

THE MINES AND MINERALS (AMENDMENT) BILL, 2007

MEMORANDUM

The object of this Bill is to amend the Mines and Minerals Act so as to—

- (a) revise the provisions of section *nine* so as to subject the provisions in a development agreement to the law;
- (b) provide for the exclusion of fiscal terms from a development agreement;
- (c) clarify the provisions of section *ninety-seven* so that the reliefs from customs and excise duties which apply to holders of mining rights do not extend to contractors and subcontractors;
- (d) increase the mineral royalty on base metals from zero point six per centum (0.6%) gross value to three per centum (3%) gross value;
- (e) provide for the grant of a mineral processing licence to a person involved solely in mineral processing operations; and
- (f) provide for matters connected with or incidental to the foregoing.

M. MALILA,
Attorney-General

N.A.B. 7, 2007
9th February, 2007

GOVERNMENT OF ZAMBIA

ACT

No. 6 of 2007

Date of Assent: 12th April, 2007

An Act to amend the Mines and Minerals Act.

[13th April, 2007

ENACTED by the Parliament of Zambia

Enactment

1. (1) This Act may be cited as the Mines and Minerals (Amendment) Act, 2007, and shall be read as one with the Mines and Minerals Act, in this Act referred to as the principal Act.

Short title and commencement

Cap. 213

(2) This Act shall come into operation on 1st April, 2007.

2. Section *two* of the principal Act is amended in subsection (1) by—

Amendment of section 2

(a) the deletion of the definition of “ mining operations ” and the substitution therefor of the following definition:

“ mining operations ” means any operation carried out under a mining right referred to in section *six*; and

(b) the insertion in the appropriate place of the following new definition:

“ mineral processing ” means the practice of beneficiating or liberating valuable minerals from their ores which may combine a number of unit operations such as crushing, grinding, sizing, screening, classification, washing, froth flotation, gravity concentration, electrostatic separation, magnetic separation, leaching, smelting, refining,

calcining and gasification and includes other processes incidental thereto.

- Amendment of section 5 **3.** Section *five* of the principal Act is amended in subsection (1) by—
- (a) the insertion after the word “ operations ” of the words “ or mineral processing operations ”; and
 - (b) the insertion after the word “ right ” of the words “ or mineral processing licence ”.
- Amendment of section 7 **4.** Section *seven* of the principal Act is amended in subsection (2)—
- (a) by the deletion of the word “ or ” at the end of paragraph (c);
 - (b) by the deletion of the full stop at the end of paragraph (d) and the substitution therefor of a colon and the word “ or ”; and
 - (c) by the insertion after paragraph (d) of the following new paragraph:
 - (e) individual or company whose operations consist solely of mineral processing.
- Amendment of section 8 **5.** Section *eight* of the principal Act is amended—
- (a) in the side note by the insertion after the word “ rights ” of the words “ or mineral processing licences ”; and
 - (b) in subsection (1) by the insertion after the words “ mining right ”, wherever they appear, of the words “ or mineral processing licence ”.
- Amendment of section 9 **6.** Section *nine* of principal Act is amended—
- (a) in subsection (1) by the deletion of the word “ Republic ” and the substitution therefor of the word “ Government ”;
 - (b) by the deletion of subsection (2) and the substitution therefor of the following subsection:
 - (2) An agreement referred to in subsection (1) shall be known as a development agreement and may, subject to the provisions of the law, contain provisions binding on the Government in relation to—

- (a) mining operations under a large-scale mining licence, or the financing of any operations under such a licence;
- (b) the circumstances or the manner in which the Minister or the Director shall exercise any power or discretion conferred on them by this Act in respect of the licence;
- (c) the settlement of disputes arising out of or relating to the agreement, the administration of this Act, or the terms or conditions of a large-scale mining licence, including provisions relating to the settlement of any such dispute by international arbitration; and
- (d) matters connected with or incidental to the foregoing:

Provided that a development agreement shall not contain provisions relating to fiscal matters.

7. Section *ten* of the principal Act is amended—

Amendment of section 10

- (a) in the side note by the insertion after the word “ rights ” of the words “ or mineral processing licences ”
- (b) in subsection (1) by the insertion after the word “ right ” of the words “ or mineral processing licence ”; and
- (c) in subsection (2) by the insertion after the word “ right ” of the words “ or mineral processing licence ”.

