

**LAWS OF THE REPUBLIC OF VANUATU
CONSOLIDATED EDITION 2006**

Commencement: 1 September 1986

**CHAPTER 190
MINES AND MINERALS**

Act 11 of 1986



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To regulate and control the search for and development of minerals and to provide for matters incidental thereto.

PART 1 – INTERPRETATION

1. Interpretation

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

"body corporate" means a company or a corporation;

"building minerals" means, subject to subsection (2), mineral substances and rocks commonly used for building, road making or agricultural purposes;

"claim" means a claim established and registered under and in accordance with this Act;

"Commissioner" means the Commissioner for Mining and Minerals appointed pursuant to section 6(1);

"company" means a corporate body formed and registered under the Companies Act [Cap. 191] including any amendment or re-enactment thereof, and it includes a company formed or registered outside Vanuatu but which is registered as an overseas company in Vanuatu;

"conditions" includes terms, prohibitions, limitations and stipulations;

"corporation" means a corporate body incorporated outside Vanuatu, whether by Act or otherwise, but does not include a company;

"exploration area" means an area of land subject to an exploration licence;

"exploration licence" means a licence granted under section 15;

"exploration operations" means the search for minerals in land by geophysical surveys, geochemical surveys and photogeological surveys, or other remote sensing techniques, and surface geology in connection therewith;

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"holder", in relation to a Mining Right, means a person to whom the Mining Right is granted or issued, whether alone or with others, and includes every person to whom the Mining Right or an interest therein, is lawfully transferred;

"land" includes –

- (a) land beneath water;
- (b) the seabed and subsoil beneath the territorial sea; and
- (c) for the purposes of giving effect to section 3(2), the seabed and subsoil of the continental shelf or beneath the waters of the exclusive economic zone;

"licence" means an exploration licence, a prospecting licence and a mining licence, or any of them, as the context requires;

"licensee" means the holder of a licence;

"mine", when used as a noun, includes any place, excavation or working in or on which any mining operations are carried on;

"mine" when used as a verb, means intentionally to get minerals from land and includes any operations necessary for or incidental to that purpose;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in land, formed by or subject to a geological process, but does not include –

- (a) water; or
- (b) petroleum;

"mining area" means an area of land subject to a mining licence;

"mining licence" means a licence granted under section 34;

"mining operations" means operations carried out in the course of mining;

"Mining Right" means a claim, a licence, a prospecting permit or a quarry permit, or any of them, as the context requires;

"Minister" means the Minister for the time being responsible for matters relating to mineral resources;

"notice" means a notice in writing;

"petroleum" means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition, including any other mineral substance contained in oil and natural gas brought to the surface in the normal process of extraction, but does not include coal and bituminous shale and other stratified deposits from which oil could be extracted by distillation;

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"prospect" means intentionally to search for minerals in land and includes any work necessary to determine their extent and economic value;

"prospecting area" means an area of land subject to a prospecting licence;

"prospecting licence" means a licence granted under section 20;

"prospecting operations" means operations carried out in the course of prospecting;

"prospecting permit" means a permit issued under section 54;

"quarry permit" means a permit issued under section 62;

"regulations" means regulations made under section 88;

"Vanuatu" means the Republic of Vanuatu;

"working for profit" means producing a mineral for use or sale.

(2) The Minister may, by notice published in the Gazette, from time to time, include in, or exclude from, the definition in subsection (1) of "building minerals", any rock or mineral, or class thereof, identified in the notice.

(3) In this Act, a reference to "the territorial sea", "the continental shelf", "the exclusive economic zone", is a reference to that sea, shelf or zone as lawfully determined from time to time.

(4) In this Act, a reference to a year of the term of a Mining Right is a reference to a period of 1 year commencing on the date from and including which the Mining Right has effect and ending on any anniversary of that date.

(5) In this Act, a reference to minerals in land includes a reference to minerals on or under land.

(6) In this Act –

(a) a reference to the conditions of a licence is a reference to the conditions on which the licence is granted, as from time to time varied, and

(b) a reference to the conditions of a claim is a reference to the conditions on which the claim is, for the time being registered.

PART 2 – PROPERTY IN MINERALS TO VEST IN THE REPUBLIC OF VANUATU

2. Vesting of property in minerals

(1) The property in minerals, in their natural condition, in land is vested in the Republic of Vanuatu.

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(2) Nothing in subsection (1) shall prejudice the grant, or the exercise, of rights under or pursuant to this Act.

3. Rights in continental shelf, etc.

(1) All rights exercisable, in relation to minerals, by Vanuatu with respect to the continental shelf or the exclusive economic zone are hereby vested in the Republic of Vanuatu.

(2) This Act (other than Parts 13 and 14) shall apply in relation to the seabed and subsoil of the continental shelf and beneath the waters of the exclusive economic zone, as it applies in relation to land.

(3) Nothing in subsection (1) shall prejudice the grant, or the exercise, of rights under or pursuant to this Act.

PART 3 – SERVICE OF NOTICES AND DOCUMENTS, ETC.

4. Service of documents

(1) A document or notice required or permitted to be served on, or given to, a person under or for the purposes of this Act may be served or given –

(a) in the case of an individual other than the Minister or the Commissioner, by serving it personally upon the individual or by sending it by post to him at his usual or last known place of abode or business;

(b) in the case of the Minister or the Commissioner, in the manner prescribed;

(c) in the case of a company –

(i) by leaving it at the registered or principal office of the company with some individual apparently employed by the company and apparently not less than 16 years of age;

(ii) by sending it by post to the company at the registered or principal office of the company; or

(iii) by delivering it to some individual, in the employment or acting on behalf of the company, who is authorised by the company, or agrees on behalf of the company, to accept service of, or to receive, the document or any document.

(2) For the purpose of subsection (1) (c), the principal office of a company incorporated outside Vanuatu is its principal office within Vanuatu.

(3) Where a person has more than one place of abode or business a document or notice may be served on, or given to, the person under this section at any of those places.

(4) Where –

(a) two or more persons constitute the applicant for the grant of a Mining Right; or

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(b) the holder of a Mining Right is constituted by two or more persons,

a document or notice served on or notice given to any one of those persons in accordance with this section shall be treated as having been served on or given to all of them.

(5) Where a document or notice is sent by post pursuant to this section, service or notice is deemed to have been effected or given under this section, unless the contrary is proved, at the time at which the document or notice would be delivered in the ordinary course of post.

5. Restriction on exercise of rights

Where the doing of any act is prohibited or regulated by a written law other than this Act, nothing in this Act shall be construed –

(a) where the doing of the act is so prohibited, as authorising a holder of a Mining Right to do the act; or

(b) where the doing of the act is so regulated, as authorising a holder of a Mining Right to do the act –

(i) otherwise than in accordance with the written law and any authority referred to in subparagraph (ii); and

(ii) without first obtaining any authority howsoever described required under the written law for the doing of the act.

PART 4 – ADMINISTRATION

6. Commissioner for Mines and Minerals

(1) There shall be appointed a public servant to be known as the Commissioner for Mines and Minerals.

(2) There shall be appointed such number of public servants as may be necessary for the administration of this Act.

(3) Anything required or permitted by this Act to be done by the Commissioner may be done by any public servant who is authorised, either specially or generally, in that behalf in writing by the Commissioner.

7. Restriction on disclosure of information

(1) No information, obtained under or by virtue of this Act, about exploration, prospecting or mining operations under a Mining Right shall be disclosed, unless the disclosure is made –

(a) with the consent of the holder of the Mining Right;

(b) in relation to land which has ceased to be subject to the Mining Right;

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- (c) for the purpose of facilitating the performance of any functions under this Act;
- (d) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings;
- (e) for the purpose of any civil proceedings brought by or against the holder of the Mining Right;
- (f) for the purpose of facilitating the performance by a consultant to the Government of any functions under the consultancy arrangement;
- (g) for the purpose of the determination of the liability of the holder of the Mining Right to make any payment under this Act or of any tax;
- (h) for any purpose, or in any circumstances, prescribed in the Mining Right.

(2) Where any disclosure is made to a person pursuant to subsection (1)(a), (c), (f) or (g), then for the purposes of this section that person shall be treated as having obtained the information by virtue of this Act.

(3) Any person who discloses information in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding VT 100,000 or imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(4) In proceedings on a prosecution for an offence under subsection (3) it is a sufficient defence if the accused person proves that the information disclosed was, without that disclosure, generally known to the public.

8. Prohibition against holding Mining Right, etc.

(1) In this section –

"member of the family", in relation to a relevant person, means –

- (a) the husband or wife, or reputed husband or wife; and
- (b) the son or daughter (being a minor), whether born in or outside wedlock,

of the relevant person;

"relevant person" means a public servant or public officer or any person engaged in the service of the Government of Vanuatu.

(2) No relevant person, in his private capacity, shall acquire, attempt to acquire or hold –

- (a) a Mining Right or an interest in a Mining Right; or
- (b) a share in a body corporate that is entitled under this Act to carry on exploration, prospecting or mining operations in Vanuatu.

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(3) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(4) In proceedings on a prosecution for an offence under this section of acquiring a share of a kind referred to in subsection (2) (b), it is a sufficient defence if the person charged proves –

(a) that the share was acquired by operation of law; and

(b) that all reasonable steps necessary to dispose of the share have been, and are continuing to be, taken.

(5) In proceedings on a prosecution for an offence under this section of holding a Mining Right, or an interest or share of a kind referred to in subsection (2), it is a sufficient defence if the person charged proves that –

(i) the Mining Right, interest or share was acquired before he became a relevant person; or

(ii) the share was acquired before the body corporate became entitled under this Act to carry on prospecting or mining operations; and

(iii) since he became a relevant person or since the body corporate became so entitled, as the case may be, all reasonable steps necessary to dispose of the mining interest or share have been, or are continuing to be, taken.

(6) For the purposes of this section, the acquisition or holding by a member of the family of a relevant person (not herself or himself being a public servant) of any Mining Right, interest or share of the kind referred to in subsection (2), is deemed to be a holding by the relevant person of the Mining Right, interest of shares.

