day of the month following upon the date of signature of the deed of conversion, proportionate deduction being made accordingly.

(4) The owner of a mining area who is in default for a period of thirty days with any payment due in respect of mining areas fees shall be liable to a penalty of one fourth of the amount due.

(5) If any amount due in respect of mining area fees together with any penalty incurred under subsection (4) remains unpaid for thirty days after the penalty became due, the mining commissioner shall demand payment thereof by registered post addressed to the owner of the mining area concerned and shall simultaneously —

- (a) notify such owner that steps may be taken for forfeiture of his mining area as hereinafter provided;
- (b) advise any registered bond-holder or any other holder of real rights in regard to such mining area by registered post of the notice of demand sent to such owner;
- (c) publish such notice of demand once in the *Official Gazette* and post a copy thereof on his official notice board.

(6) Unless the amounts which have accrued, in terms of this section, together with the cost of publication of the said notice of demand are paid within thirty days from the date of such publication, the Director may declare such mining area forfeited, and may in addition institute civil proceedings against the defaulter for the recovery of the amounts so accrued and the cost of such publication.

(7) After the Director has declared such mining area forfeited he shall advise the Registrar of Deeds who shall note such forfeiture in the mining area register and on the deed of conversion concerned and thereupon all rights to mine for and dispose of minerals in such area shall revert in the Administration.

48. (1) When any precious and/or base minerals have been regularly won from a claim for a period of two years, and if the Director is satisfied that there are reasonable grounds for believing that any precious and/or base minerals exist in payable quantities on such claim, the Director may, by notice, call upon the holder of such claim to convert such claim into a mining area within a time to be specified in such notice.

Compulsory conversion of claims.

(2) Failing such conversion within such time or within any further extended period granted by the Director in his discretion all rights in such claim shall lapse and the relative land may not again be pegged or registered by the mining commissioner either wholly or partly in the name of such holder for a period of twelve months.

(3) The Director may furthermore prohibit the prospecting or pegging of such claim or any portion of such claim by other persons and may cancel any rights acquired by such persons when the circumstances clearly indicate an attempt to evade the provisions of this section.



49. (1) Every owner of a mining area shall within two years from the date of conversion as noted on his deed of conversion begin regular mining operations appropriate to the character and nature of the mineral deposit occurring on his mining area and shall continue such operations without interruption unless prevented by circumstances over which he has no control and the Director may grant an extension of the period within which this obligation shall be fulfilled.

Owners of mining areas: obligation to commence mining operations.

(2) The Director shall decide whether any mining operations which are carried out are in accordance with the obligation imposed on the owner of a mining area by this section.

(3) The Administrator may direct that in particular areas the obligation imposed on any such owner in terms of this section shall be met by the annual expenditure of a specified sum of money on the mining area concerned, and by the employment of a specified number of white and Coloured persons and Natives, and may also in such areas reduce the period of two years as provided for in subsection (1) to any period not less than one year.

(4) Should any such owner fail to comply with the provisions of subsection (1) or with any direction given in terms of subsection (3) the Director may after due notice, the period of the said notice being in his discretion, declare the mining area concerned forfeited.

50. (1) On application being made to the Director, he may grant permission to a prospector or mine owner to use the surface of any land for the erection of any accessory works required by such prospector or owner in connection with his mining operations: Provided that such works shall not unduly interfere with or endanger mining or prospecting operations on a claim or mining area or grant area belonging to another person: Provided further that no such permission shall be granted in respect of private land until the applicant has produced proof that an agreement has been entered into with the owner of the land as to the terms under which the owner of the land will be compensated in terms of section 67.

Construction of accessory works.

(2) The said permission may be granted subject to such conditions as the Director may see fit to impose.

(3) A mine owner to whom permission has been granted in terms of this section to erect accessory works shall pay full compensation for any damage or loss resulting to any other persons from the erection of such accessory works, and any minerals won by such owner from any claim or mining area or grant area belonging to any such other person during the erection of such accessory works shall be handed over to any such other person free of charge.

(4) Any minerals won in the erection of accessory works on open land shall, for the purposes of this ordinance, be treated as part of the production of the mine in respect of which such accessory works have been erected.

(5) (a) Any permission granted under this section shall be attached to specific claims, mining areas or grant areas and shall endure for as long as the prospecting or mining rights to which it relates are registered in the name of the holder of such rights: Provided that in the event of such rights being transferred or ceded, the Director shall endorse such permission accordingly.

(b) The holder of a permit issued under this section shall within six months after the lapsing of the prospecting or mining rights to which such permission is attached, remove all structures erected by him: Provided that any such structures may be left on the land in terms of a mutual agreement between the holder of such permit and the owner of the land. Any water opened up by the permittee shall become the property of the owner of the land after the said prospecting or mining rights have lapsed.

(6) An application for permission in terms of subsection (1) shall be accompanied by a sketch plan, in triplicate, acceptable to the Director and signed by the applicant, showing *inter alia* —

- (a) the position of the area in respect of which the permission is required in relation to the claims, mining areas or grant areas to which the permission is to be attached;
- (b) prospecting and mining rights held by other persons and affected by the proposed accessory works; and
- (c) the position of the area in respect of which such permission is required, in relation to the boundaries of the farm concerned and any roads, railways, buildings and structures, fences, streams, rivers and water pumps.

51. If two different mine owners are entitled to the right to win minerals within the boundaries of one and the same mining area, then each or either of such owners, when winning his own minerals as specified in his deed of conversion shall be entitled to win in combination therewith the minerals of the other, but any minerals so won in combination shall, on request, be surrendered to the true owner thereof against payment of the actual cost of mining involved.

Mining on same land by two mine owners.

52. (1) In the case of a dispute regarding the use of water between two or more mine owners, the Director shall decide in how far any such mine owner has the right to use water found or opened up by him on his mining area, claim or grant area or artificially conducted there by him for the purpose of his mining operations, and may grant him permission to construct the necessary accessory works therefore and the Director may determine the conditions on which any surplus water (if any) on such mining area, claim or grant area shall be disposed of to any other mine owner.

Disputes between mine owners over rights to water.

(2) The Director may issue written instructions in pursuance of any decision or determination made by him in terms of subsection (1) to any such mine owner and the Director may, if any such mine owner fails to carry out any such instructions within the period specified in those instructions, declare forfeited the mining rights of such mine owner.

53. (1) Every mine owner shall —

- (a) maintain in a safe condition any working place or the surface of any land during prospecting or mining operations;
- (b) where necessary, immediately restore to a safe condition any working place or the surface of any land rendered dangerous or unsafe during prospecting or mining operations; and
- (c) not abandon or cease working on any mine unless he has complied with the provisions of paragraphs (a) and (b) to the satisfaction of the Director.

Keeping in safe condition of surface of land and working place by mine owner.

(2) If a mine owner contravenes any provision of subsection (1) he shall be guilty of an offence.

(3) Nothing in this section contained shall be deemed to deprive any owner of land of the right to claim compensation from any mine owner for damage done to his land.

