

Mines and Minerals Bill of Bhutan 2020

Kingdom of Bhutan

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PREAMBLE

WHEREAS the Royal Government considers it expedient to reform the law on regulation and management of mining activities in the country for long term development of mining sector, building mineral value chain, ensuring broad-based ownership, achieving economy of scale of mines, enhancing transparency and accountability, and ensuring scientific, environment-friendly and socially responsible mining.

The Parliament of the Kingdom of Bhutan hereby enacts as follows:

CHAPTER I PRELIMINARY

Title

1. This Act is the Mines and Minerals Act of Bhutan 2020.

Commencement

2. This Act comes into force on theDay of the.... Month of theYear corresponding to.....Day of the.....Month of 2020.

Extent

3. This Act extends to the whole of Kingdom of Bhutan.

Application

4. This Act applies to a person:
 - (1) undertaking prospecting, exploration, mining and related activities in the country; and
 - (2) directly or indirectly undertaking any activity related to activities mentioned in subsection (1).

Objective

5. The objective of this Act are, in relation to prospecting, exploration, mining and related activities, to:
 - (1) delineate policy and regulatory functions;
 - (2) strengthen and ensure transparency and accountability in mines and minerals management;
 - (3) attract and promote investment;
 - (4) establish standards and rules of conduct;
 - (5) promote in-country value addition and value chain creation;

- (6) strengthen regulatory and monitoring aspects of geotechnical and mining activities;
- (7) ensure responsible and sustainable mining; and
- (8) provide for matters incidental thereto.

Repeal

6. This Act repeals:
 - (1) the Mines and Minerals Management Act, 1995;
 - (2) section 51(d) and 53(d) of the Local Government Act, 2009;
 - (3) section 3g(iv) of the Forest and Nature Conservation Act, 1995 on boulders, stone, sand, gravel and rocks; and
 - (4) section 26(b) of the Water Act of Bhutan 2011.

CHAPTER II MINISTRY AND DEPARTMENT

Powers of the Ministry

7. The Ministry shall have the power to:
 - (1) formulate policy related to mines and minerals management, and mining operation;
 - (2) review laws related to mines and minerals in the country;
 - (3) issue rules, regulations, and notifications under this Act;
 - (4) issue rules or regulations separately for underground mining when required;
 - (5) delegate powers and relevant functions to the Department and Authority for the proper implementation of this Act;
 - (6) review and propose royalty and mineral rent to the Parliament;
 - (7) impose fees and charges applicable under this Act;
 - (8) approve issuance of exploration license;
 - (9) approve issuance of Mining Rights Certificate;
 - (10) prescribe conditions of competition through price control when required;
 - (11) promote markets through enabling measures and strategies; and
 - (12) issue moratorium on constructions and development works from being carried out on sites identified for future mineral development.

Powers of the Department

8. The Department shall control all mineral rights and geoscientific activities, and may disqualify a person from applying for mineral rights.

9. The Department may issue notification on any matter in respect of which actions or notices are necessary for implementation of the relevant provisions of this Act.
10. The Department shall visit any mine or other premises directly or indirectly related to a mining lease or minerals.
11. The Department shall issue directive to the Authority:
 - (1) to implement policy related to mines and mineral management;
 - (2) to lease mines in the designated area as per the Mining Rights Certificate;
 - (3) to permit short term mining, surface collection for commercial purpose, fossicking and artisanal mining in the designated area as per the Rights Certificate;
 - (4) on matters related to mines and minerals in national interest; or
 - (5) to furnish information, reports and status on mines, leases, permits and directives.
12. The Department shall implement and enforce the relevant provisions of this Act, and the rules, and regulations thereof.

Functions of the Department

13. The Department shall:
 - (1) assist the Ministry in formulating and reviewing policies, and laws related to mines and minerals;
 - (2) frame and issue guidelines related to the management of mines and minerals in the country;
 - (3) produce geological maps at regional scale as a primary source of information on geology for land planning, environment monitoring, seismic risks and geohazards prevention, civil works planning and mineral resource of the country;
 - (4) produce the policy declaration for geo-data management;
 - (5) carry out prospecting and exploration of priority minerals on its own or outsource to a person in consultation with relevant agencies;
 - (6) oversee, execute and regulate geoscientific activities;
 - (7) receive application and issue prospecting and exploration license;
 - (8) receive application and issue Mining Rights Certificate for new mine and renewal thereof;
 - (9) receive application and issue Rights Certificate for short term mining, surface collection for commercial purpose, fossicking and artisanal mining and renewal thereof;
 - (10) administer and monitor prospecting and exploration activities including collection of applicable fees and charges;
 - (11) ensure reclamation of any land deterioration caused by prospecting or exploration activity;
 - (12) resolve mining boundary disputes;

- (13) maintain a standard mineral cadastre through a Mineral Rights Cadastre unit;
- (14) provide professional advice relating to mining and related activities to the government;
- (15) list, review and update strategic minerals and reserves when required; and
- (16) encourage and support creation of a professional association related to geoscience and mining.

CHAPTER III MINING REGULATORY AUTHORITY

Establishment of the Mining Regulatory Authority

14. There shall be Mining Regulatory Authority established under this Act to enforce the regulatory provisions of this Act.
15. The Authority:
 - (1) shall be an autonomous body;
 - (2) shall have the Board;
 - (3) shall have an official seal;
 - (4) may acquire, hold and dispose real and personal property; and
 - (5) may sue and be sued in its own name.