8. Section *eleven* of the principal Act is amended by the insertion after the word “ right ”, wherever it appears, of the words “ or mineral processing licence ”.

Amendment of section 11

9. Part II of the principal Act is amended in the heading by the insertion of the words “ AND MINERAL PROCESSING LICENCES ” after the word “ RIGHTS ”.

Amendment of Part II

10. The principal Act is amended by the insertion after Part III of the following new Part:

Insertion of new Part III A

PART III A

MINERAL PROCESSING OPERATIONS

Mineral Processing Licences

28 A. A mineral processing licence confers on the holder of the licence exclusive rights to carry on mineral processing in the mineral processing area for the minerals specified in the licence and to do all such other acts and things as are necessary for, or reasonably incidental to the carrying on of those operations.

Rights conferred by mineral processing licence

Application
for mineral
processing
licence

28 B. (1) An application for a mineral processing licence shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed fee.

(2) The application shall include—

- (a) in the case of an applicant who is an individual, the applicant's name, address and nationality and in respect of a company that is an applicant, its registered name and address and the names, addresses and nationalities of the directors and of any shareholder who is the beneficial owner of more than five per centum of the issued capital;
- (b) a full description of the area of land over which the licence is sought, including its surrounding settlements or developments and a plan of the area prepared in such manner and showing such particulars as the Minister may reasonably require;
- (c) a statement of the minerals to be processed;
- (d) a copy of the applicant's title to the land or written consent from a surface right holder or mining right holder;
- (e) the proposed programme for mineral processing operations including a forecast of plant capacity, capital investment, facilities, mineral processing methods and the estimated mineral recoveries;
- (f) an environmental management plan approved by the Environmental Council of Zambia in accordance with section *ninety-six* of the Environmental Protection and Pollution Control Act including the applicant's proposals for the prevention of pollution, the treatment of waste, the protection and reclamation of land and water resources, and for eliminating or minimising the adverse effects on the environment of the mineral processing operations; and
- (g) such further information as may be prescribed by the Minister by statutory instrument.

Cap. 204

(3) The applicant shall commission and produce to the Minister an environmental impact study on the proposed mineral processing operations approved by the Environmental Council of Zambia.

- 28C. (1) A mineral processing licence shall not be granted to or held by—
- (a) an individual who—
- (i) is under the age of eighteen years;
 - (ii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any agreement or scheme of composition with the individual's creditors, or takes advantage of any legal process for the relief of bankrupt or insolvent debtors; or
- (b) a company which is in liquidation, other than liquidation which forms part of a scheme for the reconstruction of the company or for its amalgamation with another company.

Persons disqualified from holding mineral processing licences

(2) Any document or transaction purporting to grant a mineral processing licence to any person not entitled to hold the licence shall be void and of no effect.

28 D. (1) The Minister shall, within sixty days of receipt of an application referred to in section *twenty-eight B*, grant a mineral processing licence to the applicant, unless—

Grant of mineral processing licence

- (a) the Minister considers that the applicant has not satisfied the requirements referred in section *twenty-eight B*;
- (b) the applicant is disqualified from holding a mineral processing licence under this Act;
- (c) the applicant is the holder of another mineral processing licence and is in breach of any condition of that licence, any of the provisions of this Act or any regulations in relation thereto;
- (d) the area of land for which the applicant has made an application or a part of it is subject to another mineral processing licence, extends to, or is included in an area in respect of which the Director has granted preliminary investigation rights on conditions which impose work or expenditure obligations, unless in any such case the applicant is the holder of that mineral processing licence; or
- (e) the area of land for which application has been made covers or includes an area of land for which an application has been made by another person who has priority over the applicant.

(2) A mineral processing licence shall —

- (a) state the date of the grant of the licence, the period for which it is granted, not exceeding seven years, and the conditions on which it is granted;
- (b) specify the minerals in respect of which it is granted; and
- (c) include a description and plan of the mineral processing area.

(3) There shall be appended to a mineral processing licence a programme of mineral processing operations, as accepted by the Minister, which shall form part of the conditions of the licence.

(4) In determining the date for the commencement of the licence, the Minister may take account of any period not exceeding twelve months from the date of the grant which is required by the applicant to make any necessary preparation for mineral processing operations.