54. (1) An owner of a mining area may apply to the Director for permission to subdivide his mining area into two or more portions.

Subdivision of  
mining area.

(2) If the application for such subdivision is approved by the Director, he shall supply the applicant with his written consent to such subdivision and whenever any deed relating to such subdivision is issued or registered in accordance with the provisions of section 84 of the Deeds Registry Proclamation 1939 (Proclamation 37 of 1939), such owner shall, immediately after registration has been effected, supply the Director with a third copy of such deed, together with a diagram attached thereto.

55. (1) (a) The owner of a mining area may at any time give notice to the Director that he desires to abandon his mining area or such part thereof as may be specified in such notice and shall forward with such notification, sufficient funds to cover the cost of a publication by the Director of a notice of abandonment in terms of subsection (2).

Abandonment of  
mining areas and  
disposal thereof.

(b) Any such notice shall, if the mining area is to be abandoned in part only, be accompanied by a diagram, in triplicate, indicating the part to be abandoned.

(2) If no bond has been registered against the mining area concerned the Director, on receipt of the said notification, shall as soon as practicable publish a notice of abandonment once in the *Official Gazette* and once in a newspaper circulating in the magisterial district within which the said mining area is situated and shall state in such notice either the date when the area concerned will be open for pegging or that it has been decided to withdraw such area from prospecting and/or pegging in terms of section 17.

(3) If any bond has been registered against the said mining area the Director, on receipt of the said notification of abandonment, shall advise the bondholder of the first bond by registered letter of the proposed abandonment and if within sixty days after the despatch of such letter such bondholder has not advised the Director that he proposes to take transfer of the rights of the owner of the mining area concerned in the manner as set out in subsection (5) or to pay any mining area fee due in respect of such mining area, the Director shall advise in turn any further bondholders, in the order of the time of registration of their bonds, by registered letter of the proposed abandonment and if each such further bondholder in turn has not within sixty days after the despatch of such letter to him advised the Director that he proposes to take transfer of the rights of the owner of the mining area concerned in the manner as set out in subsection (5) the Director shall proceed to publish the said notice of abandonment in the manner as set out in subsection (2).

(4) If the first bondholder, or failing him, any further bondholder in his turn in order of time of registration of his bond duly advises the Director that he proposes to take transfer of the rights as aforesaid and takes



no steps to take such transfer within thirty days thereafter his right to take transfer shall lapse and the Director shall proceed to publish the said notice of abandonment in the manner as set out in subsection (2).

(5) If the first bondholder, or failing him, any further bondholder in his turn in order of time of registration of his bond takes steps to take transfer of the rights as aforesaid the Director shall inform the Registrar of Deeds accordingly who shall note the abandonment by the owner of the mining area concerned on the title concerned whereupon all the rights and obligations conveyed by such title shall be deemed to vest in such bondholder.

(6) Upon the publication of a notice of abandonment of a mining area or any defined portion thereof, the Director shall notify the Registrar of Deeds who shall note the abandonment in his records whereupon all rights formerly held by the owner of the mining area concerned shall vest in the Administration and any registered real right over such area shall be deemed to have lapsed: Provided that in the event of a defined portion of a mining area being abandoned, the Registrar of Deeds shall endorse the title deed accordingly and the Surveyor-General shall define on the diagram attached to such deed the portion so abandoned.

56. (1) Forfeiture of any mining area shall be by notice in the *Official Gazette* under the hand of the Director and such notice shall give the reason for such forfeiture.

Forfeiture of  
mining area.

(2) Upon forfeiture, the mining area concerned may be declared open to prospecting and pegging as from a date announced by the Director in the said notice of forfeiture.

57. Subject to the provisions of section 64 and the consent of the Administrator, who may make such consent subject to such conditions as he may deem fit, the holder of a mining area may transfer his rights to the mining area to any person who is the holder of a prospecting licence.

Transfer of  
mining areas.

58. When any mining area registered in the Deeds Registry is subdivided, transferred, abandoned or forfeited the Director shall notify the Surveyor-General accordingly.

Notification of  
sub-division,  
transfer, abandon-  
ment and forfeit-  
ure of mining  
area to Surveyor-  
General.

59. (1) When a mining area, claim or grant area has been abandoned or is forfeited, the Director may in his discretion decide whether and to what extent the underground timbering, masonry work, safety pillars, ladderways, or anything provided for the protection of the underground workings or the surface of such mining area, claim or grant area may be removed.

Protection of  
underground  
workings on for-  
feiture or abandon-  
ment of  
mining rights.

(2) Any person removing the fixtures or materials referred to in subsection (1) contrary to the decision of the Director or before such decision has been given shall be guilty of an offence.



## CHAPTER IV.

SPECIAL GRANTS OF PROSPECTING AND MINING RIGHTS, PERMITS TO PROSPECT OR MINE BEYOND THE POLICE ZONE, IN GAME PARKS, THE REHOBOTH *GEBIET* AND ON LAND RESERVED OR SET APART UNDER ANY LAW FOR THE SOLE USE OF AND OCCUPATION BY COLOURED PERSONS.

60. (1) (a) The Administrator may grant to any person who is the holder of a prospecting licence referred to in section 20 the exclusive right to prospect in any defined area for any particular mineral or minerals, subject to the provisions of subsection (2) and to such terms and conditions as he may deem fit.

Grant of exclusive prospecting rights.

(b) Such exclusive right to prospect shall be for a period determined by the Administrator, and he may extend such period from time to time subject to such additional and/or amended terms and conditions as he may deem fit.

(c) The Administrator may, during the period determined or extended under paragraph (b), add to any exclusive right to prospect in a defined area, any particular mineral or minerals as he may deem fit.

(d) On receipt of a notification from the Administrator that an exclusive right to prospect, or that an extension of an existing exclusive right to prospect, has been granted, or that any particular mineral or minerals have been added under paragraph (c) or excluded from any such existing grant or cession under subsection (6), the Director shall publish once a notice to that effect in the *Official Gazette*.

(e) The exclusive right to prospect shall be embodied in a deed of grant signed by the Administrator and styled a prospecting grant and such deed shall be registered in the Deeds Registry in a register kept by the Registrar of Deeds and called a prospecting grant register.

(f) Any addition of any particular mineral or minerals in terms of paragraph (c), or any exclusion of minerals in terms of subsection (6), and any extension in terms of paragraph (b) and/or terms and conditions to which such extension has been made subject in terms of the last-mentioned paragraph, shall be endorsed on the title deeds of the Prospecting Grant and the Registrar of Deeds shall make all the necessary endorsements on such title deeds and in his registers on receipt of such title deeds and written authority of the Administrator.

(g) (i) Any transfer of any prospecting rights in respect of a grant area or any defined portion thereof approved in terms of subsection (6) shall be by means of a notarial cession and any lease of any such rights approved in terms of the said subsection shall likewise be embodied in a notarial contract of lease and the Registrar of Deeds shall register any such notarial deed.