Composition of the Board

16. The Board shall comprise of not more than 7 members including:
 - (1) the Chairperson;
 - (2) not more than 5 members; and
 - (3) the Chief Executive Officer of the Authority, as a member secretary.
17. The Ministry shall appoint members of the Board from relevant agencies as prescribed, for a period not exceeding 3 years. A person eligible for appointment as member shall:
 - (1) be a natural born citizen of Bhutan;
 - (2) be of sound mental fitness for efficient and effective discharge of the powers and duties vested in and imposed by this Act;
 - (3) have no financial or other interests or any legal incapacity that is likely to prejudice his or her functions;
 - (4) have no engagement in mining business; and
 - (5) not have political affiliations.
18. The Board shall elect a member each from among the members as Chairperson and Deputy Chairperson.

19. If the Chairperson is unable to act or the office of Chairperson is vacant, the deputy Chairperson may exercise all or any of the functions conferred, or the duties imposed, on the Chairperson.
20. The member of the Board excluding the ex-officio member shall be eligible for reappointment for not more than 2 terms.
21. A member of the Board may resign at any time by giving 1 month notice in writing to the Ministry.
22. The Board may adopt its own rules of procedures to conduct its affairs.

Vacancy of the Board

23. The membership of the Board becomes vacant:
 - (1) on death of a member or if proven to be of unsound mind;
 - (2) if a member without sufficient cause, fails to attend 3 consecutive meetings of the Board;
 - (3) if a member breaches the code of conduct under section 42 of this Act;
 - (4) if a member is convicted to criminal offence by the court;
 - (5) if a member is adjudged bankrupt, whether discharged or not; or
 - (6) if a member is transferred from the relevant sector or resigns.
24. Vacancy under section 23 of this Act may be filled in accordance with section 17 of this Act.

Functions of the Board

25. The Board shall:
 - (1) approve Mine Feasibility Study report to lease a mine;
 - (2) take stock of the permits issued and make recommendations to the Department, where relevant.
 - (3) approve Mine Closure and Reclamation Plan and utilization of Mine Reclamation Fund;
 - (4) decide on revocation of a mining lease;
 - (5) decide on the compensatory afforestation or reclamation activity;
 - (6) approve surrender and closure of a mine or part thereof;
 - (7) approve utilization of Community Development Fund;
 - (8) decide on the annual budget and human resources;
 - (9) approve organizational development of the Authority;
 - (10) ensure execution of notification and policy directives of the Ministry;
 - (11) oversee the exercise of any delegated functions; and
 - (12) undertake any other matter as may be necessary for implementation of the relevant provisions of this Act.

Meeting, Quorum and Decisions of the Board

26. The Board shall convene at least 4 meetings in a year or such other special meetings upon a request in writing by a member to the Chairperson. The Chairperson may accordingly decide to convene or not to convene the meeting.
27. The Board shall meet at such time and place as the Chairperson may decide.
28. The Board shall convene a meeting by a notice to the members at least 7 days before the meeting and shorter notice may be given for special meeting.
29. The quorum for the meeting of the Board shall be two third of the members.
30. The decisions of the Board shall be made by a simple majority vote of the members present.
31. Each member shall have 1 vote, and the Chairperson shall have a casting vote in the event of a tie.
32. A member of the Board shall declare conflict of interest if the member is directly or indirectly interested in a matter being considered at a meeting of the Board.
33. A member making a disclosure under section 32 of this Act shall not take part in any discussion or decisions relating to the matter.
34. A disclosure under section 32 of this Act shall be recorded in the minutes of the meeting.

Secretariat of the Authority

35. The Authority shall have a secretariat headed by the Chief Executive Officer selected through an open interview by the Board.
36. The Chief Executive Officer shall:
 - (1) be accountable to the Board;
 - (2) record and keep the minutes of all proceedings and other records of the Board; and
 - (3) have custody of the seal of the Authority.
37. The Chief Executive Officer may appoint official and staff with the approval of the Board as to the numbers, and the terms and conditions for appointment shall be prescribed under the service rules of the Authority.

Functions of the Authority

38. The Chief Executive Officer shall:
 - (1) oversee the management and administration of the Authority;

- (2) exercise the powers and perform the functions under this Act and the rules, and regulations thereof; and
 - (3) be responsible for financial operations of the Authority.
39. The Chief Executive Officer may issue notifications for effective implementation of the relevant provisions of this Act.
40. The Authority shall:
- (1) lease mine as per the Mining Rights Certificate accorded by the Department;
 - (2) issue permit for short term mining, surface collection for commercial purpose, fossicking and artisanal mining as per the Rights Certificate accorded by the Department;
 - (3) regulate and monitor surface collection, fossicking and mining operations;
 - (4) allow sale of minerals extracted in the process of land and infrastructure development approved by concerned authority;
 - (5) inspect any mine or other premises directly or indirectly related to a mining lease or minerals to ensure compliance under this Act;
 - (6) ensure employment of adequate professional manpower in every mine as prescribed;
 - (7) collect and manage Mine Reclamation Fund;
 - (8) spearhead consultation with public to discuss post mining reclamation towards the end of mining operation, where relevant;
 - (9) ensure post mining reclamation in accordance with the approved Mine Closure and Reclamation Plan;
 - (10) assess, levy, collect and audit mineral royalty, levies, fees, charges and rents on time;
 - (11) monitor import and export of minerals;
 - (12) conduct search and seizure under this Act;
 - (13) impose fines and penalties provided under this Act and the rules, and regulations thereof;
 - (14) maintain statistics, documents, maps and appropriate technical and financial records of all permits and leases;
 - (15) disseminate information on mining, surface collection for commercial purpose and fossicking;
 - (16) provide technical advice to the Ministry and the Department on matters related to policy and management of mineral resources; and
 - (17) provide relevant data and information to the Department.

Cooperation with other bodies

41. In exercising its powers or discharging its functions under this Act, the Authority may work in cooperation with Royal Bhutan Police or other law enforcement agencies, or any person in private sector.