Renewal of
mineral
processing
licence

28E. (1) A mineral processing licence shall on application be renewed by the Minister for such period not exceeding seven years as the licensee may require, if the holder of the licence—

- (a) undertakes to carry out during the renewal period, an adequate programme of mineral processing operations;
- (b) is not in breach of any condition of the licence or in breach of any of the provisions of this Act or the regulations in relation to the licence:

Provided that the Minister shall not reject an application for renewal for reasons contained in this paragraph unless the applicant has been given details of the applicant's default and has failed to remedy the default within such reasonable time as the Minister has allowed or, where a default is not capable of the remedy, has not offered in respect thereof reasonable compensation.

Obligations
of holder of
mineral
processing
licence

28F. The holder of a mineral processing licence—

- (a) shall commence mineral processing operations within twelve months, or such further period as the Minister may allow after the date of the grant of the licence or such other date as is stated in the licence as its commencement date;
- (b) shall give notice to the Minister of mineral recoveries within thirty days of the recovery; and
- (c) shall expend on mineral processing operations not less than the amount prescribed or required by the terms and conditions of the licence to be so expended:

Provided that where there is a disparity between the amount prescribed or required by the terms and conditions of the licence to be so expended and what is actually expended, the holder of the mineral processing licence shall account for the disparity.

28G. Any person who prior to the commencement of this Act—

- (a) is a holder of a large scale mining licence issued under Part III but is involved solely in mineral processing; or
- (b) is carrying out mineral processing operations without a licence;

Requirement of person involved in mineral processing to obtain mineral processing licence

shall be required to apply for a mineral processing licence within ninety days of the commencement of this Act.

11. Section *forty-six* of the principal Act is amended—

Amendment of section 46

- (a) in paragraph (a) of subsection (1) by the insertion after the word “ operations ” of the words “ or mineral processing operations ”; and
- (b) in subsection (2) by the insertion after the words “ Part III ” of the words “ or Part III A ”.

12. Section *fifty* of the principal Act is amended by the deletion of subsection (4) and the substitution therefor of the following subsection:

Amendment of section 50

(4) The Minister may, by notice in writing to a holder of a licence or permit, cancel the licence or permit on the occurrence of an event which, as provided by section *seven* or section *twenty-eight C*, renders that person ineligible to hold a mining right or mineral processing licence.

Insertion of new section 52 A **13.** The principal Act is amended by the insertion immediately after section *fifty-two* of the following new section:

Termination of mineral processing licence for insufficient production

52A. Where any holder of a mineral processing licence has failed to carry out mineral processing operations in accordance with that holder's proposed programme of mineral processing operations and for a period of three successive years has recovered less than fifty per centum of the minerals which should have been recovered under that holder's estimated recovery rate, the Minister may cancel that holder's licence.

Amendment of section 54

14. Section *fifty-four* of the principal Act is amended—
 (a) in paragraph (a) of subsection (1) by the insertion after the words “ Part III ” of the words “ or Part III A ”;
 (b) by the deletion of subsection (4) and the substitution therefor of the following subsection:

(4) No mining right or mineral processing licence may be transferred to a person disqualified under section *seven* or section *twenty-eight C* from holding that right or licence; and

(c) in subsection (6) by the insertion after the word “ right ” of the words “ or mineral processing licence ”.

Amendment of section 55

15. Section *fifty-five* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following subsection:

(1) A company that holds a mining right or a mineral processing licence shall not, after the date of the grant of the right or licence, without the written consent of the Minister—

(a) register the transfer of any share or shares in the company to any particular person or that person's nominee; or

(b) enter into an agreement with any particular person, if the effect of doing so would be to give that person control of the company.

16. Section *sixty-one* of the principal Act is amended—

Amendment
of
section 61

(a) by the deletion of the words “ Whenever in the course of prospecting or mining operations any disturbance of the rights of the owner or occupier of land or damage to any crops, trees, buildings, stock or works thereon is caused, the owner of the mining right by virtue of which such operations are or were carried out shall be liable to pay to such owner or occupier fair and reasonable compensation for such disturbance or damage according to their respective rights or interest, if any, in the property concerned:” and the substitution therefor of the words “Whenever in the course of prospecting, mineral processing or mining operations any disturbance of the rights of the owner or occupier of land or damage to any crops, trees, buildings, stock or works thereon is caused, the owner of the mining right or holder of a mineral processing licence, as the case may be, by virtue of which such operations are or were carried out shall be liable to pay to such owner or occupier fair and reasonable compensation for such disturbance or damage according to their respective rights or interest, if any, in the property concerned ”; and

(b) by the insertion in paragraph (b) of the proviso of a comma and the words “ mineral processing ”after the word “ prospecting ”.