(7) This section applies with respect to shares whether acquired before or after the commencement of this Act, or whether acquired by a person before he became a relevant person.

(8) Nothing in this section shall affect the operation of the principles of Chapter 10 of the Constitution.

9. Indemnity

A public servant does not incur any liability in respect of the exercise or performance, or purported exercise or performance, by him in good faith of any function under and for the purposes of this Act.

PART 5 – GENERAL PROVISIONS RELATING TO LICENCES

10. Form of applications

An application for issue of a licence under this Act to the Minister or the Commissioner –

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- (a) Shall be made –
 - (i) in accordance with this Act; and
 - (ii) in such manner and form as may be prescribed;
- (b) shall be accompanied by such fee as may be prescribed; and
- (c) may be withdrawn by the applicant giving to the Minister or, as the case may be, the Commissioner a notice of withdrawal.

11. Powers of Minister with respect to applicants

(1) Without prejudice to any other provision of this Act, upon receipt of an application for the grant or renewal of a licence, the Minister may –

- (a) cause such investigations, negotiations or consultations to be made or carried on relating to such application as the Minister considers necessary; or
- (b) by notice served on the applicant, require the applicant to furnish the Minister, within such reasonable period as is specified in the notice, with such proposals, by way of alteration to or in addition to any proposals in the application as the Minister specifies in the notice;
- (c) publish notice of the application for a period of time and in the places as may be prescribed.

(2) Unless the Minister is satisfied that those requirements as may be specified under subsection (1) have been complied with, he shall refuse to proceed further with the application.

12. Restrictions on persons who may hold a licence

No –

- (a) licence shall be granted to an individual unless he is an indigenous citizen of Vanuatu;
- (b) exploration or prospecting licence shall be granted to a body corporate unless the body corporate is –
 - (i) a company; or
 - (ii) a corporation which is specifically approved by the Minister for the purposes of this Act;
- (c) mining licence shall be granted to a body corporate unless the body corporate is a company or a corporation which is specifically approved by the Minister for the purposes of this Act.

13. Grant of licence to more than one person

(1) A licence may be granted to two or more persons associated together in any form of joint arrangement, if each one of them is qualified to hold, and none of them is disqualified from holding the licence under section 12.

(2) Where, at any time, a licensee is constituted by two or more persons, the obligations to be observed and performed by the licensee under this Act are joint and several obligations, but without prejudice to any right of contribution which may exist between all or any of them.

14. Notice of decision on application

(1) The Commissioner shall cause an applicant for the grant or renewal of a licence to be notified of the decision on the application giving, where the Minister is prepared to grant or renew the licence, details of the conditions on which the licence will be granted or renewed.

(2) Where an applicant for the grant or renewal of a licence –

(a) notifies the Minister, within 60 days of the date of notification pursuant to subsection (1), or within such further period as the Minister may allow, that he accepts the conditions of the grant or renewal of the licence, the Minister shall cause the licence or the instrument of renewal to be issued on those conditions; or

(b) fails to notify the Minister, in accordance with the requirement of paragraph (a), the application lapses.

PART 6 – EXPLORATION LICENCES

15. Disposal of application for exploration licence

(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he determines, or refuse to grant, an exploration licence.

(2) An application for the grant of an exploration licence shall include –

(a) full name and nationality of applicant, or in the case of a partnership or an association of individuals, the full names and nationalities of all applicants;

(b) in the case of a company or corporation the full names and nationalities of the directors and full name and nationality of every shareholder and full name and nationality of every ultimate beneficial owner of 5 per cent or more of the issued capital;

(c) full information as to financial status, technical competence and experience;

(d) a description of area over which the exploration licence is sought together with a plan thereof to such specification as may be prescribed;

(e) the proposed programme of exploration and the estimated cost thereof;

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(f) such further information as the Minister may require.

(3) An exploration licence shall not be granted to an applicant in relation to any land which is, at the time the application for the grant of the licence is made, comprised in—

(a) a prospecting licence, being a licence in respect of a mineral to which the exploration licence would, if granted, relate;

(b) a mining licence; or

(c) a claim.

(4) The area of land in respect of which an exploration licence is granted shall cover such area and be of such size, shape, or orientation as may be prescribed.

16. Form and content of exploration licence

(1) An exploration licence –

(a) shall –

(i) be in such form as may be prescribed;

(ii) state the date of grant of the licence;

(iii) identify the land over which the licence is granted;

(iv) state the conditions on which the licence is granted;

(v) state the term, not exceeding 12 months, for which the licence is granted;

(b) shall describe the programme of exploration work to be fulfilled in the period of the grant of the licence in or in relation to the exploration areas and the estimated cost thereof; and

(c) may contain such other matter as may be prescribed.

(2) An exploration licence shall not give an exclusive right to conduct exploration over the area specified therein.

17. Renewal of exploration licence

(1) Subject to subsection (2), on application duly made to the Minister in accordance with this Act for the renewal of an exploration licence, the Minister may, by instrument in writing, renew the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act, or refuse to renew the licence.

(2) The Minister shall not renew an exploration licence if it is established that the exploration

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operations would be liable to disturb public order, and shall not renew a licence more than once.

(3) The instrument in writing renewing an exploration licence –

(a) shall –

(i) identify the land over which the licence is renewed;

(ii) state the conditions on which the licence is renewed; and

(iii) state the term, not exceeding 12 months, for which the licence is renewed; and

(b) shall describe the programme of exploration work to be fulfilled during the period of the renewal in or in relation to the exploration area and the estimated cost thereof.

(4) An instrument in writing renewing an exploration licence shall, for the purpose of this Act, form part of the licence.

18. Term of exploration licence

An exploration licence, unless sooner determined by or under this Act, shall, by virtue of this section, continue in force, in relation to the land for the time being subject to the licence –

(a) for the term, not exceeding 12 months, for which the licence is granted, commencing next after the date of the grant of the licence;

(b) for any term, not exceeding 12 months, for which the licence is renewed, commencing on the date on which the licence would cease to have effect if not then renewed, or next after the date on which the licence is renewed, whichever is the later; and

(c) for any period added to the term of the licence pursuant to section 49(3).

19. Obligations of holder of exploration licence

(1) The holder of an exploration licence shall, within 3 months after the expiration thereof, submit a report to the Minister setting forth his evaluation of the mineral prospects in the area of the licence; such report shall be accompanied by –

(a) all geological, geochemical and geophysical maps, profiles, diagrams and charts made by such holder;

(b) copies of all tests and analyses made by such holder;

(c) copies of all reports made by such holder;

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

PART 7 – PROSPECTING LICENCES

20. Disposal of application for prospecting licence

(1) Subject to this Act, on application duly made, the Minister may grant on such conditions as he determines, or refuses to grant, a prospecting licence.

(2) An application for the grant of a prospecting licence shall include –

- (a) full name and nationality of applicant, or in the case of a partnership or an association of individuals, the full names and nationalities of all applicants;
- (b) in the case of a company or corporation the full names and nationalities of the directors and full name and nationality of every shareholder and full name and nationality of every ultimate beneficial owner of 5 per cent or more of the issued capital;
- (c) full information as to financial status, technical competence and experience;
- (d) a description of area over which the prospecting licence is sought together with a plan thereof to such specification as may be prescribed;
- (e) the names of the minerals for which prospecting will take place;
- (f) the proposed programme of prospecting and the estimated cost thereof;
- (g) such further information as the Minister may require.

(3) The application shall be registered by the Commissioner and the date and hour of its deposition shall be recorded in a register provided for the purpose, and which shall be open to public inspection. Applications shall be credited with an order of priority determined by the date and hour of registration.

(4) A prospecting licence shall not be granted to an applicant in relation to any land which is, at the time the application for the grant of the licence is made, comprised in–

- (a) an existing prospecting licence, being a licence in respect of a mineral to which the new prospecting licence would, if granted, relate;
- (b) a mining licence;
- (c) a claim, unless the applicant is the holder of the claim.

(5) The area of land in respect of which a prospecting licence is granted shall cover such area, not exceeding 100 km² and be of such size, shape, or orientation as may be prescribed.

(6) No prospecting licence shall be granted to an applicant –

- (a) unless the Minister is satisfied that –

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- (i) he has adequate financial resources, technical competence and experience to carry on effective prospecting operations;
- (ii) his programme of prospecting work to be fulfilled is adequate; and
- (iii) his proposals for the employment and training of citizens of Vanuatu are adequate; or

(b) if, being a licensee, he is in default.

(7) For the purposes of this section, an applicant who is a licensee is in default if he is in breach of the conditions of his licence, or of the requirements of this Act in relation to him or his licence, when he makes application for the grant of a prospecting licence.

21. Form and content of prospecting licence

(1) A prospecting licence –

(a) shall –

- (i) be in such form as may be prescribed;
- (ii) state the date of grant of the licence;
- (iii) identify the land and mineral or minerals in respect of which the licence is granted;
- (iv) state the conditions on which the licence is granted; and
- (v) state the term, not exceeding 3 years, for which the licence is granted;

(b) shall describe the programme of prospecting work to be fulfilled in the period of the grant of the licence in or in relation to the prospecting area and the estimated cost thereof.

(2) There may be included in a prospecting licence provision with regard to future joint arrangements for the mining of any mineral resources which may thereafter be discovered in land to which the licence relates.

(3) There may be included in a prospecting licence provision for the determination of disputes, in relation to any identified matters, by way of arbitration or otherwise in such manner as is specified in the licence.

22. Renewal of prospecting licence

(1) Subject to section 23, on application duly made to the Minister in accordance with this Act for the renewal of a prospecting licence, the Minister shall, by instrument in writing, renew the licence on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act.