Code of conduct

42. The Authority shall perform its functions in a manner that:
- (1) is transparent and objective;
 - (2) is fair, reasonable and efficient;
 - (3) is non-discriminatory;
 - (4) promotes fair competition;
 - (5) does not lead to misuse of privileged information; and
 - (6) is in compliance with this Act and the regulations thereof.

Finance

43. The government shall provide budgetary support to finance the activities of the Authority.

Framework for governing Human Resource, Delegation of Powers and Procurement

44. The Authority shall adopt rules to govern human resource, delegation of powers and procurement.

Remuneration

45. The Chairperson and the members shall be paid such sitting fees, travel, and other allowances as approved by the Ministry of Finance.
46. The Chief Executive Officer, officials and staff shall be paid such remuneration, travel and other allowances as prescribed in the Service Rules.

CHAPTER IV MINERAL PROSPECTING AND EXPLORATION

Eligibility

47. Prospecting or exploration of minerals shall be permitted to a person as provided under this Act and the rules, and regulations thereof.
48. A person fulfilling the criteria under the rules, and regulations shall be eligible to obtain prospecting or exploration license from the Department.

Limitation

49. A person shall not be required to apply for prospecting or exploration license for exposed minerals where the deposit can be directly assessed as feasible for mining.

50. If a person discovers any strategic mineral and fossil specimen during prospecting or exploration of permitted minerals, the person shall report to the Department for compensation, collaboration for development or as may be determined by the Ministry.

Prospecting License

51. A person shall apply for prospecting license to the Mineral Rights Cadastre in the format as prescribed.
52. Subject to section 48 of this Act, the Mineral Rights Cadastre shall process the application for prospecting license in the order in which it was received.
53. A prospecting license holder shall have the right to prospect minerals specified in the license.
54. The Department shall give a notice of entry to the landowner or any person in custody of such land before prospecting in private property.
55. The landowner shall allow authorized person to enter his land to carry out mineral prospecting.
56. Issuance of prospecting license shall not require any sectoral clearances from relevant agencies.
57. Notwithstanding section 56 of this Act, use of airborne or unmanned aerial vehicle for geophysical prospecting shall require the necessary clearance from the relevant agency.
58. After the submission of detailed prospecting report, a prospecting license holder shall have the priority right to apply for exploration license of the permissible and specified minerals discovered within the prospecting area.
59. The priority right mentioned under section 58 of this Act shall be exercised by applying for exploration license according to section 61 of this Act.
60. The Department shall permit overlap of area for prospecting of different minerals by different applicants.

Exploration License

61. A person shall apply for exploration license to the Mineral Rights Cadastre in the format as prescribed.
62. Subject to section 48 of this Act, the Mineral Rights Cadastre shall process the application for exploration license in the order in which it was received.

63. The Department shall issue exploration license after obtaining necessary forestry and environmental clearance from the concerned agencies.
64. Subject to this Act, the rules, and regulations and the terms and conditions of the exploration license, an exploration license holder may, in the permitted area:
 - (1) explore the specified minerals; and
 - (2) drill, use equipment and machineries, build communication systems and other facilities necessary for mineral exploration.
65. An exploration license holder shall use the exploration license for the intended purpose, and not for speculation and land banking.
66. Subject to written consent from the landowner, exploration in private land may be allowed.
67. Any use of airborne or unmanned aerial vehicle for geophysical exploration shall require necessary clearance from the relevant agency.
68. The Department shall permit exploration of any nonstrategic minerals discovered during exploration of the mineral under section 64(1) of this Act.
69. After the submission of detailed exploration report, an exploration license holder shall have the priority right to apply for a mining rights of the permissible mineral explored within the permitted area.
70. The priority right mentioned under section 69 of this Act, shall be exercised by applying for mining rights according to section 82 of this Act.
71. The exploration license may be transferred to any eligible person on payment of transfer fee as prescribed.
72. The Department shall permit amalgamation of adjacent exploration licenses or division of a licenses into several titles depending on feasibility.

CHAPTER V MANAGEMENT OF MINING ACTIVITIES

Rights over Mineral Resources

73. The rights over mineral resources shall vest in the State and are the properties of the State.
74. Except as provided under this Act, no person shall be permitted to carry out prospecting, exploration, mining, surface collection, fossicking and related activities.
75. The Mineral Rights Cadastre shall maintain registries, files, documents, maps and procedures related to granting and management of the mineral rights.

76. The State shall have the prerogative to promote and develop minerals whether they occur on private or state owned land, in consultation with the relevant agencies.
77. The Ministry shall have the right to earmark and declare mineral potential areas for future resource tapping and to guide infrastructure and developmental works in such areas.

Value Addition

78. A person shall add value on the mineral before export where it is technically and economically viable.

Management of Mining Lease

79. All mineral reserve proven by the Department shall be allocated through public notification either through sealed or open competitive bidding process or to a State Owned Enterprise.
80. The Ministry shall assess the socioeconomic viability of strategic mineral or strategic reserve to be exploited and recommend the government on the method of allocation for approval.
81. The lessee shall have the exclusive right to operate and sell all nonstrategic minerals in the mine.

Application, Grant, Amalgamation and Transfer of Mining Rights

82. A person shall apply for mining rights to the Mineral Rights Cadastre in the format as prescribed.
83. The Department shall grant a Mining Rights Certificate or transfer the rights if the applicant or the transferee has:
 - (1) adequate financial resources and technical competence to carry out mining operations; and
 - (2) not been disqualified by the Department or the Authority under this Act.
84. The financial and technical requirement of a person under section 83(1) of this Act shall be determined based on the type and size of a mine as prescribed.
85. Subject to section 83 of this Act, the Mineral Rights Cadastre shall process the application for a mining rights in the order in which it was received.
86. The Department shall grant a Mining Rights Certificate to a person after obtaining necessary clearances from the concerned agencies.
87. The validity of clearances obtained shall be for the life of mine except environmental clearance which shall be according to the relevant laws.

