

MINES AND MINERALS MANAGEMENT ACT 1995

CHAPTER I

PRELIMINARY

1. This Act shall be called the Mines and Minerals Management Act 1995.
2. The Act shall come into force on the First Day of September 1995.
3. This Act shall extend to the whole of the Kingdom of Bhutan.

Definitions

4. In this Act and in all regulations made thereunder, unless the context otherwise requires:

a. Division :

shall mean the Division of Geology & Mines.

b. Exploration :

means the prospecting and further geo-scientific investigations necessary to determine the location, extent and socio-economic feasibility of a mineral deposit prior to determining whether to proceed with the commercial exploitation of such deposit.

c. Final Mine Feasibility Study :

means the final mineral deposit assessment report containing, in reasonable detail, the technical, financial, environmental and social impact analyses required prior to the approval of a mining lease.

d. Government :

shall mean the Royal Government of Bhutan.

e. Head of Division :

means the Head of the Division of Geology and Mines.

f. Head of Ministry:

means the Minister for Trade and Industry.

g. Inspector :

shall mean an officer appointed by the Head of Division to enter and inspect a mine for any purpose as specified in this Act.

h. Kingdom :

shall mean the Kingdom of Bhutan

i. Lessee :

shall mean a person or an organisation who has been granted a mining lease.

j. Lessor :

shall mean the Head of Division who has formally been accorded permission by the Ministry to execute a mining lease agreement with the lessee.

k. Mine :

when used as a **noun** means an opening or an excavation in the ground for the purpose of mining, opening up or proving a mineral bearing substance or ore deposit, and includes the place where a mining operation is carried on together with buildings, premises, machinery, plants, roads and any other access above and below the ground used in connection with a mine.

l. Mine :

when used as a **verb** means intentionally to search for and remove minerals from a mining area and includes any operation which is necessary for such an activity, and encompasses the term "mining".

m. Mineral :

means any substance occurring naturally in or on the earth and having formed by or subject to a geological process and which can be obtained from the earth by digging, drilling, dredging, quarrying or by other mining operations.

n. Mining Area :

means land covered under a mining lease.

o. Mineral Processing :

means the approved value-added beneficiation of minerals obtained from a mine by a physical, chemical or other processes.

p. Mining Lease:

means a lease granted by the Ministry for commercial exploitation of a mineral.

q. Mining Lease Agreement :

means a document containing additional terms and conditions relating to a specific mining area, signed by the lessee and executed on behalf of the Government by the lessor, and attached to each mining lease.

r. Ministry :

means the Ministry of Trade and Industry.

s. Officer :

shall mean a person authorised by the Head of Ministry to exercise power conferred by this Act.

t. Order :

means any notification, order or other document authorized or required by this Act to be served on any individual or organisation.

u. Prescribed :

means prescribed by Regulations formulated under this Act.

v. Regulations :
means the Regulations made under this Act.

w. Surface Rights :
means right to ownership of land as per Land Act of the Kingdom.

x. Transport Permit (challan) :
means the official transport permit issued by the Division for the purpose of transporting minerals.

Ownership of Minerals

5. In accordance with section KA 11-1 of the THRIMSHUNG-CHHENPO, all rights of ownership of minerals are vested exclusively in the Government whether occurring in private or government land.

Application of the Act

6. The Ministry may grant mining leases in accordance with the provisions of this Act.

7. No person or organisation shall be permitted to carry out exploration, mining and related activities except as provided in this Act.

8. All minerals shall be developed in accordance with the policies of the Royal Government of Bhutan, with due respect for efficient use of the resources, protection of the environment, and worker and public health and safety.

CHAPTER - II

ADMINISTRATION

Powers of the Head of Ministry

9. The Head of Ministry may, by notification, make rules and regulations and issue orders for any purpose consistent with the intent of this Act.

10. The Head of Ministry shall be the sole authority to lease mineral deposits and he shall delegate all necessary powers to the Head of Division.

Powers of the Head of Division

11. Under the directives of the Ministry, the control of all exploration, mining, mineral processing and geo-scientific activities in Bhutan shall vest with the Head of Division.

12. The Head of Division shall have all necessary power and authority to implement and enforce this Act and all regulations made under it, and to carry out administrative and technical supervision of all operations covered by this Act.

13. The Head of Division may issue orders for any of the following matters or purposes :

i. For conducting scientific mining practices consistent with the method(s) and standard(s) prescribed by this Act.

ii. Preservation, protection and setting standards of environment and conservation of natural resources consistent with the provisions of this Act, and other environmental legislation.

iii. Quality control and conservation of ore/minerals.

iv. Proper conduct of all mining operations consistent with the provisions of this Act.