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(2) An application for renewal of a prospecting licence shall be submitted not later than 60 days before the expiry of the licence and shall be accompanied by –

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

(3) The instrument in writing renewing a prospecting licence –

- (a) shall –
 - (i) identify the land in relation to which the licence is renewed which shall not exceed in area 50 per cent of the area of the land in respect of which the licence was granted or, in the case of a second renewal, was first renewed;
 - (ii) state the conditions on which the licence is renewed; and
 - (iii) state the term, not exceeding 2 years for which the licence is renewed; and
- (b) shall describe the programme of prospecting work to be fulfilled during the period of the renewal in or in relation to the prospecting area and the estimated cost thereof.

(4) An instrument in writing renewing a prospecting licence shall, for the purposes of this Act, form part of the licence.

23. Restrictions on renewal of prospecting licence

(1) A prospecting licence shall not be renewed on more than two occasions.

(2) Subject to subsection (3), the Minister shall refuse to grant a renewal of a prospecting licence if the licensee is in default.

(3) The Minister shall not refuse to renew a licence on the ground that the licensee is in default unless –

- (a) he has given to the licensee notice of his intention to do so giving in the notice–
 - (i) particulars of the alleged default;
 - (ii) a date before which the licensee may make representations in writing in relation to the alleged default, or remedy it; and
- (b) the licensee has not, before that date –
 - (i) remedied the default; or

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(ii) in a notice given to the Minister, made representations which satisfy the Minister that the licensee is not in default, or that in the circumstances he is justified in renewing the licence notwithstanding the default.

(4) The Minister shall not renew a licence in respect of an area of land which does not meet the requirement in section 22(3) (a) (i).

(5) For the purposes of this section, a licensee is in default if he is in breach of the conditions of his licence, or of the requirements of this Act in relation to him or his licence, when he makes application for the renewal of the licence.

24. Term of prospecting licence

(1) A prospecting licence, unless sooner determined by or under this Act, shall, by virtue of this subsection, continue in force, in relation to the land for the time being subject to the licence –

- (a) for the term, not exceeding 3 years, for which the licence is granted, commencing next after the date of the grant of the licence;
- (b) for any term, not exceeding 2 years, for which the licence is renewed commencing on each occasion on the date on which the licence would cease to have effect if not then renewed, or next after the date on which the licence is renewed, whichever is the later, and
- (c) for any period added to the term of the licence pursuant to section 49(3).

(2) Where a prospecting licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined by or under this Act, continue in force in the circumstances referred to –

- (a) in subsection (1) of section 31, for the period necessary to enable the licensee to comply with the duties under paragraphs (a) and (b) of that subsection;
- (b) in section 32, for the period necessary to enable the licensee to comply with the duty under that section; and
- (c) in section 33(1), for the period of 60 days referred to in section 33(1) or such further period as the Commissioner may allow for the purposes of section 33(1).

(3) Where a prospecting licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined by or under this Act, continue in force in respect of any land, subject to the licence, to which an application for the grant of –

- (a) a renewal of the licence; or
- (b) a mining licence,

relates, until

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- (c) that application is finally dealt with –
 - (i) by the renewal of or refusal to renew the licence; or
 - (ii) as the case may be, by the grant of or refusal to grant the mining licence; or
- (d) that application lapses.

25. Rights under prospecting licence

A prospecting licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence, the exclusive right to carry on prospecting operations in or in relation to the prospecting area for any mineral to which the licence relates, and to execute in the prospecting area such works as are necessary for that purpose.

26. Obligations of holder of prospecting licence

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

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

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

(2) Any holder of a prospecting licence who fails to supply any record to the Commissioner or who supplies a false or misleading record shall be guilty of an offence and shall on conviction be liable to the same penalty or penalties as specified in section 79(8).

(3) The holder of a prospecting licence shall, within 3 months after the expiration thereof, submit a report to the Minister setting forth all results of his prospecting operations in the area of the licence; such report shall be accompanied by –

- (a) all geological, geochemical and geophysical maps, profiles, diagram charts made by such holder;
- (b) copies of all tests and analyses made by such holder;

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(c) copies of all reports made such holder;

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

PART 8 – WORK PROGRAMME UNDER EXPLORATION AND PROSPECTING LICENCES

27. Performance of work programme under exploration licence

(1) During the term for which an exploration licence is granted, the licensee shall, subject to section 29, fulfil the programme of exploration work described in the licence pursuant to section 16(1) (b).

(2) During the term for which an exploration licence is renewed, the licensee shall, subject to section 29, fulfil the programme of exploration work described in the instrument renewing the licence pursuant to section 17(3)(b).

28. Performance of work programme under prospecting licence

(1) During the term for which a prospecting licence is granted, the licensee shall, subject to section 29, fulfil the programme of prospecting work described in the licence pursuant to section 21(1) (b).

(2) During the term for which a prospecting licence is renewed, the licensee shall, subject to section 30, fulfil the programme of prospecting work described in the instrument renewing the licence pursuant to section 22(3)(b).

29. Amendment of work programme

The Minister may, on application made to him by a licensee, by instrument in writing, amend, in the manner proposed in the application, any programme of exploration work or prospecting work which the licensee is obliged by section 27 or, as the case may be, by section 28, to fulfil, and in the event, the obligation under the section concerned shall apply in relation to the programme as so amended.

30. Damages for failure to perform work programme

Subject to section 49(1), a licensee is liable to pay to the Republic damages in respect of any failure to fulfil his obligation under subsection (1) or (2) of section 28, which damages –

(a) shall be those prescribed in respect of any such failure in the licence; or

(b) if not so prescribed, shall be assessed on the basis that the failure constitutes a breach of a contract with the Republic to fulfil the obligation.

31. Discovery in prospecting area

(1) Where a mineral deposit is discovered in a prospecting area, the licensee –

(a) shall –

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(i) forthwith inform the Commissioner; and

(ii) within a period of 30 days after doing so, furnish the Commissioner in writing with particulars of the discovery and identify the location of the discovery;

(b) shall, subject to subsection (3), where the deposit contains a mineral to which his licence relates, take promptly all steps that are reasonable, in the circumstances relating to the discovery, to ascertain whether or not, in his opinion, the mineral exists in commercial quantities; and

(c) shall, to the extent to which he is able to do so, comply with any notice served on him pursuant to subsection (2).

(2) Where a mineral deposit containing a mineral to which a prospecting licence relates is discovered in the prospecting area, the Commissioner may by notice served on the licensee, direct the licensee to furnish to the Commissioner, within the period specified in the notice, particulars in writing of the extent and nature of the mineral deposit and of any other matters relating to the discovery that are specified in the instrument.

(3) The Commissioner may exempt a licensee from the requirement of subsection (1) (b) either wholly or partly and either unconditionally or subject to such conditions as are specified in the instrument of exemption.

32. Notice of existence of minerals in commercial quantities

Where a licensee has, pursuant to section 31(1) (b), ascertained whether or not, in his opinion, any mineral to which his licence relates exists in commercial quantities in the prospecting area, he shall forthwith give to the Commissioner notice stating whether or not the mineral does so exist.

PART 9 – MINING LICENCES

33. Application for mining licence

(1) A licensee whose prospecting licence is in force and who has given notice to the Commissioner under and in accordance with section 32, stating, that in his opinion, a mineral exists in commercial quantities, the licensee may, within a period of 60 days from the date on which that notice is given to the Commissioner, or within such further period as the Commissioner may allow, apply pursuant to this subsection for the grant of a mining licence –

(a) over land in, or which constitutes, the prospecting area; and

(b) in relation to any mineral specified in the notice given under that section.

(2) Where subsection (1) does not apply, a person may, subject to subsection (3), apply under this subsection for the grant of a mining licence over land whether he holds, or does not hold, a licence over that land.

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(3) No application shall be made under subsection (2) for the grant of a mining licence over any land in respect of any mineral unless that mineral exists in commercial quantities in that land.

(4) An application for the grant of a mining licence shall include –

(a) full name and nationality, or, in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body.

(b) in the case of a company or corporation, the full names and nationalities of the directors and the full name and nationality of every shareholder and the full name and nationality of every ultimate beneficial owner of 5 per cent or more of the issued capital;

(c) full information as to his financial status, technical competence and experience;

(d) the number or numbers of his prospecting licence;

(e) the name of the mineral which it is intended to mine;

(f) details of the mineral deposit and a comprehensive report thereon which shall include details of all known minerals, proved, estimated and inferred ore reserves and mining conditions;

(g) details, illustrated by an approved plan, of the area in respect of which the application is made;

(h) the period for which the lease is sought;

(i) a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;

(j) a proposed programme of mining operations which shall include –

(i) the date by which the applicant intends to work for profit;

(ii) the estimated overall recovery of ore and mineral products;

(iii) the nature of the product;

(iv) the marketing arrangements made for the sale of the mineral product; and

(v) a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by mining and for the minimization of the effects of such mining on adjoining land and water areas;

(k) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;

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- (l) a programme for the employment and training of Vanuatu citizens;
- (m) a report of the goods and services required for the mining operations which can be obtained within Vanuatu and the applicant's intention in relation thereto;
- (n) details of expected infrastructure requirements; and
- (o) such further information as the Minister may require or as may be prescribed.

34. Disposal of application for mining licence

Subject to section 35 –

- (a) on application duly made pursuant to section 33(1) the Minister shall grant the mining licence applied for on such conditions as are reasonably necessary to give effect to the application and the requirements of this Act; and
- (b) on application duly made pursuant to section 33(2), the Minister may grant on such conditions as he may determine, or refuse to grant, the mining licence applied for.

35. Restrictions on grant of mining licence

(1) A mining licence shall not be granted to an applicant –

- (a) unless –
 - (i) the proposals of the applicant would ensure the most efficient, beneficial and timely use of the mineral resources concerned;
 - (ii) the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective mining operations;
 - (iii) the applicant would be able and willing to comply with the conditions on which a licence would be granted;
 - (iv) the applicant's proposals for the employment and training of citizens of Vanuatu are satisfactory; and
 - (v) any option given under section 21(2) has been properly disposed of, or arrangements satisfactory to the Minister have been made for that purpose; or
- (b) if the applicant is in default, unless the Minister considers that special circumstances exist which justify the granting of the licence notwithstanding the default.