88. A person shall not obstruct mining proposal or related activities unless the person is able to establish direct injuries or is likely to suffer as a result of the proposed activity.
89. If a person is able to establish direct injuries or likelihood to suffer as a result of the proposed activity, the Department shall consider the willful obstruction of a proposed mining activity by the person as a valid ground.
90. The Authority, upon grant of Mining Rights Certificate by the Department, shall lease a mine for the expected economic life of the mine or a maximum of 30 years, whichever is less.
91. Subject to this Act, a mining lease may be renewed for the expected economic life of the mine or a maximum of 30 years, whichever is less. The Department may renew a mining lease more than once.
92. The Department shall permit amalgamation of adjacent leases or division of a lease into several titles depending on feasibility.
93. Subject to section 83 of this Act, a Mining Rights Certificate may be transferred or sold to another person.

Mine Feasibility Study

94. The lessee shall prepare a Mine Feasibility Study report including, among other things:
 - (1) a Mine Plan;
 - (2) an Environmental and Social Risk Management and Mitigation Plan;
 - (3) a Progressive Restoration Plan, where relevant; and
 - (4) any other requirements as prescribed.
95. The lessee shall engage a geologist certified by the Department to prepare a detailed geological report of the deposit.
96. The lessee shall engage a mining engineer certified by the Department to prepare the Mine Feasibility Study report of the proposed mine and submit to the Authority.
97. The lessee shall prepare the final Mine Closure and Reclamation Plan in consultation with affected local community and submit to the Authority for approval before cessation of a mining life.

Technical Manpower

98. The lessee shall employ adequate professional manpower in a mine determined based on the type and size of the mine as prescribed.

99. The mines manager who shall be made known to the Authority in writing, shall, on behalf of the lessee:
- (1) be responsible for the control and daily supervision of the mine; and
 - (2) reside close to such mining area.

Accident Reporting and Investigations

100. The lessee shall report to the Authority in the event of an accident resulting in loss of life or serious bodily injury to a person in connection with work directly or indirectly related to a mining lease.
101. The Authority shall immediately investigate for further course of action on receipt of report under section 100 of this Act.
102. The accident spot shall be kept intact until the investigation is completed, except where it is necessary to carry out immediate rescue and safety operations.

Termination

103. The Department shall terminate the Mineral Rights on:
- (1) expiration of the lease or permit term;
 - (2) surrender by the lessee or permit holder of the entire area; or
 - (3) revocation of the lease or permit by the Authority.
104. Upon termination of the Mineral Rights in section 103 of this Act, the rights and obligation of the lessee or permit holder shall cease to exist, except those related to mine reclamation and closure.
105. Subject to this Act and lease agreement, upon termination of a Mineral Rights, the lessee shall:
- (1) remove any building, machinery or other movable property from the mining area within 6 months from the date of permanent closure unless otherwise required by the Authority;
 - (2) not be entitled to any compensation from the government for any immovable property or infrastructures developed in the mining area; and
 - (3) be entitled to fair market price compensation from the government in the event the termination is due to change in government policy or in the national interest and without any fault of the lessee.

CHAPTER VI
RIGHTS AND OBLIGATIONS OF LESSEE

Rights of Lessee

106. Subject to this Act and the Lease Agreement, a lessee may in the mining area:
- (1) have the exclusive right to mine any permissible minerals and sale;
 - (2) construct, operate and maintain mines, roads, aerial ropeways, communication systems and other facilities necessary for mining;
 - (3) establish processing plants upon obtaining necessary approval from the relevant agencies; and
 - (4) surrender the mine or part thereof by giving a written notice to the Authority, which shall be effective on approval in writing.

Obligations of Lessee

107. Subject to this Act and the lease agreement, a lessee shall:
- (1) start mining operation within the period specified;
 - (2) carry out mining operations in accordance with the Mine Plan, Environmental and Social Risk Management and Mitigation Plan and the lease agreement;
 - (3) comply with notification issued by the Department and the Authority;
 - (4) erect and maintain boundary pillars of the mining area as demarcated by the Department;
 - (5) where required, use explosives in accordance with the relevant law;
 - (6) transport minerals after transport permit is issued by the Authority;
 - (7) keep accurate records of all components of the mining operation as prescribed;
 - (8) keep accurate financial records of all components of the mining operation as prescribed;
 - (9) notify the Authority in writing at least 1 month in advance if the lessee intends to cease, suspend or curtail production from the mine;
 - (10) comply with obligations that may continue to apply beyond surrender, suspension, termination or expiry of the lease;
 - (11) comply with the conditions of the Lease Agreement in the event of surrender of any area covered by a lease until the surrender is rendered effective by the Authority;
 - (12) carry out reclamation as per the Mine Closure and Reclamation Plan; and
 - (13) notify the Authority on discovery of mineral other than the leased minerals or rock.
108. The lessee shall comply with safety standards under the existing laws and the mines safety standards as may be adopted by the Authority.

CHAPTER VII
SHORT TERM MINING, SURFACE COLLECTION, FOSSICKING AND ARTISANAL MINING

Application and approval

109. A person shall apply for rights to short term mining, surface collection for commercial purpose, fossicking or artisanal mining to the Mineral Rights Cadastre as prescribed.
110. The Authority or the delegated Agency shall permit noncommercial surface collection of sand and stones for rural purpose as prescribed.
111. The Mineral Rights Cadastre shall process the application under section 109 of this Act in the order in which it was received.
112. The Rights Certificate issued shall be for the specified minerals in the case of short term mining and artisanal mining.
113. The issuance of Rights Certificate for short term mining, fossicking, surface collection for commercial purpose or artisanal mining shall not require community clearance.
114. The issuance of Rights Certificate for short term mining or surface collection for commercial purpose shall require forestry and environmental clearance from the concerned agency.
115. The issuance of Rights Certificate for fossicking and artisanal mining shall not require any sectorial clearance.
116. The Authority shall issue permit to a person based on the Rights Certificate granted by the Department for short term mining, surface collection for commercial purpose, fossicking or artisanal mining as prescribed.
117. The Department may auction an identified surface collection for commercial purpose or fossicking site where the market prospects are large.
118. The permit holder shall not sublet or contract out the permit issued under section 116 of this Act to any person.