(ii) In the event of any such transfer or lease, a diagram, in triplicate, of the area concerned shall be attached to such notarial cession or contract of lease, as the case may be, and the costs of preparing such diagram shall be borne by the holder of the grant area concerned.

(h) (i) When any prospecting rights in respect of a grant area or any defined portion thereof or any prospecting rights held under a notarial cession or contract of lease, are abandoned or when such rights have lapsed or have terminated, the Director shall notify the Registrar of Deeds who shall endorse on the title deeds concerned such abandonment, lapsing or termination and shall make the necessary entries in his registers.

(ii) When the prospecting rights in respect of a defined portion of a grant area are abandoned, the Director shall transmit with his notification to the Registrar of Deeds, referred to in subparagraph (i), the title deeds of such prospecting rights together with a diagram of such defined portion, in triplicate and the costs of preparing such diagram shall be borne by the holder of such prospecting rights.

(2) A grant under this section shall, *inter alia*, provide for —

- (a) the adequate prospecting of the grant area concerned to the satisfaction of the Administrator;
- (b) the keeping of such books, plans and records as may appear to the Administrator to be necessary, and the inspection and examination by the Administrator or any person authorised by him of such books, plans and records of such grant area; and
- (c) the payment by the holder of such grant of a rental determined by the Administrator.

(3) Written application for an exclusive right to prospect shall be made to the Director and the applicant shall furnish the Director with —

- (a) such particulars he may require as to —
  - (i) the mineralization of the area in respect of which such right is required;
  - (ii) the scheme according to which the applicant proposes to prospect;
  - (iii) the applicant's financial resources; and
  - (iv) any other matter related to the proposed exclusive right to prospect;
- (b) a sketch plan of the area in respect of which such right is required, drawn to any convenient scale and containing sufficient data to enable the Surveyor-General to prepare a diagram of such area.

(4) A holder of exclusive prospecting rights shall carry out prospecting operations in his grant area subject to the provisions of this ordinance and shall, before carrying out any prospecting operations on private land within such grant area, enter into a written agreement with the owner of such private land as to the terms under which such owner shall be compensated in terms of section 67 and shall transmit a copy of any such agreement to the Director.

(5) (a) The provisions of this ordinance in regard to the registration of deeds of conversion in the Deeds Registry shall apply *mutatis mutandis* to the registration of a deed of grant referred to in subsection (1) (e): Provided that where the Surveyor-General certifies in writing that insufficient data are available for the preparation of a diagram for such deed of grant, the Administrator may direct the Registrar of Deeds to register such deed of grant with a plan approved by the Surveyor-General.

(b) When preparing a plan or diagram for purposes of the registration of such deed of grant, the Surveyor-General shall indicate on such plan or diagram, the extent, name and number of every single surveyed portion of private land or of State land within the grant area concerned.

(6) A holder of exclusive prospecting rights shall not cede or lease any of such prospecting rights in respect of his grant area or any defined portion thereof without the approval of the Administrator, who may make any such approval subject to any such amended and/or additional terms and conditions, and to the exclusion of any particular mineral or minerals from such prospecting rights, as he may deem fit.

(7) A holder of exclusive prospecting rights shall, within three months after the date of commencement of such exclusive rights, transmit to the Director the name and postal address of every owner of private land within his grant area.

(8) (a) The Administrator may once by notice in the *Official Gazette* and in two or more newspapers circulating in the Territory call for applications for an exclusive right to prospect for any particular mineral or minerals over any land withdrawn from prospecting and/or pegging of claims and may grant such a prospecting right to any applicant who satisfies him —

- (i) that the scheme according to which the applicant proposes to prospect upon such land is satisfactory; and
- (ii) either that his financial resources are adequate for proper prospecting under such grant or that the arrangements by which he proposes to obtain capital for such proper prospecting are satisfactory.

(b) The provisions of subsections (1), (3), (4), (5) and (6) shall apply *mutatis Mutandis* to a grant made under paragraph (a).

61. (1) A holder of exclusive prospecting rights granted in terms of section 60 shall in respect of any mineral or minerals for which he holds such rights and during the currency of such rights, have the right to obtain an exclusive right to mine such minerals or minerals and the Administrator may, subject to the provisions of subsections (3) and (4) and subject to such terms and conditions as he may determine, grant to such holder an exclusive right to mine his grant area or such portion or portions thereof as the Administrator, having particular regard to the scope and results of his prospecting operations, may consider reasonable and approve: Provided that the aforesaid terms and conditions may be indicated or imposed at the time of the granting of the prospecting rights.

Grant of exclusive mining rights.

(2) An application for a mining grant under subsection (1) shall be lodged with the Director and the applicant shall furnish the Director with —

- (a) such particulars as he may require as to —
  - (i) the mineralization of the area in respect of which such grant is required;
  - (ii) the scheme according to which the applicant proposes to mine;
  - (iii) the applicant's financial resources; and
  - (iv) any other matter related to the proposed grant;



- (b) a sketch plan of the proposed grant area, drawn to any convenient scale and containing sufficient data to enable the Surveyor-General to prepare a diagram of the proposed grant area.
- (3) No exclusive right to mine shall be granted under this section unless —
- (a) the Administrator is satisfied that there are reasonable grounds for believing that the minerals concerned occur in workable quantities in or on the area in respect of which application has been made in terms of subsection (2);
- (b) the Administrator is satisfied that the scheme according to which the applicant proposes to carry on mining under such exclusive right is satisfactory and either that his financial resources are adequate for the proper mining of such minerals or that the arrangements whereby he proposes to obtain capital for such proper mining are satisfactory.
- (4) A grant under this section shall, *inter alia*, provide for —
- (a) the adequate working of the grant area concerned to the satisfaction of the Administrator;
- (b) the keeping of such books, plans and records as may appear to the Administrator to be necessary, and the inspection and examination by the Administrator or any person authorised by him of such books, plans and records of such grant area; and
- (c) the payment by the holder of such grant to the Administration, in addition to taxation, or any share of profits as may be provided for in the mining grant, a rental determined by the Administrator.
- (5) Every grant under this section shall continue until such time as the mineral or minerals which are the subject of such grant and which can be profitably mined have become exhausted or for a period prescribed in such grant, unless such grant has previously terminated in accordance with the terms and conditions thereof.
- (6) (a) On receipt of notification from the Administrator that an exclusive right to mine has been granted, the Director shall publish once a notice to that effect in the *Official Gazette*.
- (b) The exclusive right to mine shall be embodied in a deed of grant signed by the Administrator and styled a mining grant and such deed shall be registered in the Deeds Registry in a register kept by the Registrar of Deeds and called a mining grants register.
- (c) The holder of a mining grant shall not transfer, cede or lease any of his rights held under such grant or any defined portion thereof without the approval of the Administrator who may make such approval subject to such amended and/or additional terms and conditions as he may deem fit.
- (d) (i) Any transfer, cession or lease approved in terms of paragraph (c) shall be embodied in a notarial deed and the Registrar of Deeds shall register such notarial deed.
- (ii) In the event of such transfer, cession or lease, a diagram in triplicate of the area concerned shall be attached to such deed and the costs of preparing such diagram shall be borne by the holder of the grant concerned.