(2) Where an application is made under section 33(1) the Minister shall not refuse to grant a mining licence to the applicant –

- (a) on any ground referred to in subsection (1) (a), unless the Minister has given notice

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to the applicant of his intention to do so on that ground and has allowed the applicant, within such reasonable time as is specified in the notice, to make representation in relation to the proposed refusal and where appropriate, to put forward proposals either in alteration of or in addition to those in his application, and has taken into account any such representations and proposals;

(b) on the ground that the applicant is in default, unless the Minister has given notice to the applicant of his intention to do so giving in the notice –

(i) particulars of the alleged default; and

(ii) a date before which the applicant may make representations in relation to the alleged default, or remedy it, and the applicant has not, before that date, remedied the default or, in a notice given to the Minister, made representations which satisfy the Minister that the applicant is not in default, or that in the circumstances he is justified in granting the licence notwithstanding the default.

(3) A mining licence shall not be granted to an applicant in relation to any land which is, at the time the application for the grant of the licence is made, comprised in –

(a) a single prospecting licence, unless the applicant is the holder of the prospecting licence, or applies with the written consent of that holder;

(b) more than one prospecting licence, unless, subject to subsection (4) –

(i) the applicant is the holder of one of those prospecting licences;

(ii) the applicant's prospecting licence covers the mineral to which the mining licence would, if granted, relate, or the mineral is not covered by any other such prospecting licence; and

(iii) the Minister is satisfied that the public interest requires that the mining licence should be granted.

(c) an existing mining licence, unless the applicant is the holder of the mining licence;
or

(d) a claim, unless the applicant is the holder of the claim.

(4) Where, in the circumstances referred to in paragraph (b) of subsection (3) –

(a) the Minister is satisfied as provided in subparagraph (iii) of that paragraph; and

(b) every holder of a relevant prospecting licence or, if the applicant for the mining licence is the holder of such a prospecting licence, every other holder of such a prospecting licence, gives his consent in writing to the grant of a mining licence to the applicant,

such a licence may be granted to the applicant notwithstanding subsections (3) (b) (ii)

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and (iii).

(5) For the purposes of this section, an applicant is in default if he is in breach of the conditions of any licence held by him, or of the requirements of this Act in relation to him or any such licence, when he makes application for the grant of a mining licence.

36. Form and content of mining licence

(1) A mining licence –

(a) shall –

(i) be in such form as may be prescribed;

(ii) state the date of the grant of the licence;

(iii) identify the land and mineral in respect of which the licence is granted;

(iv) state the conditions on which the licence is granted; and

(v) state the term, not exceeding 25 years or the estimated life of the ore body which it is proposed to mine, whichever is the shorter.

(b) shall describe a programme of mining work to be fulfilled; and

(c) may contain such other matters as may be necessary to give effect to subsection (2) or (3), if applicable, or for any other purpose as may be determined by the Minister.

(2) There may be included in a mining licence conditions with respect to the processing, disposal or sale of the minerals to be mined.

(3) There may be included in a mining licence provision for the determination of disputes, in relation to any identified matters, by way of arbitration or otherwise in such manner as is specified in the licence.

37. Renewal of mining licence

(1) Subject to section 38, on application duly made to the Minister in accordance with this Act for the renewal of a mining licence, the Minister may, by instrument in writing, renew the licence on such conditions as he deems fit, or refuse to do so.

(2) An application for renewal of a mining licence shall state the period for which renewal is sought, which period will not exceed 25 years, and shall be accompanied by –

(a) a proposed programme of mining operations to be carried on in the period of renewal; and

(b) details of –

(i) the latest proved, estimated and inferred reserves;

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(ii) the capital investment to be made in, and production and revenue forecasts in respect of, the period of renewal;

(iii) any proposed changes in methods of mining and treatment;

(iv) such other information as the Minister may require, and, such information shall be presented so as to give a clear indication of expected increase or reduction in mining activities and the estimated life of the mine.

(3) The instrument in writing renewing a mining licence shall –

(a) identify the land in respect of which the licence is renewed;

(b) state the conditions on which the licence is renewed;

(c) state the term for which the licence is renewed; and

(d) describe a programme of mining operations to be fulfilled.

(4) An instrument in writing renewing a mining licence shall, for the purpose of this Act, form part of the licence.

38. Restriction on renewal of mining licence

(1) A mining licence shall be renewed on one occasion only.

(2) The Minister shall refuse to renew a mining licence if the licensee is in breach of the conditions of his licence, or of the requirements of this Act in relation to him or his licence, when he makes application for the renewal of the licence.

39. Term of mining licence

(1) A mining licence, unless sooner determined by or under this Act, shall, by virtue of this subsection, continue in force –

(a) for the term for which the licence is granted, commencing next after the date of the grant of the licence;

(b) for any term for which the licence is renewed, commencing on the date next after the date on which the licence would cease to have effect if not renewed; and

(c) for any period added to the term of the licence pursuant to section 49(3).

(2) Where a mining licence would otherwise cease to be in force then, by virtue of this subsection, the licence shall, unless sooner determined, by or under this Act, continue in force in respect of any land, subject to the licence, to which an application for the grant of a renewal of the licence relates until –

(a) the application is finally dealt with by the grant or refusal to grant the renewal; or

(b) the application lapses.

40. Rights conferred by mining licence

(1) A mining licence, while it remains in force, confers on the licensee subject to this Act and to the conditions specified in the licence, exclusive rights –

- (a) subject to subsection (2) to carry on exploration, prospecting and mining operations in or in relation to the mining area;
- (b) to sell or otherwise dispose of any mineral product recovered and stack and dump any mineral or waste products in a manner approved by the Minister; and
- (c) to carry on such operations and execute such works in or in relation to the mining area as are necessary for or in connection with any matter referred to in paragraphs (a) and (b).

(2) Any exploration or prospecting operations carried on by a licensee in or in relation to the mining area shall be carried on in accordance with a programme of work from time to time approved by the Commissioner.

41. Restriction on rights conferred by mining licence

(1) The holder of a mining licence –

- (a) shall not, without the consent of the Minister, intentionally carry on exploration, prospecting or mining operations for a mineral unless it is a mineral to which his licence relates; and
- (b) shall not mine any mineral deposit, particulars of which have not been given in his application, or a statement accompanying his application, for the grant of the licence, without the approval of the Minister given under subsection (3).

(2) Where, in the exercise of his rights, the holder of a mining licence discovers any deposit of a mineral, particulars of which were not given in his application, or a statement accompanying his application, for the grant of the licence, the holder –

- (a) shall, within a period of 30 days after the discovery, give to the Minister notice and particulars of the mineral deposit and the circumstances in which the discovery was made; and
- (b) may, in the notice, or in a further notice given within such period as the Minister may allow, request the Minister to give his approval to the mining of the mineral deposit in accordance with a programme of mining work stated in or accompanying the notice.

(3) On a request made pursuant to subsection (2)(b), the Minister –

- (a) may refuse to give the approval requested; or

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(b) may give in writing

(i) approval to the request as made; or

(ii) approval to the request as amended with the agreement of the holder of the licence,

unconditionally or subject to such conditions as are agreed to by the holder of the licence and stated in the instrument of approval.

(4) An instrument of approval given under this section shall, for the purposes of this Act, form part of the mining licence concerned.

42. Duties of holder of mining licence

(1) The holder of a mining licence shall –

(a) subject to subsections (2) and (3), carry on mining and development operations and commence production in accordance with the programme of mining work described in the licence pursuant to section 36(1)(b) or 37(3)(d);

(b) demarcate and keep demarcated, in the manner prescribed or determined in accordance with the regulations, the mining area; and

(c) notify the Minister when he begins to work for profit.

(2) The Minister, on application made to him by the holder of a mining licence, may, by instrument in writing, limit, reduce, vary or suspend any obligation arising pursuant to subsection (1)(a), either unconditionally or subject to such conditions as the Minister may specify in the instrument.

(3) A licensee may, for good cause and with the agreement of the Commissioner, amend the details of his programme of mining work.

43. Suspension of production

(1) The holder of a mining licence shall notify the Minister –

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

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

(c) 3 months in advance, if he proposes to curtail such production,

and shall, in all cases, give reasons for such cessation, suspension or curtailment.

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

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

(a) give his approval to such cessation, suspension or curtailment; or

(b) direct the holder of the mining licence to resume full production at the mine by such date as he may specify.

(4) Approval of cessation, suspension or curtailment may be given subject to such conditions as the Minister may consider appropriate in the circumstances.

PART 10 – RELINQUISHMENT

44. Relinquishment of land in exploration area

(1) A licensee may at any time when his exploration licence is in force and by giving to the Commissioner not less than 30 days' previous notice of his intention to do so, relinquish any land in the exploration area identified in the notice, and the land ceases to be subject to the licence at the end of the period of notice.

(2) Where a prospecting licence is granted over land in the exploration area then to the extent the land is comprised in the prospecting licence it ceases to be subject to that exploration licence.

(3) Where a mining licence is granted over any land which is comprised in one, or more than one, exploration licence, the land ceases to be subject to that exploration licence or those exploration licences to the extent that it is comprised in the mining licence.

45. Relinquishment of land in prospecting area

(1) Subject to subsection (4) a licensee may at any time when a prospecting licence is in force and by giving to the Commissioner not less than 30 days' previous notice of the intention to do so, relinquish any land in the prospecting area identified in the notice, and the land ceases to be subject to the licence at the end of the period of the notice.

(2) Where a mining licence is granted over land which is comprised in one, or more than one, prospecting licence, the land ceases to be subject to that licence or those licences to the extent that it is comprised in the mining licence.

(3) Before making an application for the renewal of a prospecting licence, an applicant shall, not less than 60 days before making the application, by notice in writing to the Commissioner, relinquish, in accordance with subsection (4), such area of land as is necessary to meet the requirement of section 22(3)(a)(i).