17. The principal Act is amended by the repeal of section *sixty-six* and the substitution therefor of the following new section:

Repeal and
replacement
of
section 66

66. (1) The holder of a large-scale mining licence, small-scale mining licence, gemstone licence or an artisan’s mining right shall in accordance with the licence and this Act pay to the Government a royalty at the rate of—

Royalties
on
production
of minerals

(a) three per centum of the gross value of the base metals produced under the licence;

(b) five per centum of the gross value of the gemstones or precious metals produced under the licence; or

(c) two per centum of the gross value of the minerals other than the minerals referred to in paragraphs (a) and (b) produced under the licence;

as the case may be:

Provided that a company which is party to a development agreement signed prior to 1st April, 2007, shall after the commencement of this Act renegotiate with the Government the rate of mineral royalty to be paid by such company to the Government and any such rate which is agreed upon in the negotiations shall be the rate payable under the development agreement.

(2) In this section—

“ gross value ” means the realised price for a sale free-on-board, at the point of export from Zambia or point of delivery within Zambia:

Provided that if the Minister considers that the realised price does not correspond to the price that would have been paid for the minerals if they had been sold on similar terms in a transaction, at arms length, between a willing seller and a willing buyer, a notice may be given to that effect to the licensee, and the amount of the gross value shall be determined in accordance with mechanism contained in section *ninety-seven A* to *ninety-seven D* of the Income Tax Act.

Cap. 323

Amendment
of
section 70

18. Section *seventy* of the principal Act is amended—

(a) in the side note by the insertion after the words “ Part III ” of the words “ and Part III A”; and

(b) in subsection (1) by the insertion after the words “ retention licence ” of a comma and the words “ mineral processing licence ”.

Repeal and
replacement
of
section 75

19. The principal Act is amended by the repeal of section *seventy-five* and the substitution therefor of the following section:

Environment
to be
considered
when granting
mining rights
or
mineral
processing
licences

75. In deciding whether or not to grant any mining right or mineral processing licence, the Minister shall take into account the need to conserve and protect —

(a) the air, water, soil, flora, fauna, fish, fisheries and scenic attractions; and

(b) the features cultural, architectural, archaeological, historical or geological interests;

in or on the land over which the right or licence is sought;

and the Minister may in consultation with the Minister responsible for environment, cause such environmental impact studies and other studies to be carried out as the Minister considers necessary to enable such a decision to be made.

20. The principal Act is amended by the repeal of section *seventy-six* and the substitution therefor of the following section:

Repeal and replacement of section 76

76. The conditions subject to which the mining right or mineral processing licence is granted or renewed shall include such conditions as may be prescribed by the Minister, by statutory instrument, or as the Minister may, in a particular case, otherwise determine, in relation to—

Conditions for protection of environment

(a) the conservation and protection of—

(i) the air, water, soil, flora, fauna, fish, fisheries and scenic attractions; and

(ii) the features of cultural, architectural, archeological, historical or geological interest;

in or on the land subject to the right or licence;

(b) the rehabilitation, leveling, re-grassing, re-forestation or contouring of such part of the land over which the right has effect as may have been damaged or adversely affected by prospecting operations, mining operations or mineral processing operations; and

(c) the filing in, sealing or fencing off of excavations, shafts and tunnels.

(2) Any conditions of the kind referred to in subsection (1)—

(a) shall conform to specifications and practices established by national standards for the management of the environment as it is affected by mining or mineral processing operations; and

(b) may include requirements for the lodgement, by an applicant for the grant or renewal of a licence or permit, of one or more cash deposits for securing the performance by such applicant of all or any such conditions.

Amendment
of
section 77

21. Section *seventy-seven* of the principal Act is amended—

(a) in the side note by the insertion after the word “right” of the words “or mineral processing licence”; and

(b) by the deletion of subsection (1) and the substitution therefor of the following subsection:

(1) The Director of Mine Safety may cause to be served on a person who is or has been the holder of a mining right or mineral processing licence, a written notice directing the person to take specified steps within a specified time, to give effect to any conditions included in an environmental plan, development agreement or otherwise attaching to the right or licence for the protection of the environment.