(e) (i) The holder of a mining grant under this section may at any time give notice in writing to the Director that he desires to abandon his rights held under such grant or such part thereof as may be specified in such notice.

(ii) Any such notice shall, if such rights are to be abandoned in part only, be accompanied by a diagram, in triplicate, indicating the part to be so abandoned.

(iii) When any mining rights in respect of a grant area or any defined portion thereof or any mining rights held under notarial deed are abandoned or when such rights have lapsed or have terminated, the Director shall notify the Registrar of Deeds who shall endorse on the title deeds concerned such abandonment, lapsing or termination and shall make the necessary entries in his registers.

(f) The holder of a mining grant shall, before carrying out any mining operations on private land within the grant area concerned, enter into a written agreement with the owner of such private land as to the terms under which such owner shall be compensated in terms of section 67 and shall transmit a copy of such agreement to the Director.

(g) The provisions of this ordinance in regard to the registration of deeds of conversion in the Deeds Registry shall apply *mutatis mutandis* to the registration of a deed of grant referred to in paragraph (b).

(h) (i) When preparing a diagram for the purposes of the registration of such deed of grant, the Surveyor-General shall indicate on such diagram, the extent, name and number of every single surveyed portion of private land or of state land within the grant area concerned.

(ii) The holder of a mining grant shall, within three months after the date of commencement of such grant, transmit to the Director the name and postal address of every owner of private land within his grant area.

(7) (a) Subject to the provisions of this ordinance, the Administrator may upon application grant to any person who is the holder of a prospecting licence referred to in section 20, the exclusive right to mine in any defined portion of open land for any mineral or minerals, subject to such terms and conditions as he may deem fit.

(b) The provisions of subsections (2), (3) (4), (5) and (6) shall *mutatis mutandis* apply to a grant made under paragraph (a).

62. No person may prospect for or mine any mineral below high water mark as defined in section 1 of the Sea-shore Ordinance 1958 (Ordinance 37 of 1958) unless he is the holder of a prospecting grant area under section 6C or a mining grant under section 61.

Prospecting and mining below high water mark.

63. (1) Notwithstanding anything in this ordinance contained, no person shall prospect, peg claims or mine in any game park, the area beyond the Police Zone falling outside a Native reserve or the Rehoboth *Gebiet*, or on any land reserved or set apart under any law for the sole use of and occupation by Coloured persons, unless he is the holder of a special permit issued on the instructions of the Administrator, who may make such permit subject to such conditions as he may deem fit: Provided that a Burgher of the Rehoboth *Gebiet* and a Coloured person lawfully resident on land so reserved or set apart shall not be required to hold such a special permit in respect of

Prospecting in certain areas under special permit.

the Rehoboth *Gebiet* or such land so reserved or set apart, as the case may be.

(2) Application for a permit referred to in subsection (1) shall be made in writing to the Director and the applicant shall supply such information concerning his application as the Director may require.

64. No owner of a claim or mining area in the Rehoboth *Gebiet* or on any land reserved or set apart under any law for the sole use of and occupation by Coloured persons, shall transfer, cede, lease or otherwise dispose of such claim or mining area, unless he has obtained the permission of the Administrator, who may make such permission subject to such terms and conditions as he may deem expedient.

Disposal of prospecting and mining property in Non-white areas.

#### CHAPTER V.

#### RESPECTIVE RIGHTS OF PROSPECTOR AND HOLDER OR OWNER OF A CLAIM OR MINING AREA OR GRANT AREA AND OWNER OF PRIVATE LAND.

65. Subject to the provisions of sections 17 and 18 a prospector may conduct prospecting operations on private land and may use any water, dead wood or roads thereon and may subject to the provisions of section 50 use such land for the purpose of constructing gates, roads, buildings, dumps or storage sites as are necessary and incidental to his prospecting operations.

Private land open for prospecting.

66. Subject to the provisions of section 50, any prospector or mine owner may, on his claim, grant area or mining area situated on private land or on private open land, as the case may be, erect any accessory works he may consider necessary for his prospecting or mining operations: Provided that land containing buildings, cultivated land or enclosures used for farming or industrial purposes shall be exempt from such erection of accessory works unless such prospector or mine owner can show that the erection of such buildings or enclosures or the cultivation of such land has been carried out not for the purpose of *bona fide* occupation, farming or industry but merely with the intention of obstructing such prospector or mine owner in the full enjoyment of his rights.

Erection of accessory works on private land.

67. (1) The owner of private land shall be entitled to compensation in respect of —

Rights of owner of private land to compensation and security.

(a) any operations by any prospector or mine owner that may involve the use by, or on behalf of, such prospector or mine owner of roads, wood and water, but excluding water opened up by such prospector or mine owner on his claim or grant area or mining area, as the case may be: Provided that any water so opened up shall not affect any existing water supply from a spring, well or borehole;

(b) any use by a prospector or mine owner of the surface of any land referred to in section 50 (1);

- (c) any operations by any prospector or mine owner that may cause —
- (i) damage to property on, or forming part of, that land;
  - (ii) diminution of the surface value of that land;
  - (iii) total or partial interruption of the right of occupation of that land;
- (d) the residence, whether temporary or otherwise, on such land of any employee of any prospector or mine owner conducting prospecting or mining operations on such land and the residence, whether temporary or otherwise, on such land of any dependant and servant of such employee: Provided that in the case of prospecting and mining operations carried out in the Rehoboth *Gebiet* or a Native reserve or on land reserved or set apart under any law for the sole use of and occupation by Coloured persons, no such compensation shall be payable in respect of any such residence if the employee concerned is a Burgher of the Rehoboth *Gebiet*, a Native or a Coloured person lawfully resident and ordinarily domiciled in the Rehoboth *Gebiet*, or in such Native reserve or on such land so reserved or set apart, as the case may be.

(2) (a) A prospector or mine owner shall pay the amount of compensation payable under the terms of any written agreement entered into between such prospector or mine owner and the owner of the private land concerned at the time and in the manner as may be provided for in such agreement.

(b) If payment of such compensation is not made on the due date, it shall be unlawful to conduct any prospecting or mining operations on the land concerned after such due date and any prospector or mine owner conducting such unlawful operations shall be guilty of an offence and liable on conviction to the penalties as set out in section 7 and in addition the Director may cancel the prospecting licence of such prospector and declare forfeited the claim or mining area on which such unlawful operations were conducted.

(3) The owner of private land may at any time demand adequate security for the payment of compensation referred to in subsection (1) as agreed between a prospector or mine owner and such owner of private land and if such security is not provided to the satisfaction of the Director, he may prohibit the carrying out of any prospecting or mining operations by the person in default until such time as such default has been made good.

(4) Any claim for compensation accruing in terms of this section shall be prescribed after the lapse of a period of three years as from the date of such accrual.

68. (1) In default of a written agreement between an owner of private land and any prospector or mine owner in matters involving their respective rights any such person may apply in writing to the Director for the dispute to be referred for settlement to a board of adjudication (in this section referred to as the board).