CHAPTER VII
ENVIRONMENTAL AND SOCIAL RISK MANAGEMENT

Protection of the Environment and the Affected Communities

119. The Department shall consider the environmental carrying capacity and social risk associated with mining while granting the Mineral Rights.
120. A valid environmental clearance shall be a prerequisite to lease and operate a mine and permit for short term mining and surface collection for commercial purpose.
121. The Mining Rights Certificate holder shall prepare a risk-based Environmental and Social Risk Management and Mitigation Plan for a lease of mine according to the relevant laws.
122. A lessee operating an underground mine or mine with potential environmental and social hazard shall prepare an Emergency Plan and Hazard Preparedness Response Plan and submit to the Authority for approval.
123. A mining applicant shall obtain Land Lease Certificate after due public consultation with the community residing at proximity to the proposed mine.
124. The lessee shall rectify any damage caused to the available local facilities by the operation of mines.

Mine Reclamation Fund and Reclamation

125. The Authority shall maintain and manage Mine Reclamation Fund for lessees through a saving account with a financial institution. The account shall be operated by a joint signatory of the Chief Executive Officer, and head of finance and environment unit of the Authority.
126. The respective principal amount of the Mine Reclamation Fund deposited under section 125 of this Act shall be utilized for post-mining reclamation of the respective mine in accordance with their Mine Closure and Reclamation Plan.
127. The interest earned from the saving account under section 125 of this Act shall be utilized to fund other reclamation, afforestation, revegetation and environmental management activities.
128. In consultation with the relevant agency, a lessee shall carry out compensatory reclamation in other areas in case of a mine not feasible for complete reclamation.
129. The lessee shall carry out progressive mine reclamation and an amount equivalent to the cost of reclamation shall be adjusted as Mine Reclamation Fund in the subsequent years.
130. The Authority shall release the principal amount of the Mine Reclamation Fund of the mine to the lessee to fund post mining reclamation or compensatory reclamation and ensure its utilization as prescribed.

131. Any balance principal amount of the Mine Reclamation Fund after acceptance of the reclamation work under section 126 or 128 of this Act shall be returned to the lessee.
132. If the reclamation under section 126 or 128 of this Act is not in accordance with the Mine Closure and Reclamation Plan, the Authority shall carry out supplementary reclamation of a mine using the balance principal amount of the Mine Reclamation Fund.
133. Notwithstanding section 126 and 128 of this Act, post-mining reclamation of all mines auctioned more than one term shall be carried out by the Authority on exhaustion of the mineral reserve and abandonment of the mine. The Mine Reclamation Fund collected from such mines shall not be refunded.
134. The Authority shall close the mine after the reclamation work is accepted by the Board.

CHAPTER IX MINERAL FISCAL REGIME

Mineral Fiscal Instrument

135. The Ministry may develop and propose a mineral fiscal regime, a progressive fiscal instrument, to extract a proportionate share of the benefit from mineral as revenue to the government through royalty.

Royalty

136. A lessee or permit holder shall pay royalty to the government for mineral mined or lifted, at the rates prescribed by law.

Mineral Rent

137. A lessee or permit holder shall pay mineral rent at the rates prescribed by law to the Authority.

Lease Rent

138. A lessee shall pay lease rent to the Government for the leased mine falling under state owned land according to the Land Act.

Other Fees and Charges by the Ministry

139. A license holder shall pay a progressive prospecting, exploration or extended license fee on an annual basis, at the rates as prescribed.

140. A person, based on the activity, shall:
- (1) pay auction license fee for mines and minerals auctioned under section 79 or section 117 of this Act; or
 - (2) pay an application, lease renewal, transfer or any other fees for services provided at the rates as prescribed.

Other Government Levies

141. A lessee or permit holder shall pay taxes and other government levies in accordance with the rates prescribed by relevant law.

CHAPTER X COMMUNITY ENGAGEMENT AND DEVELOPMENT

Community Engagement

142. The lessee shall provide preference to eligible affected community for employment opportunities and procurement of goods and services.
143. The affected community shall be granted priority to buy equity stake in the mining company.

Socio-economic Benefit Sharing

144. The affected community shall be compensated through benefit sharing scheme as prescribed.
145. The communities shall have access to:
- (1) social infrastructure developed by the lessee; and
 - (2) other infrastructures such as medical facilities, road and water supply.
146. The Authority shall formulate a Community Development Agreement for leased mine prescribing the Benefit Sharing Scheme for the communities.
147. The Authority shall create and manage Community Development Fund maintained in a saving account with a financial institution for the lessee to deposit fund to finance activities under the Community Development Agreement.

CHAPTER XI DUTIES, IMMUNITIES AND INTELLIGENCE

Duties

148. An official of the Department or Authority shall not take any assignment in which his relatives are involved or a case in which he or she may have a conflict of interest.
149. An official authorized by the Department or Authority shall carry out inspections in their respective fields in accordance with this Act, and the rules, and regulations made thereof.
150. An authorized official under section 149 of this Act shall identify himself by producing the Official Identity Card during the field assignment.

Immunity

151. No action or suit shall be instituted or maintained in any court of law for any act or omission carried out in good faith under this Act against:
 - (1) the Department or Authority;
 - (2) official of the Department or Authority; or
 - (3) the committee or a member of the committee;
152. Any willful action or inaction with a corrupt or illegal intent shall not be covered under section 151 of this Act.