- v. For matters pertaining to any illegal activity that may contravene any of the terms and conditions prescribed by this Act and laid down in the Lease Agreement.
- vi. Any other matter in respect of which actions or notices are deemed necessary for enhancing the implementation and effecting the provisions of this Act.

Functions of the Division

14. The functions of the Division shall be ;

- i. to execute or supervise the undertaking of all systematic geo-scientific investigation in the Kingdom and the preparation and publishing of maps and reports documenting such research.
- ii. to identify and assess the mineral resources of the Kingdom.
- iii. to evaluate the socio-economic feasibility of mining, processing and marketing, sale and export of minerals and mineral products.
- iv. to ensure the sustainable development and utilisation of the mineral resource of the Kingdom.
- v. to ensure that the restoration of the areas that are mined is carried out in a proper manner with the objective of creating a suitable and acceptable environment as approved by the National Environment Commission.
- vi. to control, regulate and monitor the exploration and mining of minerals in approved areas.
- vii. to maintain registers, maps and appropriate technical and financial records of all mining leases.
- viii. to periodically notify the Division of Revenue & Customs regarding fees, rents, royalties and other payments due under the provision of this Act.
- ix. to enter into and inspect any land, mine or other premises directly or indirectly related to a mining lease and to ensure provisions of this Act are being complied with.
- x. to establish and maintain facilities relating to the mineral resources heritage of the Kingdom.
- xi. to provide professional advice, as required, to the Ministry on all research aspects related to improved management of mineral resources.

CHAPTER - III

MANAGEMENT OF EXPLORATION AND MINING ACTIVITIES

Exploration

15. All exploration in the Kingdom shall be carried out by the Division or where authorized by the Head of Division, by other persons/agency operating under his supervision and under such terms and conditions as may be prescribed.

Granting of Mining Lease

16. A mining lease shall grant the lessee the right to mine the mineral or minerals specified in the mining lease agreement.

17. Any individual or organisation may apply for a mining lease to the Head of Division.

18. The mining area covered under the mining lease shall be for a definite area as demarcated by the Division.

19. A mining lease shall be granted for a mining area only after clearance of such area has been received from all concerned authorities of the Government by the Head of Division.

20. A mining lease shall be given for a specified period and under terms and conditions as stipulated in a mining lease agreement.

21. A mining lease shall be given, provided the applicant

- i. is able and willing to comply with all the terms and conditions as prescribed in this Act and the mining lease agreement.
- ii. has adequate financial resources, technical competence and experience to carry out the mining operations effectively.
- iii. has not been disqualified by the Government to apply for a mining lease.

Final Mine Feasibility Study

22. Prior to granting of a mining lease a final mine feasibility study is required to be prepared and submitted. Such a study shall contain an assessment of technical, financial, environmental and social parameters which demonstrate, in a reasonable manner, the socio-economic viability of the proposed mine. Such a study shall be prepared by either a prospective lessee or the Division in keeping with the format determined by the Division.

23. The Final Mine Feasibility Study shall include, *inter alia*, a Mine Plan, Environment Management Plan and a Mine Restoration Plan, and other data as prescribed.

Protection of the Environment

24. The Environment Management Plan shall be prepared on the basis of a format determined by the Division which, *inter alia*, should include the size and sensitivity of the proposed mine, but shall contain, in as detailed a manner as deemed sufficient by the Head of Division the following site-specific environmental impact assessment :

- i. base-line sampling and analysis of soils, surface and sub-surface waters, air quality and noise levels, plant and animal life, and
- ii. analysis of the effects that mining, possible processing, worker activities, transport of workers and mine products, will have on existing human habitation and current uses of land, water, plant and animal resources.

25. The Mine Restoration Plan shall be evaluated on the size and sensitivity of the proposed mine site and shall be prepared on the basis of a format determined by the Division.

Rights of the Lessee

26. Subject to the provisions of this Act and the mining lease agreement; a lessee may in the mining area :

- i. Have the exclusive right to mine the mineral or minerals specified.

- ii. Construct, operate and maintain mines, work plans, roads, aerial ropeways, communication systems and other facilities necessary or convenient for carrying on the purpose of the lease, and upon obtaining necessary industrial license and approval from the Ministry for the establishment of processing plants.
 - iii. Sell the minerals mined.
27. Subject to any condition of a mining lease a lessee may:
- i. With the permission of the Ministry, transfer the mineral rights and obligations of a mining lease to a qualified third party.
 - ii. Surrender the mining area covered by the lease or part thereof by giving the Head of Division not less than three months notice of his intention to do so.
 - iii. The surrender of any area covered by a mining lease shall not be rendered effective until the Head of Division has issued approval effecting the surrender of the referred area(s).