**Manner of resolving disputes.**

(2) The board shall consist of the magistrate of the district in which the dispute has arisen, who shall be chairman, and two officers of the Administration appointed by the Administrator.



(3) The chairman and one other member of the board shall form a quorum at an inquiry by the board: Provided that where only a quorum is present the decision of the board shall be unanimous but if such decision is not unanimous the board shall adjourn until such time as all the members thereof are present, in which case the inquiry shall be begun *de novo* before all the members of the board.

(4) Subject to the provisions of subsection (3) the decision of the majority of the members of the board, which shall include the chairman, shall be the decision of the board at any inquiry by the board and if the chairman should differ from the other members of the board with regard to a decision of the board, the board shall be reconstituted under the provisions of subsection (2) and the inquiry begun *de novo* before all the members of the reconstituted board.

(5) The board shall have authority to decide —

- (a) the amount of compensation to be paid to the owner of private land concerned in pursuance of the provisions of section 67 (1) and the time and manner of such payment;
- (b) any dispute arising over any terms of any agreement that may have been entered into prior or subsequent to the date of commencement of this ordinance between an owner of private land and a prospector or mine owner concerning the amount or manner and time of payment of compensation payable in terms of such agreement;
- (c) any dispute arising between an owner of private land and a prospector or mine owner as to the terms under which each may exercise his respective rights on such land;
- (d) any dispute arising between an owner of private land and a prospector or mine owner as to the conditions on which any surplus water obtained on or brought to a claim or mining area or grant area by a prospector or mine owner, may be disposed of.

(6) On receipt of an application under subsection (1) the Director shall inform the Administrator who shall constitute the board.

(7) (a) The chairman of the board for the purposes of any inquiry in which the board may be engaged, may summon witnesses to give evidence or to produce documents, or any article or thing which he may deem requisite for properly conducting an inquiry before the board and the board may enter on any private land, claim or mining area or grant area for an inspection *in loco*.

(b) The chairman of the board may at any time if it may be found necessary adjourn any such inquiry in the course of its proceedings.

(8) Any person summoned as aforesaid who fails without reasonable excuse to comply with the terms of the summons shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or in default of payment to imprisonment for a period not exceeding one month.

(9) Any person, whether summoned as aforesaid or not who while under examination refuses to answer to the best of his knowledge or belief all questions lawfully put to him by or with the concurrence of the chairman of the board or who at the inquiry wilfully insults the board or any member thereof or wilfully interrupts the proceedings of the board shall be guilty of an offence and liable on conviction to the penalties set out in subsection (8).

(10) At any such inquiry the chairman may administer an oath or affirmation to witnesses and if any witness to whom an oath or affirmation has been so administered gives false evidence, he shall be guilty of an offence and liable on conviction to the penalties prescribed in section 7.

(11) Any such witness shall have the same privileges in respect of answering questions or producing documents as he would have under the same circumstances if he were summoned as a witness before a superior court.

(12) At every such inquiry the evidence shall be taken down in writing and the chairman of the board shall record the decision of the board in writing.

(13) The decision of the board shall be supplied to each of the parties in the dispute and to the Director.

(14) Any person who fails to carry out a decision of the board within such time limit as the board may prescribe shall be guilty of an offence and liable on conviction to the penalties as set out under section 7 and should such person be the prospector or mine owner concerned the Director may also cancel the prospecting licence or the claim or the mining area of such defaulting prospector or mine owner, as the case may be.

69. (1) No prospector or mine owner or any employee of a prospector or mine owner shall keep any dog on private land unless he has obtained written permission from the owner or occupier of that land.

Dogs.

(2) Any person contravening the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding one month.

70. (1) Should the owner of private land on which mining operations are being carried out, submit in writing to the Administrator, stating his reasons, that such operations prevent the proper use of his land for farming purposes, and at the same time applying that the mine owner or mine owners concerned be directed to buy from him what land has been or is likely to be rendered useless for farming purposes because of such mining operations, the Administrator may, after making such investigations as he may deem appropriate and on being satisfied that mining and farming operations cannot be carried out simultaneously on the same land, direct that the mine owner or mine owners concerned shall buy, on such conditions as he imposes, the whole or such necessary portion of such land on pain of cancellation of any mining rights such mine owner or mine owners may hold on such land.

Compulsory purchase of farming land by mine owner.

(2) If the owner of such private land and the mine owner or mine owners concerned are unable to agree as to the price to be paid for the land concerned, the price and mode of payment shall be fixed by arbitration.

71. (1) One half of the fees received by the Mines Division in respect of private land for —

Amounts payable to owners of private land.

- (a) claims;
  - (b) mining areas;
  - (c) withdrawals in terms of section 17; or
  - (d) grant areas,
- shall be paid over to the owner of such land.

(2) Where a claim is pegged or a mining area or grant area is held on, or such a withdrawal affects, private land of more than one owner the mining commissioner shall

decide what proportion of the amounts payable under subsection (1) is to be paid to the respective owners: Provided that where a grant area or such a withdrawal affects the private land of such a number of owners that the biggest amount which any one of such owners shall receive as his share of the amount payable under this section is less than ten rand per annum, the mining commissioner shall not pay any amount to such owners.

(3) Amounts payable to owners of private land under this section shall be paid by the mining commissioner to such owners entitled thereto at the end of April and October in each year: Provided that the land owner's dues in respect of —

- (a) the Rehoboth *Gebiet* shall be paid to the magistrate of Rehoboth in his capacity as *Kaptein* of the Rehoboth Baster Community;
- (b) any native reserve shall be paid to the South African Bantu Trust;
- (c) any land reserved or set apart under any law for the sole use of and occupation by Coloured persons, shall be paid into any trust fund established under the provisions of any law in respect of such land so reserved or set apart.

72. Nothing in this Chapter contained shall be taken to debar an owner of private land from instituting civil proceedings in the courts of the Territory against a prospector or mine owner for the non-fulfilment of any obligation arising out of the provisions of section 67.

Owner of private lands recourse to the courts.

## CHAPTER VI.

### SURVEY AND REGISTRATION OF MINING AREAS.

73. Save as may otherwise be specially provided under this ordinance, the provisions of the Land Survey Ordinance 1963 (Ordinance 9 of 1963) and the regulations promulgated thereunder shall *mutatis mutandis* apply to all survey operations done and any diagram prepared for the purpose of registering a mining area.

Survey of mining areas.

74. The Surveyor-General shall —

- (a) allocate a distinctive serial number to each mining area irrespective of the situation of such mining area;
- (b) keep a register of mining areas, and enter in it particulars of the numbers of the mining areas allocated and other relative information; and
- (c) assign official numbers to the beacons of mining areas.

Duties of Surveyor-General.

75. A mining area shall be demarcated by beacons and line beacons constructed in accordance with the regulations.

Beaconing of mining areas.

76. (1) Every owner of a mining area shall maintain in proper order and repair in accordance with the regulations any beacon or mark defining a corner or line point of such mining area.