Intelligence, Information and Informant

153. Where the Department or the Authority receives information in confidence about a commission or suspected commission of an offence under this Act, that information and the identity of the complainant or informer shall not be disclosed to any person unless there is a court order.

CHAPTER XII SEARCH, SEIZURE AND DISPOSAL

Search

154. The authorized official shall have the authority to:
 - (1) search and control the movement of minerals in designated areas, public roads and all kinds of transport conveyances; or
 - (2) stop a conveyance and conduct search for any mineral, mineral products or documents, where such conveyance is suspected of being engaged or used for unauthorized transport of minerals and mineral product.

Seizure and Transportation

155. The seizure of any mineral, equipment or conveyance under section 176(1) of this Act shall be done after issuance of a seizure notice in the format as prescribed.

156. Any cost relating to the transportation and handling of the seized minerals, equipment or conveyance under section 176(1) of this Act shall be borne by the offender.
157. The Authority shall not be held liable for any damage caused to the conveyance during the period of seizure under section 176(1) of this Act.

Disposal

158. Any seized mineral under section 176(1) of this Act may be disposed through public auction by the Authority or utilized in the manner as prescribed.
159. Any seized equipment or conveyance under section 176(1) of this Act shall be released to the owner on payment of fines and enforcement of penalties.
160. In case of any appeal arising out of penalty under section 176(1) of this Act, the disposal of the seized mineral under section 158 of this Act shall be effected after the administrative appeal procedures under this Act have been exhausted.

CHAPTER XIII APPEALS AND DISPUTE SETTLEMENT

Dispute Settlement Committee, Appeal Committee and Mining Appellate Committee

161. A 3 tier committee shall be established in hierarchical order under this Act to receive appeals and redress the disputes as follows:
 - (1) a Dispute Settlement Committee consisting of 5 members chaired by the Regional Coordinator shall be established at the respective Regional Offices;
 - (2) an Appeal Committee consisting of 5 members chaired by the Chief Executive Officer shall be established at the Authority; and
 - (3) a Mining Appellate Committee consisting of 5 members from relevant sectors of the Ministry chaired by the Secretary shall be established at the Ministry.
162. A member shall not participate in the committee during the discussion of the agenda if he or she was involved in passing the decision leading to the appeal.

Right to appeal

163. A person shall have the right to appeal against the decision of the Department or Authority as per the appeal procedure provided under this Act.

Appeal Procedure

164. An appeal related to prospecting and exploration license and mineral rights shall be made to the Mining Appellate Committee.
165. An appeal related to operation of the lease and permit arising from the decision of Regional Office may be first filed before the Dispute Settlement Committee within 30 days from the date of decision.
166. The appeal against the decision of the Dispute Settlement Committee may be made to the Appeal Committee within 10 working days from the date of the decision.
167. The appeal against the decision of the Appeal Committee or the Authority may be made to the Mining Appellate Committee within 10 working days from the date of the decision.
168. The decision of the Dispute Settlement Committee, Appeal Committee and Mining Appellate Committee shall be made in writing.
169. The decision of the Dispute Settlement Committee, Appeal Committee and Mining Appellate Committee shall be passed within 60 days from the date of appeal in writing.

Appeal to courts

170. If a person is not satisfied with the decision of the Mining Appellate committee, the person may appeal to a court of relevant jurisdiction.
171. Notwithstanding section 163 and the appeal procedure under this Act, a person may file a case directly in a court.

Quorum

172. The quorum for convening meetings in all the committees formed under section 161 of this Act shall not be less than 3 members.

Powers to Waive Off Fines and Penalties

173. The Dispute Settlement Committee, Appeal Committee, and Mining Appellate Committee may waive off any fines and penalty imposed on a person in whole or in part on reasoned grounds.
174. If the appellant pursues the same contention with a higher appeal body or a court of law, the waiver of fines and penalty under section 173 of this Act shall be annulled.

CHAPTER XIV OFFENCES AND PENALTIES

Major Mining Offence

175. A person commits a major mining offence if the person:
- (1) carries out mining activities without prior approval in accordance with this Act;
 - (2) carries out mining activities outside the demarcated area;
 - (3) carries out fossicking and surface collection for commercial purpose without prior approval in accordance with this Act;
 - (4) carries out prospecting or exploration of minerals without prior approval in accordance with this Act;
 - (5) under invoices the value or quantity of minerals sold;
 - (6) purchases any mineral from an unauthorized source or transports minerals without relevant documents;
 - (7) fails to handle and store explosives as per the existing laws;
 - (8) abandons the mine or any portion of the mine lease area with potential risk to the health and safety of a person or the community;
 - (9) alters or removes any mine boundary pillar without approval;
 - (10) fails to submit Mine Closure and Reclamation Plan or carry out post-mining reclamation; or
 - (11) sublets a mining lease or permit for short term mining, surface collection for commercial purpose, fossicking or artisanal mining.

Penalties for Major Mining Offence

176. If a person commits a major mining offence under section:
- (1) 175(1), 175(2), 175(3) or 175(6) of this Act, the person shall be liable to a fine equivalent to twice the value of the mineral along with seizure of the mineral, and equipment and conveyance used for mining;
 - (2) 175(4) of this Act, the person shall be liable to a fine equivalent to 40 days of the daily national minimum wage rate;
 - (3) 175(5) of this Act, the person shall be liable to a fine equivalent to 50 percent of the value of the minerals sold in addition to imposition of levies in arrear;
 - (4) 175(7) of this Act, the person shall be liable in accordance with relevant laws;
 - (5) 175(8) of this Act, the person shall be liable to a fine equivalent to 4 months of the daily national minimum wage rate.
 - (6) 175(9) of this Act, the person shall be liable to a fine equivalent to 4 months of the daily national minimum wage rate and immediate suspension of mining operation until rectified;

- (7) 175(10) of this Act, the person shall result in forfeiture of the Mine Reclamation Fund and disqualification of the lessee from any future mining venture; or
- (8) 175(11) of this Act, the person shall be liable to a fine equivalent to 5 months of the daily national minimum wage rate and suspension of the activity for 3 months.