Amendment
of
section 79

22. Section *seventy-nine* of the principal Act is amended—

(a) in the side note by the insertion after the word “plant” of the words “or mineral processing plant”;

(b) by the deletion of subsection (1) and the substitution therefor of the following subsection:

(1) The holder of a mining right or mineral processing licence over land that ceases to be subject to the mining right or mineral processing licence—

(a) may within the prescribed period; and

(b) shall, if directed to do so by the Director of Mine Safety by notice in writing, within the period specified in the notice, cause to be removed from the land any mining or mineral processing plant brought onto, or erected upon that land in the course of mining or mineral processing operations carried out under the mining right or mineral processing licence.

- 23.** Section *eighty* of the principal Act is amended—
- Amendment
of
section 80
- (a) in the side note by the insertion after the word “ plant ” of the words “ or mineral processing plant ”; and
- (b) by the insertion after the word “ plant ”, wherever it appears, of the words “ or mineral processing plant ”.
- 24.** Section *eighty-three* of the principal Act is amended in subsection (2) by the insertion after the word “ exploration ” of a comma and the words “ mineral processing ”.
- Amendment
of
section 83
- 25.** Section *eighty-five* of the principal Act is amended by the insertion after the word “right” of the words “ or mineral processing licence ”.
- Amendment
of
section 85
- 26.** Section *eighty-nine* of the principal Act is amended in subsection (1) by the insertion after the word “ right ”, wherever it appears, of the words “ or mineral processing licence ”.
- Amendment
of
section 89
- 27.** Section *ninety-three* of the principal Act is amended—
- Amendment
of
section 93
- (a) in the side note by the insertion after the words “ Part III ” of the words “ and Part III A ”; and
- (b) in paragraph (a) of subsection (1) by the insertion after the words “ Part III ” of the words “ and Part III A ”.
- 28.** Section *ninety-four* of the principal Act is amended in subsection (1) by the insertion after the word “ right ” of the words “ or mineral processing licence ”.
- Amendment
of
section 94
- 29.** Section *ninety-seven* of the principal Act is amended in subsection (1)—
- Amendment
of
section 97
- (a) by the deletion of the full stop at the end of the subsection and the substitution therefor of a colon; and
- (b) by the insertion after the colon of the following new proviso:
- Provided that any relief granted to a holder of a mining right shall not be extended to a contractor or subcontractor of the holder of a mining right.
- 30.** Section *one hundred and one* of the principal Act is amended—
- Amendment
of
section 101
- (a) in subsection (1)—
- (i) by the deletion of the words “ mining right granted under Part III ” and the substitution therefore

of the words “ mining right or mineral processing licence granted under Part III or Part III A, as the case may be ”; and

(ii) by the insertion in paragraph (b) of the words “ or mineral processing licence ” after the words “ mining right ”;

(b) in subsection (4)—

(i) by the insertion after the word “ right ” of the words “ or mineral processing licence ”; and

(ii) by the insertion after the word “ operations ” of the words “ or mineral processing operations ”

Amendment
of
section 104

31. Section *one hundred and four* of the principal Act is amended—

(a) by the insertion after the words “ mining rights ”, wherever they appear, of the words “ or mineral processing licences ”; and

(b) in subsection (2) by the insertion after the word “ right ” of the words “ or licence ”.

Amendment
of
section 105

32. Section *one hundred and five* of the principal Act is amended—

(a) in paragraph (b) of subsection (1) by the insertion after the word “ right ” of the words “ or mineral processing licence ”;

(b) in subsection (2) by the insertion after the word “ right ” wherever it appears, of the words “ or mineral processing licence ”; and

(c) in subsection (3) by the insertion after the word “ right ” of the words “ or mineral processing licence ”.

Amendment
of
section 108

33. Section *one hundred and eight* of the principal Act is amended in subsection (2)—

(a) by the insertion in paragraph (e) of a comma and the words “ mineral processing ” after the word “ prospecting ”; and

(b) by the deletion of paragraph (g), and the substitution therefore of the following paragraph:

(g) the reporting of cases of accident and death occurring on any prospecting area or mining area

in connection with prospecting, mining or mineral processing operations.

34. The principal Act is amended by the repeal of the First Schedule. Repeal of
First
Schedule

35. The Fifth Schedule of the principal Act is amended, in paragraph (2)— Amendment
of
Fifth
Schedule

(a) by the insertion in the side note of the words “ or mineral processing licence ” after the word “ licence ”; and

(b) by the insertion in subparagraph (c) of the words “ or mineral processing operations” after the word “ operations ”.