Obligations of Lessee

28. Subject to the provisions of this Act, a holder of a mining lease shall :
- i. Carry out mining operations in accordance with the Mine Plan, Environment Management Plan and Mine Restoration Plan and schedules submitted by the lessee and approved by the Head of Division and in accordance with the Act and the terms and conditions laid down in the mining lease agreement.
 - ii. Keep accurate records of all components of the mining operation carried out in such form as may be prescribed.
 - iii. Keep accurate financial records of all components of the mining operation in such form as may be prescribed.
 - iv. Notify the Head of Division at least three months in advance if the lessee desires to cease, suspend or curtail production from his mine.
 - v. Erect boundary pillars as may be prescribed once the mining area is surveyed by the Division.
 - vi. Transport minerals only after being issued with a transport permit.
 - vii. Abide by all regulations and orders as may be issued by the Head of Division.
 - viii. Recognize obligations that may continue to apply beyond surrender, suspension, termination or expiry of the lease.
29. Upon expiry, surrender or termination of a mining lease the former holder of the lease, subject to the provisions of this Act and any condition of the mining lease, shall
- i Remove within six months after the date of permanent closure, as determined by the Head of Division, any building, machinery or other movable property from the mining area unless otherwise required.
 - ii Not be entitled to any compensation from the Government for any immovable property or any development works, including roads and bridges constructed in the mining area, unless otherwise specified in the lease agreement.
 - iii. In the event the termination was due to some change in government policy and without any fault of lessee then some reasonable compensation may be considered by the Ministry based on the circumstances.

30. Upon expiry or termination of a mining lease the lessee shall deliver to the Head of Division :

- i. Records required to be maintained as prescribed.
- ii. Plans and sections relating to the mining area.

31. The Lessee shall take appropriate measures to ensure that all mining operations are conducted systematically and in accordance with the norms and parameters set by the Division with the objective to promote mineral conservation.

Suspension or Termination

32. The Ministry may by order to the lessee, by giving sufficient notice, suspend or terminate a mining lease, if the lessee;

- i. Fails to pay any due on mineral levies and any other government levy.
- ii. Contravenes any provision of this Act, or any condition of his lease.
- iii. Contravenes any other law of the Kingdom related to maintaining provisions specified by this Act.

CHAPTER - IV

PROPER CONDUCT OF MINING OPERATIONS

Operational Mining Scheme

33. Following the approval of the Final Mine Feasibility Study and the granting of a mining lease, the Lessee shall, within sixty days, submit an operational mining scheme containing the following information :

- i. the expected date of commencement of production, and
- ii. any modifications to the details contained in the Final Mine Feasibility Study with respect to the Mine Plan, Environmental Management Plan and the health and safety measures.

34. The Lessee shall comply with the approved operational mining scheme and shall provide reports on the progress of mining as well as necessary operational updates and revisions to the scheme, on an annual basis, as prescribed in the Regulations.

Appointment of Mines Manager

35. The Lessee shall appoint a suitably qualified mines manager when :

- i. The Head of Division has notified the Lessee that a manager is required.
- ii. There are ten or more persons employed at the mine.

36. A mines manager who shall be made known to the Division in writing, shall, on behalf of the Lessee;

- i. be responsible for the control and daily supervision of the mine,
- ii. reside close to such mines.

Compliance with Proper Mining Procedures

37. The Lessee shall be responsible for ensuring compliance with the following:

- i. Health and safety of workers in and around mines.

- ii. Sanitary and drinking water conditions and facilities in and around mines.
- iii. Emergency medical facilities.
- iv. Training to be provided for miners.
- v. Management for the safe use and storage of explosives in mines.
- vi. Management and safe disposal of waste, refuse and poisonous substances in mines.
- vii. Submission of reports on accidents occurring in mines.
- viii. Maintenance of records and accounts relating to mine operations.
- ix. Preparation and submission of annually updated Mine Plans, Environmental Management Plans and Mine Restoration Plans as originally defined in the Final Mine Feasibility Study.

Accident Reporting, Investigations

38. Where an accident resulting in loss of life or serious bodily injury to any person has taken place in connection with work directly or indirectly related to a mining lease, the lessee/mines manager or any other person that the lessee has placed in charge of the mine must, after immediately reporting such accident to the relevant Dzongkhag authorities also forthwith inform the Head of Division and follow it up with a written report to the Head of Division documenting the facts of the incident as soon as possible after the occurrence of the accident.

39. Upon being notified about the accident, the Head of Division shall immediately carry out the necessary investigation, prepare and submit a separate report on his findings with recommendations to the Ministry.