Minor Mining Offence

177. A person commits a minor mining offence if the person:
- (1) alters or removes any notices or signboards in any mining area without approval of the Authority;
 - (2) fails to implement the required progressive restoration and mitigation works;
 - (3) fails to comply with government notification and circular;
 - (4) fails to comply with any terms and conditions of Prospecting and Exploration license;
 - (5) fails to comply with any terms and conditions of the mining Lease Agreement or the permit for short term mining, surface collection for commercial purpose, fossicking or artisanal mining;
 - (6) fails to produce relevant documents during inspection;
 - (7) fails to maintain records, books and registers required under this Act;
 - (8) fails to submit necessary reports and plans on time;
 - (9) fails to recruit the required technical manpower in the mine;
 - (10) fails to use Personal Protective Equipment; or
 - (11) commits any other offences not expressly provided.

Penalty for Minor Mining Offence

178. If a person commits an offence under section 177 of this Act, the person shall be liable for administrative fine, and penalty as prescribed.

Criminal Offence

179. A person commits a criminal offence if the person:
- (1) willfully omitted to pay the applicable levies or charges under this Act;
 - (2) negligently handles explosives leading to destruction of lives while carrying out mining activities;
 - (3) knowingly submits false or misleading documents to the Department or the Authority;
 - (4) without any reasonable cause interrupts, hinders or obstructs the lawful authority while performing the duties under this Act;
 - (5) impersonates;
 - (6) carries out deceptive practice;

- (7) commits any other criminal offences related to the mines and minerals not expressly provided; or
- (8) without lawful excuse, obstruct or hinder the lessee or the license holder or permit holder in execution of any rights conferred on him under this Act.

Penalty for Criminal Offence

- 180. If a person commits an offence under section 179 of this Act, the person shall be liable according to the Penal Code of Bhutan.
- 181. The Authority shall forward a case of criminal nature to the Royal Bhutan Police for further action.

Penalties for Repeated Offenders

- 182. A lessee guilty of the same offence under section 175(2) of this Act for the third time may result in termination of the Mining Rights Certificate.
- 183. If a person is guilty of the same offence under section 177 of this Act for more than 1 instance, the applicable administrative fine and penalty under section 178 of this Act may progressively increase.

Suspension or Revocation

- 184. In addition to the penalty under section 176 or 178 of this Act, the Authority may suspend the applicable activity until the related offence under section 175 or 177 of this Act are rectified.
- 185. The Authority may request the Board to revoke a mining lease for repeated offences and noncompliance under this Act, and recommend the Department to terminate the rights.

CHAPTER XV MISCELLANEOUS

Power to make regulations

- 186. The Ministry may, in consultation with the Authority, frame rules, and regulations from time to time to carry out the provisions of this Act.

Transitional provision

- 187. The pending application at the date of commencement of this Act shall be made consistent in line with this Act within 6 months which otherwise shall be considered as annulled.

Amendment

188. The amendment of this Act by way of addition, variation or repeal may be affected only by the Parliament.

Authoritative Text

189. The Dzongkha text shall be the authoritative text, if there exists any difference in meaning between the Dzongkha and the English text.

Rule of Construction

190. In this Act, unless the context indicates otherwise, the singular shall include the plural and vice versa.

Definitions

191. In this Act, unless the context otherwise requires:

- (1) “**Act**” means the Mines and Minerals Act of Bhutan 2020 including any amendments made thereto.
- (2) “**Affected community**” means:
 - (a) the original inhabitants affected by the operations of a mine or related activity, including those displaced or residing at proximity of the mine within a radius of 500m from the operation face or the source of impact or within 300m from the periphery of a mine;
 - (b) those residents directly impacted due to geographic, atmospheric and other conditions as determined by the Authority; and
 - (c) not the new inhabitants and new land owners settled in the area after commencement of mine operation.
- (3) “**Artisanal mining**” means a very small scale and manually operated mining granted to sustain artisanal practice and includes traditional mining rights granted through *Royal Kashos* and customary practice.
- (4) “**as prescribed**” means as prescribed under the rules, and regulations framed under the Mines and Minerals Act of Bhutan.
- (5) “**auction**” means public sale of any mineral or mineral deposits through competitive bidding process. This may include proven reserve by the Department; minerals seized; and prematurely terminated mining rights.
- (6) “**Authority**” means the Mining Regulatory Authority established under this Act.
- (7) “**Department**” means the Department of Geology and Mines under the Ministry.