(4) Any land relinquished pursuant to subsection (1) or (3) shall, unless the Commissioner otherwise determines, be such as to ensure that the remaining prospecting area constitutes a single area or not more than 3 discrete areas.

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46. Relinquishment of land in mining area

A licensee may, at any time when his mining licence is in force and by giving to the Commissioner not less than 3 months' previous notice of his intention to do so, relinquish any land in the mining area identified in the notice, and the land ceases to be subject to the licence at the end of the period of the notice.

47. Relinquishment does not affect obligations

Any relinquishment made pursuant to this Part is without prejudice to any obligation incurred by the licensee in respect of the relinquished area before the date of relinquishment and does not, in particular, affect the obligation to fulfil any programme of exploration, prospecting or mining work.

PART 11 – CANCELLATION AND FORCE MAJEURE

48. Cancellation

(1) Subject to this section and section 49, where a licensee is in default the Minister may, by notice in writing served on the licensee, cancel the licence.

(2) The Minister shall not, under subsection (1), cancel a licence on the ground of any default unless –

(a) the Minister has, by notice in writing served on the licensee, given not less than 30 days' notice of the Minister's intention to so cancel the licence on that ground;

(b) the Minister has, in the notice, specified a date before which the licensee may, in writing, submit any matter which he wishes the Minister to consider; and

(c) the Minister has taken into account –

(i) any action taken by the holder to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Minister by the holder pursuant to paragraph (b).

(3) The Minister shall not, under subsection (1), cancel a licence on the ground that the holder of the licence has failed to pay any amount payable by him under this Act or his licence if, before the date specified in a notice referred to in subsection (2) (b), the holder pays the amount of money concerned, together with any amount which may be payable pursuant to section 70.

(4) The Minister may, by notice served on a licensee, cancel the licence –

(a) if the holder, being an individual, is –

(i) adjudged bankrupt; or

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(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors; or

(b) if, in the case of a licensee that is a body corporate, an order is made or a resolution is passed winding-up the affairs of the body corporate, unless the winding-up is for the purpose of amalgamation and the Minister has consented to the amalgamation or is for the purpose of reconstruction and the Minister has been given written notice of the reconstruction.

(5) Where two or more persons constitute a licensee, the Minister shall not, under subsection (4) cancel the licence on the occurrence, in relation to one or some only of the persons constituting the licensee, of an event entitling the Minister under that subsection to cancel the licence, if any other person or persons constituting the licensee satisfies or satisfy the Minister that that person or those persons, as the case may be, is or are willing and would be able to perform the duties and obligations of the licensee and take such steps as the Minister may require to secure that performance.

(6) On the cancellation of a licence, the rights of the licensee thereunder cease, but the cancellation does not affect any liability incurred before the cancellation, and any legal proceedings that might have been commenced or continued against the former licensee may be so commenced or continued.

49. Force majeure

(1) Any failure on the part of a licensee to fulfil any of the conditions of his licence or to meet any requirement of this Act, shall not be treated as a breach of the licence of this Act in so far as the failure results from an act of war, hostility, insurrection, or from an exceptional, inevitable and irresistible natural phenomenon, or from any other cause specified in the licence as constituting *force majeure* for the purposes of this section.

(2) Where a licensee fails to fulfil any of the conditions of his licence or to meet any requirements of this Act because of the occurrence of circumstances of the kind referred to in subsection (1), he shall forthwith notify the Minister giving in the notice particulars of the failure and its cause.

(3) Where a licensee is prevented from exercising any of his rights under his licence for any period because of the occurrence of circumstances of the kind referred to in subsection (1), then that period, as agreed by the Minister shall be added to the term of his licence.

(4) This section does not apply with respect to any failure to pay any amount in relation to royalty, rent or fees payable, under this Act or licence.

PART 12 – MISCELLANEOUS

50. Control of company holding mining licence

(1) A company or corporation which is the holder of a mining licence shall not, without the prior consent in writing of the Minister –

(a) register the transfer of any equity share or shares in the company to any particular

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person or his nominee; or

(b) enter into an agreement, arrangement or understanding, (whether or not having legal or equitable force) with any particular person,

if the effect of doing so would be to give to the particular person or, in the case mentioned in paragraph (b), the particular person or any other person, control of the company.

(2) On application duly made to him in writing for his consent under this section the Minister shall give his consent if he considers that the public interest would not be prejudiced by the change of control of the company, but otherwise he shall refuse to give his consent, and for the purpose of considering any such application the Minister may call for and obtain such information as he considers necessary to determine the application.

(3) For the purposes of this section –

(a) a person is deemed to have control of a company –

(i) if the person or his nominee holds, or the person and his nominee hold, a total of 20 per cent or more of the issued equity shares in the company;

(ii) if the person is entitled to appoint, or prevent the appointment of half, or more than half, of the directors of the company; or

(iii) if the person is entitled to exercise, or control the exercise of, the right to cast votes in respect of not less than two-fifths of the total number of votes in respect of issued equity shares in the company;

(b) "equity shares", in relation to a company, means shares in the company having voting rights at any general meeting of the company and includes preference shares, other than preference shares which do not have such voting rights;

(c) "preference shares" means shares which carry the right to payment of a dividend of a fixed amount, or not exceeding a fixed amount, in priority to payment of a dividend on another class or other classes of shares, whether with or without other rights; and

(d) the reference in paragraph (a)(iii) to the entitlement to control the exercise of the right to cast votes shall be read as including an entitlement to control the exercise of that right directly or indirectly, and includes control that is exercisable as a result of or by means of trusts.

51. Application for inclusion of additional mineral in licence

(1) This section applies –

(a) when –

(i) the holder of a prospecting licence in the course of prospecting for a mineral to which his licence relates, finds another mineral in the prospecting area (in

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this section called an "additional mineral") to which his licence does not relate, and which is not covered by any other prospecting licence wholly or partly covering the same area; or

(ii) the holder of a mining licence, in the course of mining a mineral to which his licence relates, finds another mineral in the mining area (in this section called an "additional mineral") to which his licence does not relate; and

(b) in the circumstances, it would be impossible to prospect for or mine the mineral to which the prospecting or mining licence concerned relates without also prospecting for or mining the additional mineral.

(2) Where this section applies, the holder of a licence may make application to the Minister for the inclusion in his licence of the additional mineral and the Minister if satisfied that this section applies, shall, subject to this section, in writing approve the application, and with effect from the date of the approval, the licence is deemed to include the additional mineral.

(3) The Minister is not required to approve an application under subsection (2) if the applicant is not prepared to make such alterations to his programme of prospecting or mining work, as the case may be, as are reasonably necessary, in the opinion of the Minister, to cover adequately the prospecting for, or the mining of, the additional mineral.

52. Enlargement of prospecting or mining area

(1) The holder of a prospecting licence or a mining licence may apply to the Minister to have his prospecting or mining area enlarged in the manner specified in the application and, subject to subsection (2), the Minister, may approve the application unconditionally or subject to such conditions as he may determine, or refuse to do so.

(2) The Minister shall not approve an application made under subsection (1) unless he is satisfied that to do so would ensure the most efficient and beneficial use of the mineral resources of Vanuatu.

(3) Notice of the Minister's decision under subsection (1) shall be given to the holder of the licence, and if the application is approved the prospecting area or the mining area is deemed to have been enlarged accordingly from the date on which the notice is given.

53. Security for compliance, etc.

The Minister may, from time to time, require the making of such arrangements as appear to him appropriate to secure that the holder of a Mining Right complies with the Mining Right and the provisions of this Act.

PART 13 – PROSPECTING PERMITS AND CLAIMS

54. Prospecting permits

(1) Subject to this Act, the Commissioner may, on the prescribed fee being paid, issue to any person a prospecting permit on such conditions as the Commissioner may determine.

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(2) No prospecting permit –

(a) shall be issued to an individual unless he is an indigenous citizen of Vanuatu;

(b) shall be issued to a company unless it is a company whose entire issued capital is beneficially owned by indigenous citizens of Vanuatu or by a corporation which has been established for a public purpose by or under a law in force in Vanuatu, or partly by such citizens and partly by such a corporation.

(3) No prospecting permit shall be issued to an individual unless the Commissioner is satisfied that the individual intends, within the limits of his competence and resources, to undertake prospecting operations.

55. Rights under prospecting permit

(1) The holder of a prospecting permit may, subject to this Act and the conditions of the prospecting permit, enter on any land identified in the permit as land in which he is authorised to prospect and carry on prospecting operations for any mineral specified in the permit as a mineral to which the permit relates.

(2) The holder of a prospecting permit shall not prospect –

(a) in land –

(i) in a prospecting area for any mineral in respect of which a prospecting licence has been granted;

(ii) in a mining area; or

(b) in land –

(i) in a claim area, unless he is the holder of the claim; or

(ii) in an area subject to a quarry permit, unless the Commissioner is satisfied that the exercise of rights under the prospecting permit in such area would not substantially prejudice the carrying out of operations under the quarry permit and gives his approval to the carrying on of the prospecting operations in that area.

(3) A prospecting permit may not be transferred.

56. Terms of prospecting permit

A prospecting permit has effect for the period of 12 months from and including the date of issue of the permit.

57. Pegging and registration of claim

(1) Subject to this Act, the holder of a prospecting permit may peg a claim or claims in accordance with the regulations.

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(2) Where the holder of a prospecting permit, pursuant to subsection (1), pegs a claim he shall within 30 days, or such longer period as the Commissioner may allow, of doing so, apply in accordance with the regulations for registration, in the manner prescribed, of the claim.

(3) Subject to this Act, on application duly made to the Commissioner for the registration of a claim, the claim shall be registered subject to such conditions as the Commissioner may determine.

58. Restriction on registration of claim

(1) A claim shall not be registered pursuant to section 57 in respect of –

(a) any land in which, or any minerals for which, the holder of the prospecting permit applying for registration of the claim is not entitled to prospect; or

(b) any land which at the time the application for the registration of the claim is made is subject to a mining licence.