Repair of re-erection of beacons.



(2) If any such beacon or mark has not been maintained in proper order or has been removed or obliterated the mining commissioner may by registered post serve upon the owner of the mining area concerned a notice calling upon him to restore such beacon or mark to the prescribed condition or to re-erect it in the prescribed manner: Provided that such restoration or re-erection shall be carried out by a land surveyor.

(3) If such beacon or mark is not so restored or re-erected within six weeks of the date of delivery of such notice, the mining commissioner may cause such beacon or mark to be restored or re-erected by a land surveyor. The mining commissioner may at the request of the owner concerned extend the period of six weeks.

(4) The owners of all mining areas concerned shall be liable in equal shares for the cost of the repair, restoration or re-erection of any such beacon or mark and the mining commissioner may recover from every such owner his share of all costs incurred by the mining commissioner under subsection (3): Provided that if any such owner or his servant or agent has damaged, removed or obliterated any such beacon or mark, the entire cost of the repair, restoration or re-erection of such beacon or mark shall be borne by such owner.

77. (1) No diagram of any portion of an unsurveyed mining area registered in the Deed Registry or with the mining commissioner shall be approved by the Surveyor-General until a survey has been made of the whole of such mining area and a new deed of conversion has been registered on the basis of such survey, simultaneously with the cancellation of the old deed by the mining commissioner, except in the case of such portions of large mining areas held under one title at the commencement of this ordinance as the Surveyor-General and the mining commissioner, subject to such conditions as they may deem expedient to impose, exclude from the requirements of this subsection.

Deed of conversion in respect of unsurveyed mining area.

(2) If such old deed is subject to a registered bond no new deed shall be issued unless such bond is cancelled.

(3) If such old deed is subject to any real right, registered deed of lease or any other registered deed whereby any real right in the mining area is held by any other person such new deed of conversion shall not be registered unless the written consent of the holder of such lease or right is obtained and the new deed made subject to the same extent to such lease or right as the old deed.

(4) Every such deed of conversion shall be in accordance with the new diagram, and the law relating to the registration of deeds shall apply *mutatis mutandis* to the registration of such deed of conversion in the Deeds Registry.

78. Notwithstanding anything contained in any other law, the Registrar of Deeds shall —

Duties of the Registrar of Deeds.

- (a) take charge of and preserve all mining titles lodged with him by the Director;
- (b) accept for registration any deed and diagram having reference thereto prepared in accordance with this ordinance and the regulations;
- (c) endorse any deed as regards the abandonment of a portion of the land to which such deed relates as provided for in sections 55, 60 and 61;

- (d) keep a register of all mining titles in which shall be entered in numerical sequence particulars of all mining titles lodged with him for registration by the Director and which shall in all other respects be similar to the register of farms and portions of farms kept in the Deeds Registry and such register shall also record any subsequent dealings with mining titles therein recorded and a separate folio shall be assigned to each such title.

## CHAPTER VII.

### GENERAL AND MISCELLANEOUS.

79. Where the right to a mining area or claim is transferred, all the rights and obligations accruing to the registered owner or holder thereof, as the case may be, shall accrue to the transferee: Provided that where such mining area is bonded no transfer of such mining area shall be registered in the Deeds Registry unless such bond is cancelled: Provided further that the obligations under any agreement between such owner or holder and an owner of private land as to the terms under which such owner of private land shall be compensated under the provisions of this ordinance, shall not accrue to the transferee concerned unless such transferee has signified his written acceptance of such agreement.

Transfer of rights includes transfer of obligations.

80. Any person who —

- (a) knowingly or through neglect of proper precautions transgresses the boundaries of his claim, grant area or mining area while conducting prospecting or mining operations, or permits his employees to do so; or
- (b) removes, destroys, disfigures or displaces any trigonometrical station, a beacon or boundary mark of any claim, grant area or mining area, except as provided in section 37;

Offences in regard to boundaries and beacons.

shall be guilty of an offence.

81. Any person who wilfully and maliciously damages any mine, machinery, pipe line or other mining property or attempts to do so, shall be guilty of an offence and liable on conviction to a fine not exceeding six hundred rand or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

Penalty for damage to mining property.

82. (1) (a) Any person who makes any declaration or official statement, or supplies any official information or renders any official return required to be made under this ordinance, knowing it to be untrue, shall be guilty of an offence.

Penalties for false reports and returns.

(b) In addition, the court trying such person may upon his conviction order the rights of such person to any mine or claim to be forfeited if he be the owner or holder thereof, as the case may be and the Administrator may prohibit the issue of a prospecting licence to such person for such period as the Administrator may deem fit.

(2) Any person who in terms of this ordinance renders any return of precious or base minerals knowing that such precious or base minerals declared to have been found or recovered by him, were not naturally situated in or on the spot or in the soil where they were declared to have been found or recovered, or well knowing that the said precious or base minerals were not found or recovered on or near the place where they were declared to have been found or recovered, shall be guilty of an offence and liable on conviction to all the penalties which may by law be inflicted upon any person who commits the crime of fraud.

83. (1) Any person who wilfully places or deposits or is an accessory to the wilful placing or depositing of any precious or base minerals in any spot or place with intent to mislead the Director or any other person as to the payable nature of such spot or place, shall be guilty of an offence and liable on conviction to all the penalties which may by law be inflicted upon a person who commits the crime of fraud.

Salting an offence.

(2) If in any criminal proceedings for a contravention of subsection (1), the accused is proved to have placed or deposited, or to have been an accessory to the placing and depositing of any precious or base minerals in any place where its discovery would be likely to mislead the Director or any other person, he shall be presumed to have so placed or deposited such precious or base minerals in contravention of the provisions of subsection (1) until the contrary is proved.

84. Every person who is required by this ordinance to hold any kind of licence, permit, certificate or other document, shall produce such licence, permit, certificate or document on the request of the Director, an inspector, the mining commissioner, claim inspector or any member of the South African Police, or an owner of private land or a lessee of such land in connection with prospecting or mining operations on such land and every person who fails to produce such licence, permit, certificate or document within twenty-four hours after having been requested to do so, shall be guilty of an offence.

Establishment of identity.

85. (1) The Director, the Assistant Director of Geological Survey, the mining commissioner and every inspector of mines or claim inspector or any officer of the Mines Division or Geological Survey Branch or any employee of such Division or Branch, duly authorised in writing by any of such officers or by the Administrator, may enter upon any land for the purpose of carrying out any powers or duties conferred upon him by this ordinance or any other law.

Powers of entry on land.

(2) Any person entering upon any land under this section shall be entitled to take with him thereon such persons, vehicles, appliances, instruments and materials as may be necessary for the purpose of carrying out his powers and duties, and shall further be entitled to the use on the land so entered of such water and dead wood as may be necessary for himself and the persons with him.

(3) Any person who prevents any entry authorised by this section or wilfully obstructs or hinders any person so authorised in the exercise of his powers or the performance of his duties under this ordinance or any other law, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand.