40. Except having to carry out immediate rescue and safety operations for workers and people, the place where the accident has occurred shall be left as it was immediately after the accident until the Head of Division's investigation is completed.

41. Where there is reason to believe that the accident was due to failure to comply with provisions under this Act, the Ministry may commission an additional inquiry, if necessary, and initiate suitable action in accordance with this Act.

CHAPTER - V

MINERAL LEVIES

Royalties/Mineral Rent

42. A lessee shall pay royalty and mineral rent to the Government for any mineral mined from the mining area at the rates prescribed by the Government and officially notified from time to time.

Surface Rent

43. A lessee shall pay surface rent for the mining area at the rates prescribed by the Government and notified from time to time.

Other Government Levies

44. The holder of a mining lease shall pay taxes and other government levies in accordance with the rates and terms laid down by the Government which may be revised from time to time.

CHAPTER - VI

OFFENSES AND PENALTIES

Offenses

45. A lessee or any person shall be guilty of an offence if he:
- i. Carries out exploration or mining operations in contravention with the provisions of this Act.
 - ii. Purchases any mineral from a person or transports minerals without proper documents.
 - iii. Gives false or misleading statements or information in submitting applications or reports to the Head of Division.
 - iv. Alters or removes any notices, signboards, boundary posts in any mining area without the approval of the Head of Division.
 - v. Fails to comply with any of the provisions under this Act or the terms and conditions of a mining lease.
 - vi. Fails to maintain records, books and registers required by the provisions of this Act and Regulations made under it.
 - vii. Fails to extend the necessary co-operation to an officer or employee of the Division or obstructs such officer or employee in the execution of authorized duties.

Penalties

46. Any Lessee or a person guilty of an offence under :
- i. Article 45 (i) and (ii) of this Act, shall be liable to a fine which amounts to twice the value of the products in question or imprisonment up to three months or both at the first instance along with the seizure of the material and equipment.
 - ii. Article 45 (iii) and (vi) of this Act, shall be liable for a fine of Nu. 5,000/- at the first instance along with the seizure of the material and equipment.
 - iii. Article 45 (v) of this Act, shall be liable for a fine of Nu. 5,000/- at the first instance.
 - iv. Article 45 (iv) and (vii) of this Act, shall be liable for a fine of Nu. 10,000/- at the first instance.

47 (a). If a person is guilty of any offence mentioned under Article 45 for more than one instance, then the penalty as stipulated under Article 46 shall be doubled for every successive offence.

47 (b). If a Lessee is guilty of any offence mentioned under Article 45 for more than one instance, then the penalty as stipulated under Article 46 shall be doubled for the second instance after which the mining lease will be withdrawn and further legal action will be taken.

CHAPTER - VII

DISPUTE RESOLUTION, APPEALS, ARBITRATION

48. If any dispute or conflict relating to a lease should arise, an attempt shall be made in the first instant to settle the matter amicably through informal dialogue, using the good offices of the Head of Division and/or the Ministry.

49. Disputes outside the jurisdiction of this Act or the purview of the Ministry shall be referred to the concerned Courts of Law of the Kingdom for appropriate action.

CHAPTER - VIII

REGULATIONS

50. The Ministry may, *inter-alia*, issue regulations in respect of the following matter for carrying out the provisions of this Act:

- i. Control and regulate the production, possession, purchase, sale, transport, export and import of minerals.
- ii. Prescribe the parameters for various types of mining operations.
- iii. In keeping with the national health and safety laws, prescribe standards on environmental protection, effluent discharges, noise levels, use of explosives, etc. for all mines.
- iv. Prescribe measures for the proper disposal of tailings, waste products and other harmful substances.
- v. Prescribe measures for the restoration, reclamation and rehabilitation of mining areas before mining commences, during mining and after mining is discontinued.
- vi. Prescribe provisions for the establishment of mining lease boundaries and surveys of mining areas.
- vii. Prescribe measures governing the operation of a mine with respect to public safety.
- viii. Prescribe and provide for fees, rentals, royalties and other levies under this Act and the manner for collecting and disbursing such fees.
- ix. Prescribe the contents of all documents, records, statistical reports, plans as may be required under this Act.
- x. Prescribe the offenses under this Act and the method and procedures for applying penalties for such offenses.

CHAPTER - IX

MISCELLANEOUS

Transition Period

51. Any person holding an existing mining lease will be given a period of 12 months from the official date of enactment of this Act, at which time the provisions of the Act will apply to the holder of the mining lease.

Conflict of Laws

52. In all matters relating to mines and minerals, where any inconsistency exists between the provisions of this Act and the operation of any other Act, the provisions of this Act

shall prevail. However, where the Division has to carry out activities in forest areas in accordance with this Act, it shall do so in consultation with Division of Forests.