(2) The Commissioner shall not register a claim if the applicant is in breach of the conditions of his prospecting permit or of the requirements of this Act in relation to him or his permit when he makes application to have the claim registered, and the Commissioner is not prepared, under this paragraph, to waive the breach.

(3) Where the Commissioner has refused to register a claim on a ground referred to in subsection (2), the applicant may appeal against the refusal to the Minister who shall, as soon as practicable, hear and dispose of the appeal.

59. Period of validity and renewal of claim

(1) Subject to this Act, a claim registered pursuant to section 57 –

(a) is valid from the day on which the claim is registered until 31 January next following that day; and

(b) shall on application duly made to the Commissioner for the renewal of the claim, be renewed for further periods of 12 months each, commencing on 1 February in each year.

(2) A claim shall not be renewed pursuant to subsection (1) –

(a) unless the Commissioner is satisfied that the applicant has carried on, in good faith, within the limits of his competence and resources, mining operations in the claim area and intends to continue doing so; or

(b) if the applicant is in breach of the conditions of the claim or of the requirements of this Act in relation to him or the claim when he makes application to have the claim renewed and the Commissioner is not prepared, under this paragraph, to waive the breach.

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(3) Where the Commissioner has refused to renew a claim on a ground referred to in subsection (2)(a) or (b), the applicant may appeal against the refusal to the Minister who shall, as soon as practicable, hear and dispose of the appeal.

60. Rights and duties of holder of claim

(1) Subject to this Act and the conditions of the claim, the holder of a claim has the right to enter the claim area and the exclusive right, while the claim is registered, to prospect and mine therein and to remove therefrom and dispose of the minerals in respect of which the claim is registered.

(2) The holder of a claim shall –

(a) within the limits of his competence and resources carry on, in good faith, in the claim area mining operations;

(b) furnish the Commissioner with such information relating to his mining or prospecting operations carried on in the claim area as the Commissioner may reasonably require or as may be prescribed; and

(c) carry out promptly any directions relating to his mining or prospecting operations which may be given to him by the Commissioner pursuant to this Act for the purpose of ensuring safety or good mining practice or such other purpose as may be prescribed.

61. Cancellation of prospecting permit and claim

(1) Subject to this section, where the holder of a prospecting permit or a claim is in default, the Commissioner may, by notice in writing served on the holder, cancel the prospecting permit or claim concerned.

(2) The Commissioner shall not, under subsection (1), cancel a prospecting permit or claim on the ground of any default unless –

(a) the Commissioner has, by notice in writing served on the holder thereof, given not less than 30 days notice of the Commissioner's intention to cancel the permit or claim on that ground and specified a date before which the holder may in writing submit any matter which he wishes the Commissioner to consider; and

(b) the Commissioner has taken into account –

(i) any action taken by the holder to remove that ground or to prevent the recurrence of similar grounds; and

(ii) any matters submitted to the Commissioner by the holder pursuant to paragraph (a).

(3) The Commissioner shall not under subsection (1) cancel a prospecting permit or claim on the ground that the holder thereof has failed to pay any amount payable by him under this Act or his permit or claim, as the case may be, if, before the date specified in a notice referred to in subsection (2) (a) the holder pays the amount of money concerned together with any

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amount which may be payable pursuant to section 70.

(4) The Commissioner may, by notice in writing served on the holder of a prospecting permit or claim, cancel the prospecting permit or the claim concerned –

(a) if the holder (being an individual) is –

(i) adjudged bankrupt; or

(ii) enters into any agreement or scheme of composition with his creditors or takes advantage of any law for the benefit of debtors;

(b) if, in the case of a holder that is a company or a corporation, an order is made or a resolution is passed winding-up the affairs of the company or corporation unless the winding-up is for the purpose of amalgamation or reconstruction and the Commissioner has consented to the amalgamation or reconstruction and the Commissioner has been given written notice thereof.

(5) On the cancellation of a prospecting permit or claim, the rights of the holder of the prospecting permit or claim thereunder cease, but the cancellation does not affect any liability incurred before the cancellation and any legal proceedings that might have been commenced or continued against the former holder of the prospecting permit or claim may be so commenced or continued.

(6) Where the Commissioner has cancelled a prospecting permit or a claim under subsection (1) or (4), the person who was the holder of the permit or claim may appeal against the cancellation to the Minister who shall, as soon as practicable, hear and dispose of the appeal.

(7) For the purposes of this section, the holder of a prospecting permit or claim is in default if he is in breach of the conditions of the permit or claim or of the requirements of this Act in relation to him or the permit or claim.

(8) For the purposes of this section the words "company" and "corporation" shall have the meanings respectively assigned to them under section 54(2)(b).

PART 14 – QUARRY PERMITS

62. Issue of quarry permit

(1) Subject to this Act, the Commissioner may, on the prescribed fee being paid, issue to any person a quarry permit to prospect for and extract building minerals.

(2) No quarry permit shall be issued in respect of any land which is, at the time the application for the issue of a quarry permit is made, subject to –

(a) a claim;

(b) a prospecting or mining licence; or

(c) a quarry permit,

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unless the Commissioner is satisfied that the exercise of rights under the proposed quarry permit would not substantially prejudice the carrying out of operations under the claim, licence or existing quarry permit.

63. Renewal of quarry permit

The Commissioner may, on the prescribed fee being paid, renew a quarry permit on such conditions as the Commissioner may determine.

64. Rights under quarry permit

The holder of a quarry permit may, subject to this Act and the conditions of the quarry permit, enter upon the land specified in his permit and mine and remove therefrom and dispose of any building minerals to which his permit relates.

65. Term of quarry permit

(1) Subject to this Act, a quarry permit is valid –

(a) for a period, not exceeding 10 years, for which the permit is issued commencing on and including the date of its issue; and

(b) for any period, not exceeding 2 years on each occasion, for which the permit is renewed.

(2) In determining the period for which any quarry permit is to be issued, the Commissioner shall have regard to the scale of operations to be carried on under the permit, including the expenditure involved and the equipment to be used.

(3) A quarry permit may state that it is transferable, and in that event it may be transferred with the approval of the Commissioner, but otherwise a quarry permit may not be transferred.

(4) The provision of section 60, with the necessary modifications, apply in relation to a quarry permit, as they apply in relation to a prospecting permit and claim.

66. Record of quarry permits

Subject to the regulations, the Commissioner shall maintain a record, in such manner and containing such particulars as the Commissioner may determine, of all quarry permits issued under this Part and of the renewal, transfer or cancellation of any such permit.

PART 15 – FINANCIAL PROVISIONS, ROYALTIES

67. Royalty on minerals obtained under mining licence, etc.

(1) Subject to this Act, the holder of a mining licence shall, in accordance with his licence and this Act, pay to the Republic royalty in respect of minerals recovered by him in the mining area.

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(2) Where provision is made in a mining licence for the payment of royalty in kind, the word "pay" and cognate expressions in section 49(4) and this part shall be construed accordingly.

(3) Subject to this Act, the holder of a claim or a quarry permit shall, in accordance with this Act, pay to the Republic royalty in respect of minerals recovered by him in the claim area or the permit area.

(4) Royalty is payable –

(a) pursuant to subsection (1) –

(i) at the rate fixed in, or computed in accordance with the provisions of, the mining licence concerned; or

(ii) if no rate is so fixed or provision so made in the mining licence concerned, at the rate prescribed; or

(b) pursuant to subsection (3), at the rate prescribed.

(5) Provision may be made in the regulations for payment of royalty in respect of minerals obtained in an exploration area or a prospecting area.

(6) There shall be paid to the custom owners of the land and to the Local Government Council of the Local Government Region from which the minerals or building materials come an amount not exceeding 40 per cent and 20 per cent, respectively, out of the revenue received in respect of royalties in each particular case in accordance with this section.

(7) In subsection (6), "custom owners" shall have the same meaning assigned thereto by section 72.

(8) For the avoidance of doubt, the provisions of subsection (6) shall not apply in respect of minerals or building materials obtained or recovered from the seabed and subsoil beneath the territorial sea or from the seabed and subsoil of the continental shelf or beneath the waters of the exclusive economic zone.

68. Prohibition on disposal of mineral

If the holder of a licence, claim or quarry permit fails to pay any royalty payable by him on or before the due date, or any extension thereof allowed by the Minister, the Minister may, by order served on the holder of the licence, claim or permit, prohibit the removal of, or any dealings in or with, any mineral from the mining area, claim area or permit concerned, or from any other mining area, claim area, or permit area held by that holder until all outstanding royalty has been paid or until an arrangement has been made and accepted by the Minister, for the payment of the royalty, and the holder shall comply with the order.

69. Remission and recovery of royalty, etc.

(1) The Minister may, on application made to him by a holder of a licence, claim or quarry permit and after consultation with the Minister responsible for finance –

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(a) remit, in whole or in part, any royalty payable; or

(b) defer payment of any royalty,

on such conditions (if any) as he may determine and specifies in the instrument of exemption.

(2) Royalty payable under section 67 is a debt due to the Republic and may be recovered in a court of competent jurisdiction.

(3) A certificate of the Minister certifying that a specified amount of royalty is payable by a person identified in the certificate shall, in any proceedings instituted against that person for the recovery of any such royalty, be received as evidence of that fact, but without prejudice to the right to adduce evidence in rebuttal.

(4) Subsections (2) and (3) do not apply in any case where the royalty concerned is payable in kind.

70. Interest

(1) Where the liability under this Act or a licence of a person to pay any amount in relation to royalty, rent or fees is not discharged on or before the time when the amount is payable, there is, subject to subsection (2), payable by that person an additional amount calculated at such rate as may be prescribed, upon so much of that amount as from time to time remains unpaid, to be computed from the time the amount became payable until it is paid.

(2) The Minister may, in a particular case, for reasons that in his opinion are sufficient, remit the whole or part of an amount payable under subsection (1).