86. Whenever it is necessary in the public interest for public purposes to expropriate either wholly or in part any prospecting and/or mining rights granted under this ordinance or any prior law, the Administrator shall have the right to do so, on payment of compensation to be determined, in the absence of mutual agreement, by arbitration: Provided that in the case of any such rights held under a deed registered in the Deeds Registry the Administrator shall give notice of such expropriation to every person who on the face of such deed has any interest in such rights.

Expropriation.

87. (1) A producer of any precious metal shall sell such precious metal through a commercial bank of the Territory and within fourteen days after such sale by him, or on his behalf, he shall render to the Director an assay certificate showing the price and quantities of such precious metal together with the duplicate credit note of such bank.

Sale of precious metals.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or in default of payment to imprisonment for a period not exceeding twelve months.

88. (1) No person, other than the purchaser of a base mineral sample sold to him in terms of section 38 (3), shall export from the Territory any precious or base minerals except under the authority of an export permit issued by the Director and such permit shall be produced in the case of export by rail or by rail and sea, to the station master at the place of consignment and in the case of export by sea, to the collector of customs at the port where such minerals are shipped, and in the case of export by post, to the post master concerned, and a copy of such permit shall be retained by such station master, collector of customs or post master, as the case may be.

Export of minerals.

(2) On the export of precious or base minerals by sea the exporter shall, personally or through his agent, obtain a receipt endorsed by the ship's first officer or some other competent officer, on a duplicate of the bill of entry, showing that such minerals have been received on board and the said receipt shall thereupon be handed to the collector of customs at the port of shipment, who shall thereupon forward it to the Director.

(3) On export of such minerals by rail the exporter shall obtain a similar receipt from the guard of the train on which such minerals are carried, or from some other competent railway official, which receipt shall be handed to the station master at the station of consignment who shall thereupon forward it to the Director.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

89. (1) Any debt due to the Administration in terms of this ordinance in respect of prospecting licence fees, claim fees, mining area fees or rentals in respect of grant areas shall be a first charge upon any buildings, pumping plant, pipe lines, machinery or other assets, movable or immovable, situate upon the mine, mining area, grant area or claim concerned, and shall have priority over any registered bond or bonds registered against such mining area, grant area or assets as aforesaid in the event of the insolvency or liquidation of the prospector or mine owner concerned as the case may be, or in the event of attachment of any assets, movable or immovable, of the prospector or mine owner concerned.

Debt to Administration a first charge on assets on insolvency or liquidation.

(2) The Director shall furthermore be entitled —

- (a) to sue for such debt as aforesaid in any court of competent jurisdiction;
- (b) to demand that, on non-payment of any debt as aforesaid on due date, no asset as aforesaid shall be disposed of, alienated or removed from the mine, mining area, grant area or claim concerned, as the case may be, until such debt as aforesaid has been paid.

(3) Any person who disposes of, alienates or removes any asset as aforesaid contrary to a demand made in terms of subsection 2 (b), shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

90. (1) Subject to the provisions of the Extra-Territorial and Northern Natives Control Proclamation, 1935 (Proclamation 29 of 1935), as amended, and any regulations made thereunder, any person who carries on the business of mining or is a company or syndicate which carries on the business of mining or who is a director or official of a company or syndicate which carries on the business of mining or who is an employer of labour on behalf of a person who, or company or syndicate which, carries on the business of mining, who —

Payment or  
contract wages.

- (a) save under order of a court pays any portion of the remuneration, salary or wages or of any earnings payable under contract to a person employed on a mine otherwise than in money current in the Territory or by cheque drawn on a bank in the Territory, or otherwise than —
  - (i) to such employee direct or his duly authorised agent in the case of such employee's sickness; or
  - (ii) to any sick benefit society established in respect of the mine on which such employee is employed; or
  - (iii) to any insurance company by which such employee is insured; or
  - (iv) to the Administration in respect of any tax due by such employee; or
  - (v) to the Director of Posts and Telegraphs for the purpose of deposit on behalf of such employee in any savings bank established under the authority of the Director of Posts and Telegraphs; or
  - (vi) to any educational institution for the payment of fees in respect of any educational classes attended by such employee; or
  - (vii) to any commercial bank for the purpose of deposit on behalf of such an employee who is a white person; or
  - (viii) to any provident or pension fund; or
  - (ix) under any system of deferred payment approved by the Chief Bantu Affairs Commissioner;
- (b) becomes surety for or pays or procures the payment of the debt of a Coloured person employed on a mine due to the keeper of a business on such mine,

shall be guilty of an offence.

(2) No cession of his remuneration, salary or wages, or of his earnings under contract or any part thereof by

any person employed on a mine shall be of force and effect, save when given for any of the purposes mentioned in this section.

(3) The Administrator may direct in writing that the provisions of subsections (1) and (2) shall not apply in respect of any company which carries on the business of mining and in which the State holds, either directly or indirectly, a controlling interest.

91. Notwithstanding anything to the contrary contained in this ordinance the rights in any mining area, grant area or claim belonging to —

- (a) the estate of a deceased person; or
- (b) any estate placed under sequestration; or
- (c) any company placed under judicial management or in liquidation,

shall not lapse or be forfeited unless and until the person authorised by law to administer the estate in question, or the judicial manager or liquidator concerned, as the case may be, has failed to comply with the provisions of this ordinance regarding the payment of fees for a period of thirty days after his appointment or (if confirmation of such appointment is required by law) after confirmation thereof.

Special provisions relating to lapsing of rights if holder of such rights dies or his estate is placed under sequestration, etc.

92. Notwithstanding anything in this ordinance contained, any person who —

- (a) has been called out on active military service under a law in force in the Territory; or
- (b) has served under arms at the request of the State President of the Republic of South Africa, or the Administrator or voluntarily in defence of the Territory,

shall be entitled to exemption from payment of prospecting licence and claim fees in respect of the period of such service, and for thirty days after the cessation of such service: Provided that notice in writing shall have been given to the mining commissioner within thirty days of commencement or cessation of such service.

Military service: Exemption from fees.

93. (1) No person shall on a mine employ underground a boy under the apparent age of sixteen years or any female person.

(2) Subject to the provisions of subsection (4), no female shall work at night, and no person shall cause or permit any female to work at night at any mine or works, in connection with the operation of such mine or works.

(3) For the purpose of subsection (2) "night" means that period of time from half an hour after sunset to half an hour before sunrise.

(4) The provisions of subsection (2) shall not apply to —

- (a) females holding responsible positions of a managerial or technical character; and
- (b) females employed in medical, health, welfare or social services.

Age and sex of underground employees and night work for females.

94. Whenever this ordinance provides for the settlement of any difference or dispute by arbitration, such difference or dispute shall be determined in accordance with the provisions of the law Governing arbitration in the Territory.

Arbitration.



95. (1) The Administrator may make regulations not inconsistent with this ordinance in regard to all or any of the following matters, namely —

Administrator's power to make regulations.