- (8) **“exploration”** means the geo-scientific investigations necessary to determine the location, extent and economic feasibility of a mineral deposit.
- (9) **“fossicking”** means to search for and collect precious and semi-precious gemstone and stones from the surface of the earth manually and by using handheld tools for the purpose of trade, auction and lapidary work.
- (10) **“geoscientific activity”** means an activity related to any science, such as geology, geophysics, geochemistry, or geodesy, concerned with the earth.
- (11) **“Government”** means the Royal Government of Bhutan.
- (12) **“Lease”** means a lease granted by the Authority for exploitation of permissible minerals for a defined period of time.
- (13) **“lease agreement”** means an agreement executed between the Authority and the lessee providing the right to mine specified minerals on specific terms and conditions.
- (14) **“lessee”** means a person who has been granted a mining lease.
- (15) **“license”** means approval for prospecting or exploration of minerals granted by the Department under this Act.
- (16) **“extended license”** means a prospecting or exploration license extended by the Department after the expiry of the license until the application for the next phase of the activity is submitted to the Department.
- (17) **“mine”** means, when used as a noun, an opening or excavation in the ground for the purpose of extracting minerals or rocks, and when used as a verb, intentionally to search for and remove minerals from the mining area including any operation which is necessary for such activity.
- (18) **“Mine Closure and Reclamation Plan”** means a plan which specifies methods to reclaim the post-mining and the surrounding areas affected by the mining activities to be physically safe to human and animals, geotechnically stable, geochemically non-polluting, non-contaminating and capable to sustaining an agreed post-mining land use.
- (19) **“Mine Feasibility Study”** means the mining assessment report for the operation of a mine highlighting the technical, financial, environmental and social parameters which demonstrates, in a reasonable manner, the socio-economic viability of the proposed mine.
- (20) **“Mine Plan”** means a detailed description of the mine and proposed mining works to optimize return on investment, through capital investment, design, extraction scheduling, and preparation of the mineral product in accordance with mineral specifications.
- (21) **“Mine Reclamation”** means the removal of any unwanted structures and equipment used during the operation, stabilization of dumps or impoundments and restoration of the surface of the affected area by mining operation

so that it is returned to natural or economically usable state. The reclamation may include, where viable, constructing useful amenities.

- (22) **“Mine Reclamation Fund”** means a fund kept aside by the lessee in the saving account designated by the Authority for reclaiming the area affected by mining.
- (23) **“mineral”** means any substance occurring naturally in or on the earth and having definite chemical formula formed by or subject to a geological process and which can be obtained from the earth or surface of the earth by digging, drilling, dredging, quarrying, hydraulicking, sluicing, collection or other mining methods.
- (24) **“Mineral Fiscal Regime”** means all the fiscal instruments developed and applied to the mineral sector.
- (25) **“mineral reserve”** means those mineral deposits identified through exploratory or detail geological assessment activities and having economic and technical viability for mining.
- (26) **“mineral resources”** means a concentration or occurrence of mineral in or on the earth's crust in such form, quality and quantity that there are reasonable prospects for eventual economic extraction.
- (27) **“mineral rights”** means a License for prospecting and exploration, Mining Rights Certificate for mining and Rights Certificate for short term mining, surface collection for commercial purpose, fossicking and artisanal mining.
- (28) **“Mineral Rights Cadastre”** means a unit under the Department responsible to maintain a standard mineral cadastre and process for the grant of Mineral Rights.
- (29) **“mining area”** means land covered under a mining lease.
- (30) **“mining operation”** means any mode or method of working whereby the earth or any rock structure, stone, fluids or mineral bearing substance may be disturbed, removed, washed, sifted, crushed, leached, smelted, combusted, refined or dealt with for the purpose of obtaining any minerals or processed mineral resources through:
 - (a) removal of overburden by mechanical or other means and the stacking, deposit, storage and treatment of any substance considered to contain any minerals;
 - (b) dredging or operation by means of which mineral is recovered from natural water supply; or
 - (c) operation by means of which a processed mineral resource is produced and recovered.
- (31) **“Mining Rights Certificate”** means a certificate granted by the Department with a right to mine permissible minerals at a designated location.
- (32) **“Ministry”** means the Ministry of Economic Affairs.

- (33) “**noncommercial Surface collection**” means surface collection of sand or stones permitted by the Authority or the relevant Agency for rural purpose without application of royalty and mineral rent.
- (34) “**official**” means an employee of the Department or the Authority empowered to exercise any powers or discharge any functions conferred upon him or her under this Act.
- (35) “**permit**” means approval granted for short term mining, surface collection for commercial purpose, fossicking, artisanal mining by the Authority.
- (36) “**person**” includes a citizen of Bhutan, a business unit or company incorporated in Bhutan, government agency, a natural person in his or her capacity as a legal representative and anybody or person recognized as a separate legal entity.
- (37) “**prospecting**” means the geological study of locating prospective minerals, fossils, precious metals or mineral specimens with use of handheld tools only.
- (38) “**Rights Certificate**” means a certificate granted by the Department with a right to short term mining, surface collection for commercial mining, fossicking or artisanal mining of permissible minerals at a designated location.
- (39) “**regulations**” means the Mines and Minerals Regulations issued under this Act.
- (40) “**rules**” means the Mines and Minerals Rules issued under this Act.
- (41) “**short term mining**” means a small scale noncommercial mining activity allocated in the interest of expediting nationally important time bound projects where resources are not available within the locality to cater the requirement.
- (42) “**stone**” means a natural substance comprising of solid aggregate of one or more minerals which is found on earth’s outer solid, the lithosphere, and includes rock.
- (43) “**strategic minerals**” means minerals that have wider implications on the economy in terms of having any of the following characteristics:
- (1) being in short supply and essential for domestic industries; or
 - (2) rare and high value minerals and minerals with security implication.
- (44) “**strategic reserve**” means a mineral reserve proved by the Department and declared as strategic in one or more locations that have wider implications on the economy for being in short supply and essential for domestic industries or being high value minerals.
- (45) “**surface collection**” means lifting of minerals, sand or stones from the surface of land or riverbed or riverbank excluding extraction of in situ and sub-surface boulder rocks.

- (46) **“transport permit”** means the official transport permit issued by the Authority for the purpose of transporting minerals.
- (47) **“underground mining”** means subsurface mining technique used to extract ores and valuable minerals in the ground by digging into the ground using shafts or adits as a mode of entrance.
- (48) **“value addition”** means a product of mineral beneficiation and processing covering the whole range of processes from basic ore dressing, such as crushing and screening, resulting to concentrate production or manufacture of semifinal or final consumer goods or chemically altered products.