PART 16 – RESTRICTIONS AND SURFACE RIGHTS

71. Application of this Part

Notwithstanding anything in this Act the provisions of this Part applies –

(a) in relation to the exercise by a holder of a Mining Right of his rights in respect of certain lands;

(b) in relation to surface rights; and

(c) with respect to the payment of compensation for damage done by a holder of a Mining Right.

72. Definitions

In this Part –

"alienator" shall have the meaning assigned by section 1 of the Land Reform Act [Cap. 123];

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"custom owners" means the person or persons who, in the absence of a dispute, the Minister responsible for land is satisfied are the custom owners of land;

"lawful occupier", in relation to any land, means an alienator or the custom owners, or any person occupying the land with the lawful consent of the custom owners in relation to that land.

73. Restrictions

(1) Notwithstanding any provision of this Act, the holder of a Mining Right shall not exercise any of his rights under this Act or his Mining Right –

(a) except with the written consent of the Minister responsible for land in respect of –

(i) any public land; or

(ii) any land dedicated as a place of burial or which is a place of religious significance;

(b) subject to subsection (3), except with the written consent of the lawful occupier thereof in respect of –

(i) any land which is the site of, or which is within 200 metres or such greater distance as may be prescribed, of any inhabited, occupied or temporarily unoccupied house or building;

(ii) any land within 50 metres or such greater distance as may be prescribed, of land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of, or upon which there are growing, agricultural crops;

(c) in respect of any land within, or within 200 metres or such greater distance as may be prescribed, of the boundaries or any township, except with the written consent of the local authority having control over the township;

(d) in respect of any land within, or within 200 metres or such greater distances as may be prescribed, of the boundaries of any village, or of any land set aside or required for a village, a new village or a village extension, except with the written consent of the Minister responsible for land;

(e) in respect of a production area (as defined in the Petroleum Exploration and Production Act) except with the written consent of the holder of the production licence concerned; or

(f) in respect of any prescribed land or area except with such consent as may be prescribed.

(2) Any consent under subsection (1) (a), (c) or (d) may be given unconditionally or subject to such conditions as are specified in the instrument of consent.

(3) Where, in the opinion of the Minister responsible for land any consent under subsection

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(1) (b) is being unreasonably withheld, he may, on such conditions (if any) as he may impose, give in writing the consent required.

(4) Any dispute as to whether subsection (1) (b) applies in relation to any land or as to whether any person is a lawful occupier of the land shall be decided by the Minister responsible for land whose decision is final.

74. Surface rights

(1) The lawful occupier of any land subject to a Mining Right retains any right which he may have to graze stock upon or to cultivate the surface of the land, except in so far as the grazing or cultivation interferes with prospecting or mining operations in any such land.

(2) The lawful occupier of land which is subject to a mining licence or a claim shall not erect any building or structure in the area without the consent of the holder of the mining licence or claim, but if the Minister responsible for land considers that the consent is being unreasonably withheld, he may give his consent and, in that event, the lawful occupier may do so.

(3) The rights conferred by a Mining Right shall be exercised reasonably and so as to affect as little as possible the interests of any lawful occupier or of the land subject to the Mining Right or on which rights under the Mining Right are exercised, consistent with the reasonable and proper conduct of operations pursuant to the Mining Right.

(4) Without limiting the generality of subsection (3) a person carrying on operations under a Mining Right shall not, except where that person gives to the Minister prior notice in writing of the expected nature and duration of the interference, take action which in any way will interfere with –

(a) fishing; or

(b) navigation,

lawfully carried on.

75. Compensation for disturbance of rights, etc.

(1) Where, in the course of exploration, prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused, the holder of the Mining Right by virtue of which the operations are carried on, is liable to pay to any lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interests of the lawful occupier concerned.

(2) If the holder of a Mining Right and a lawful occupier fail to reach agreement with respect to the payment of compensation, or the amount of compensation payable, pursuant to subsection (1) in any particular case, either party may refer the matter to the Valuer-General whose decision thereon shall be final.

76. Notice of intention to commence prospecting or mining operations, etc.

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Subject to such exceptions as may be prescribed, a holder of a Mining Right before commencing prospecting operations or mining operations in any land on which there is a lawful occupier, shall give to the custom owners and any other lawful occupier of the land notice of his intention to commence the operations, in such manner and form as may be prescribed.

77. Compulsory acquisition of land for the purposes of mining

(1) Notwithstanding any provision of this Act or any other law for the time being in force, the Minister responsible for land may, from time to time, in exercise of the powers conferred by Part 6 of the Land Reform Act [Cap. 123] including any amendment or re-enactment thereof and any other powers vested in him in that behalf, declare any land which, in his opinion, ought to be so declared for mining purposes or for any of the purposes of this Act; and such purposes shall, in relation to the exercise of any such powers, be deemed to be public purposes.

(2) In assessing any compensation for land declared public land in accordance with subsection (1) there shall be taken into account the market value of the land (exclusive of the increase in the value of such land by reason of the existence thereon of any minerals) and the improvements thereon, reasonable allowance being made for any damage that may be caused by severance; and if there be a lessee or custom owners thereon they shall receive reasonable compensation for disturbance.

(3) If no agreement is reached on the amount of compensation payable in pursuance of subsection (2) either party may refer the matter to the Valuer-General whose decision thereon shall be final.

78. Registration of interest in the land register in certain circumstances

(1) Every Mining Right under this Act conveying any interest in or over land which is registered in accordance with the Land Leases Act [Cap. 163] including any amendment or re-enactment thereof and every variation of the term thereof and every surrender or other determination thereof shall be noted in the land register; and upon being notified in writing by the Commissioner and furnished with such information as he may require, the Director of the department responsible for land shall note in the land register the Mining Right, variation, surrender or determination, as the case may be, in such manner as he thinks fit.

(2) Without prejudice to the power of the Director of the department responsible for land to require further information, a notification from the Commissioner shall be sufficient evidence to support a note in the land register as aforesaid.

(3) The Director of the department responsible for land shall not be concerned to note any dealing in any Mining Right, nor to file in the land registry, nor to furnish copies thereof, nor to provide for inspection any instrument embodying a Mining Right, variation, surrender or determination as aforesaid.

PART 17 – OFFENCES, PENALTIES AND PROCEEDINGS

79. Power of Commissioner and authorised officers

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(1) For the purposes of this Act, the Commissioner or an authorised officer, at all reasonable times –

(a) may enter any area, structure, vehicle, vessel, aircraft or building that, in his opinion, has been, is being or is to be used in connection with exploration, prospecting or mining operations;

(b) may inspect and test any machinery or equipment that, in his opinion, has been, is being or is to be used in connection with any of the operations referred to in paragraph (a);

(c) may take or remove for the purpose of analysis or testing or for use in evidence in connection with an offence against this Act, samples of minerals or other substances from any land where any of the operations referred to in paragraph (a) are being carried on;

(d) may inspect, take extracts from, and make copies of, any document relating to any of the operations referred to in paragraph (a);

(e) may, with respect to the health and safety of persons employed by a licensee in or in connection with any of the operations referred to in paragraph (a), issue directions to and impose restrictions on the licensee, or any persons so employed, by instrument in writing;

(f) may order, by instrument in writing –

(i) the cessation of operations on or in, and the withdrawal of all persons from, any structure or building that is being used in connection with any of the operations referred to in paragraph (a); or

(ii) the discontinuance of the use of any machinery or equipment,

which he considers unsafe, unless and until such action as is necessary for safety and specified in the instrument is taken and completed; or

(g) may make such examinations and inquiries as are necessary to ensure that the provisions of this Act, and any directions issued, conditions imposed or orders made under this Act, are being complied with.

(2) Before exercising any of the powers under subsection (1), if there is any person who is or appears to be in charge of the area, structure, vehicle, vessel, aircraft, building, machinery, equipment or matter or thing in respect of which the power is about to be exercised, the Commissioner or an authorised officer shall identify himself to that person and to any person to whom he is about to give an order or a direction.

(3) Any person who is aggrieved by a decision, direction or order of the Commissioner or an authorised officer made or given under this section may appeal in writing to the Commissioner or, in the case of a decision, direction or order made or given by the Commissioner, to the Minister, who shall, as soon as practicable hear and dispose of the appeal, but the bringing of the appeal does not affect the operation of the decision, direction

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or order appealed from pending disposition of the appeal.

(4) On appeal under subsection (3), the Commissioner or the Minister, as the case may be, may rescind or affirm the decision, direction or order appealed from or may make or give a new decision, direction or order in substitution therefore, and that decision, direction or order is final.

(5) In exercising his powers under subsection (1), the Commissioner or an authorised officer may be accompanied by any person who the Commissioner or the authorised officer, as the case may be, believes has special or expert knowledge of any matter being inspected, tested or examined.

(6) A person who is an occupier or person in charge of any building, structure or place, or the person in charge of any vehicle, vessel, aircraft, machinery or equipment referred to in subsection (1), shall provide the Commissioner or an authorised officer with all reasonable facilities and assistance (including the provision of necessary means of transport) for the effective exercise of his powers under this section.

(7) The Minister may, by notice published in the Gazette, designate any person, or class or description of persons, and any such person or a person belonging to a class or description of persons so designated is an authorised officer for the purposes of this section.

(8) Any person who –

(a) without reasonable excuse, obstructs, molests or hinders the Commissioner or an authorised officer in the exercise of his powers under this section; or

(b) knowingly or recklessly makes a statement or produces a document that is false; or

(c) with intent to mislead or deceive the Commissioner or an authorised officer when so engaged does any act or withholds any information,

is guilty of an offence and is liable on conviction to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

80. Further information to be furnished

(1) Where the Minister has reason to believe that a person is capable of furnishing information or data relating to exploration, prospecting or mining operations, or minerals obtained or the value thereof, he may, by notice served on that person, require that person –

(a) to furnish him in writing with that information within the period and in the manner specified in the notice;

(b) to attend before him or a person identified in the notice at such time and place as is so specified and there to answer questions relating to those operations, or minerals obtained or the value thereof; or

(c) to furnish a person identified in the notice, at such time and place as is so specified,

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with data in his custody or power relating to those operations, or minerals obtained or the value thereof.