- (a) the pegging of claims;
- (b) the size and shape of beacons of mining areas, the manner of marking of such beacons for identification, and the manner of their erection and any matter appertaining to such beacons;
- (c) the form of any application, authority, certificate, consent, licence, notice, order, process, register, summons or subpoena to be made, given, issued or kept under this ordinance and any other form required in carrying out the provisions of this ordinance and any regulations made thereunder;
- (d) prospecting and mining in Native reserves after consultation with the Minister of Bantu Administration and Development of the Republic of South Africa;
- (e) the form of any sketch plan required to be submitted under this ordinance;
- (f) the protection and preservation of the surface of mines or works and of buildings, roads, railways and other structures and enclosures on or above the surface of the land, and the conditions under which any such buildings, roads, railways, structures and enclosures may be undermined;
- (g) the making and keeping of mine plans and the depositing of copies with the Mines Division;
- (h) the making of statistical and other reports relating to mines, works and machinery;
- (i) the duties and responsibilities of owners, managers, overseers, and other persons engaged in or about mines, works and machinery;
- (j) the storage, receipt, distribution, transport and use of explosives in mines;
- (k) the manner of holding inquiries at or in connection with any mine or works, the procedure to be followed at any such inquiry and the manner of securing the attendance of witnesses thereat;
- (l) the provision of ambulances and medical aid in case of accident;
- (m) the conditions upon which machinery may be erected or used;
- (n) the fees which shall be payable for any inspection under this ordinance;
- (o) the prohibition or restrictions in relation to the making or use of roads or railways or other travelling ways over, or the erection or use of buildings or other objects on areas which have been undermined;
- (p) the safety and health of persons employed in or about mines and works, and generally of persons, property and public traffic;
- (q) the procedure to be followed in connection with trials by the Director or an inspector under this ordinance;
- (r) the grant, cancellation and suspension of certificates of competency to —

- (i) mine managers;
- (ii) mine overseers;
- (iii) mine surveyors;
- (iv) mechanical engineers;
- (v) engine drivers;
- (vi) miners entitled to blast;
- (vii) such other classes of persons employed in, at or about mines, works and machinery as the Administrator may from time to time deem it expedient to require to hold certificates of competency;
- (s) the fees to be payable by persons applying for any of the certificates mentioned in paragraph (r) or on their admission to an examination for any such certificate;
- (t) the limiting of the days and hours of work upon any mine or works;
- (u) the conditions governing the grant of paid leave of absence by owners of mines or works to their employees or to various categories of their employees;
- (v) in relation to any specific mineral or any specific category of a mineral —
  - (i) the prohibiting or regulating or restricting of its export from the Territory; or
  - (ii) the prohibiting of its disposal or use for any defined purpose or in any defined manner, or its disposal or use for any other purpose or in any other manner than may be defined; or
  - (iii) in general the restricting or regulating of its disposal or use; and
- (w) generally for ensuring the proper working and management of all mines, works and machinery and as to all matters which he considers it necessary or expedient to prescribe for the better carrying out of the objects and purposes of this ordinance.

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding the penalties mentioned in section 7; and daily penalties may be prescribed for a continuing contravention or non-compliance or increased penalties may be prescribed for a second or subsequent contravention or non-compliance subject to the limitations mentioned in section 7.

96. Section 3 of the Deeds Registry Proclamation, 1939 (Proclamation 37 of 1939) — hereinafter called the principal proclamation — is hereby amended —

- (a) by the substitution in paragraph (1) for the word "Inspector" of the word "Director";
- (b) by the insertion in paragraph (n) after the word "areas" where it appears for the first time of the words "and grant areas".

Amendment of Section 3 of Proclamation 37 of 1939 as amended by Section 2 of Ordinance 19 of 1958, Section 1 of Ordinance 32 of 1963 and section 1 of Ordinance 17 of 1967.

97. Section 84 of the principal proclamation is hereby amended —

- (a) by the addition after the words "MINING AREAS" in the heading of the words "AND GRANT AREAS";

Amendment of section 84 of Proclamation 37 of 1939.

- (b) by the insertion after the words "the registration and mortgaging of mining areas" of the words "and grant areas";
- (c) by the substitution in the first proviso for the word "mining" of the word "such";
- (d) by the insertion in the second proviso after the word "areas" of the words "or any grant area or areas" and by the substitution in such proviso for the word "Inspector" of the word "Director";
- (e) by the substitution in the third proviso for the words "a mining area or areas" of the words "a mining area or areas or a grant area or areas".

98. Section 85 of the principal proclamation is hereby amended by the insertion after the word "area" wherever it appears of the words "or grant area" and by the substitution for the word "Inspector" wherever it appears of the word "Director".

Amendment of section 85 of Proclamation 37 of 1939.

99. Section 90 (1) (a) of the principal proclamation is hereby amended by the insertion after the word "minerals" of the words "of a grant area or areas".

Amendment of section 90 of Proclamation 37 of 1939.

100. Section 102 of the principal proclamation is hereby amended —

Amendment of section 102 of Proclamation 37 of 1939.

- (a) by the insertion after the definition of "general plan" of the following definition:—  
" 'grant area' means a defined area in respect of which an exclusive prospecting or mining right has been granted in terms of the provisions of the mining laws in force in the Territory and for which a deed of grant has been registered";
- (b) by the insertion after the word "area" in paragraph (a) of the definition of "immovable property" of the words "or grant area";
- (c) by the substitution for the word "Inspector" in the definition of "Inspector of Mines" of the word "Director".

101. The Land Survey Ordinance, 1963 (Ordinance 9 of 1963) is hereby amended by —

Amendment of sections 40 and 41 of Ordinance 9 of 1963.

- (a) the deletion of paragraphs (a) and (e) of section 40; and
- (b) the deletion of the words "save as is otherwise provided in paragraph (e) of section forty" in section 41.

102. This ordinance shall be called the Mines, Works and Minerals Ordinance, 1968, and shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.

Short title and commencement.



## SCHEDULE.

No. and year of Law	Title	Extent of Repeal
Ordinance 26 of 1954	Mines, Works and Minerals Ordinance, 1954	The whole
Ordinance 4 of 1955	South West Africa Native Affairs Administration Ordinance, 1955	Item (12) of First Schedule
Ordinance 17 of 1955	Mines, Works and Minerals Amendment Ordinance, 1955	The whole
Ordinance 31 of 1957	Mines, Works and Minerals Amendment Ordinance, 1957	The whole
Ordinance 23 of 1959	Mines, Works and Minerals Amendment Ordinance, 1959	The whole
Ordinance 25 of 1960	Mines, Works and Minerals Amendment Ordinance, 1960	The whole
Ordinance 16 of 1961	Mines, Works and Minerals Amendment Ordinance, 1961	The whole
Ordinance 31 of 1965	Mines, Works and Minerals Amendment Ordinance, 1965	The whole
Ordinance 10 of 1967	Mines, Works and Minerals Amendment Ordinance, 1967	The whole
Ordinance 22 of 1967	Mines, Works and Minerals Further Amendment Ordinance, 1967	The whole