(2) A person is not excused from furnishing information, or data, or answering a question when required to do so under this section, on the ground that the information or data so furnished, or the answer to the question, might tend to incriminate him or make him liable to a penalty, but the information or data so furnished or his answer to the question shall not be admissible in evidence against him in any proceedings other than proceedings for an offence against this section.

(3) Where data are furnished, pursuant to a requirement under subsection (1) (c), the person to whom the data are furnished may make copies of or take extracts from the data.

(4) Any person who –

(a) refuses or fails to comply with the requirement in a notice under subsection (1) to the extent to which he is capable of complying with it;

(b) in purported compliance with a requirement referred to in subsection (1) (a), knowingly or recklessly furnishes information that is false or misleading in a material particular; or

(c) when attending before the Minister or any other person under a requirement referred to in subsection (1)(b) or furnishing any data to any person under a requirement referred to in subsection (1)(c), knowingly or recklessly makes a statement that is or furnishes any data that are false or misleading in a material particular,

is guilty of an offence and is liable on conviction to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(5) In this section, "data" includes books, documents, interpretations, tapes, diagrams, profiles and charts, photographs, lines or negatives, and includes data recorded or stored by means of any tape recorder, computer or other device and any material subsequently derived from data so recorded.

81. Restriction on the export of radioactive minerals

(1) No person shall export, or attempt to export, from Vanuatu any radioactive mineral except under and in accordance with a permit granted under subsection (2).

(2) The Minister may grant to any person a permit to export any radioactive mineral on such conditions as are specified in the permit, but the grant of such a permit does not exempt the person from complying with the requirements of any other law relating to the export of radioactive minerals.

(3) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction –

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(a) in the case of an individual to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment; and

(b) in the case of a body corporate to a fine not exceeding VT 1,000,000.

(4) In this section, "radioactive mineral" means any mineral which contains uranium or thorium, and includes –

(a) minerals of the pitchblende group, including pitchblende, uraninite, ulrichtit, broggerite, cleveite, and related mineral species;

(b) torbenite and autunite.

82. Restrictions on removal of minerals

(1) No mineral shall be removed from any area from which it has been obtained, or disposed of in any manner, except –

(a) by the holder of a Mining Right for the purpose of sampling or analysis;

(b) by the holder of a Mining Right in accordance with the terms of his Mining Right; or

(c) as otherwise permitted by this Act or prescribed.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction –

(a) in the case of an individual, to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment; and

(b) in the case of a body corporate, to a fine not exceeding VT 1,000,000.

83. Miscellaneous offences

(1) Any person who engages in exploration operations, prospecting operations, or mining operations when he is not acting as, or for or on behalf of, the holder of a Mining Right which covers those operations is guilty of an offence and is liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(2) Any person who, without reasonable excuse, obstructs, molests, hinders or prevents a holder of a Mining Right in or from the doing of any act which the holder is authorised by this Act or his Mining Right to do is guilty of an offence and is liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment.

(3) Any person who –

(a) in, or in connection with any application under this Act, knowingly or recklessly

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gives information which is false or misleading in a material particular;

(b) in any report, return or affidavit submitted in pursuance of any provision of this Act, knowingly or recklessly includes or permits to be included any information which is false or misleading in a material particular;

(c) places or deposits, or is accessory to the placing or depositing of, any mineral or substance in any place with the intention of misleading any other person as to the mineral possibilities of that place,

is guilty of an offence and is liable on conviction –

(i) in the case of an individual, to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 6 months, or to both such fine and imprisonment; and

(ii) in the case of a body corporate, to a fine not exceeding VT 500,000.

84. Offences by body corporate

When an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other office bearer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

85. Order for forfeiture in respect of certain offences

(1) Where a person is convicted of an offence against this Act, a court of competent jurisdiction may, in addition to any other penalty imposed, make –

(a) an order for the forfeiture of any vehicle, aircraft, vessel or equipment used in the commission of the offence; and

(b) an order –

(i) for the forfeiture of any minerals obtained in the commission of the offence;
or

(ii) for the payment by that person to the Republic of an amount equal to the value of the minerals so obtained.

(2) Where the court is satisfied that an order made under subsection (1)(b)(i) cannot for any reason be enforced, the court may, upon the application of the person by whom the proceedings were brought, set aside that order and make an order under subsection (1)(b)(ii).

(3) The court may, before making an order under this section require notice to be given to, and to hear, such person as the court thinks fit.

86. Report of offences to the Public Prosecutor

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The Commissioner or an officer authorised in that behalf by the Commissioner may report offences against this Act or any Order or regulations made thereunder directly to the Public Prosecutor.

87. Evidentiary provision

(1) The Commissioner may issue a certificate in respect of any of the following matters, namely, that –

(a) a Mining Right was granted, issued, transferred, or cancelled on or with effect from the date specified in the certificate;

(b) any land identified in the certificate, is or was on the date specified in the certificate, subject to a Mining Right;

(c) a mineral specified in the certificate is or was a mineral to which a Mining Right relates or related;

(d) the person named in the certificate is or was on the date specified in the certificate the holder of a Mining Right;

(e) a condition specified in the certificate –

(i) is or was on the date specified in the certificate a condition of the Mining Right; or

(ii) is a condition on which any consent or approval, so specified, was issued or given;

and, without prejudice to the right to adduce evidence in rebuttal, such a certificate is admissible as evidence of that matter in any proceedings before a court.

(2) The power under subsection (1) to issue a certificate affirming any matter includes a power to issue a certificate denying that matter.

PART 18 – REGULATIONS

88. Regulations

(1) The Minister may by Order published in the Gazette make regulations not inconsistent with the provisions of this Act for the better carrying into effect the provisions of this Act and may prescribe in such regulations all things and matters which are required or necessary to be prescribed thereunder.

(2) Without derogating from the generality of subsection (1), the regulations may include provision for or with respect to –

(a) the form and content of, and conditions with respect to applications for the grant and renewal of licences;

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- (b) exploring, prospecting and mining for minerals and the carrying on of operations and the execution of works for any of those purposes, the method which may or may not be used in exploration, prospecting or mining operations, and the duties of specified persons in relation to those operations;
- (c) the co-ordination of mining operations of neighbouring or contiguous mining areas;
- (d) the demarcation and dimension of exploration, prospecting or mining areas;
- (e) the regulation of matters relating to safety, sanitation and health, the reporting of cases of accident or death occurring in the course of searching for or mining materials or in any related operations, and the holding of inquiries into accidents;
- (f) the prevention of pollution and the dispersal of pollutants, and conserving, and preventing the waste of, minerals;
- (g) the keeping of records and the making of returns and reports;
- (h) the duties of holders of licences on the expiry or determination of licences or relinquishment of areas covered by licences;
- (i) the functions of persons acting in the administration of this Act;
- (j) the registration and transfer of licences or interests in licences;
- (k) the keeping of registers and the making of searches therein, the grant of certificates in connection therewith, and the effect of registration and of any such certificate;
- (l) the determination and amount of royalty payable and the manner of the payment and collection of royalty;
- (m) the circumstances in which fees or rents may be charged and the amount thereof;
- (n) ensuring the safety of navigation and shipping, and the construction, erection, maintenance, operation or use of installations or equipment;
- (o) the issue and conditions of prospecting permits and the exercise of rights thereunder;
- (p) the pegging of claims (including the number and class of claims which may be pegged) and the registration of claims and the demarcation and dimension of claim areas;
- (q) the exercise of rights in and the duties to be performed (including work obligations) in relation to land subject to a claim;
- (r) the transfer of and the creation of shares in a claim and the respective rights of the transferor and transferee;

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- (s) the amalgamation and surrender of claims whether in respect of all or some only of the land in claim areas;
- (t) the issue and conditions of a quarry permit and the exercise of rights thereunder;
- (u) the regulation of the possession or sale or purchase of minerals and the movement or conveyance, of minerals from or in any place or area;
- (v) duties of traders in valuable minerals or precious stones;
- (w) water rights and the use of water;
- (x) permits to occupy land for business purposes connected with mining;
- (y) cutting and use of timber and fuel for purposes connected with prospecting or mining;
- (z) the settlement of disputes;

(3) Any Order or regulations made under this section or made under any other provisions of this Act may provide that any failure to comply therewith or any contravention or breach thereof shall on conviction be punishable by such fine not exceeding VT 100,000 or by such term of imprisonment not exceeding 12 months as may be specified in such Orders or regulations, or by both such fine and imprisonment.

PART 19 – REPEAL AND SAVINGS

89. Repeal of the Mining Joint Regulation No. 2 of 1957

The Mining Joint Regulation No. 2 of 1957 is hereby repealed.

90. Existing rights

Without prejudice to the provisions of the Interpretation Act [Cap. 132], the repeal of the Mining Joint Regulation No. 2 of 1957 shall not affect the validity of any mineral right subsisting immediately prior to the coming into force of this Act (hereinafter called "existing right"):

Provided that –

- (a) any mineral right deemed to be –
 - (i) a prospecting licence issued under the provisions of the Joint Mining Regulation No. 2 of 1957, shall be deemed for the purposes of this Act to be a prospecting licence issued under the provisions of Part 7 of this Act;
 - (ii) a mining lease issued under the provisions of the Joint Mining Regulation No. 2 of 1957, shall be deemed for the purposes of this Act to be a mining licence issued under the provisions of Part 9 of this Act;

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(b) in the event of any conflict between the terms and conditions of any existing right and the provisions of this Act and any Order or regulations made thereunder, the terms and conditions of such existing right shall continue to be valid and enforceable notwithstanding the provisions of this Act;

(c) where provision is made for the extension or renewal of such existing right, the terms and conditions incorporated in the mineral right as renewed shall be subject to the provisions of this Act and any Order or regulations made thereunder.

Table of Amendments

75, 77 Reference to Lands Referee changed to Valuer-General, per Act 22 of 2002
78(1), (2), (3) Title of Director amended per Act 24 of 2003