USAID FIRMS PROJECT

Review of Regulatory Framework and Proposed Minerals Act – Khyber Pakhtunkhwa

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Abstract:

The USAID Firms Project Policy Framework, presented in this report, provides for vision, mission statement and main objectives of the KPK Minerals Policy.It features both Federal and Provincial legislations. The key strategic areas include Legal and regulatory framework, social and environmental protection and other important provisions include integrated infrastructure and value chain development, development of a modern minerals market, market-oriented mineral sector and capacity building. The Policy framework gives a specific note on Pakistan Mining Legal Framework, outlines KPK Mineral Policy Issues, policy objectives and strategic aspects of mining in KPK.

Acronyms

BEE	Business Enabling Environment
DMITRE	Department for Manufacturing, Innovation, Trade, Resources and Energy
EL	Exploration License
GDP	Gross Domestic Product
ICC	International Chamber of Commerce
ICMM	International Council of Mining and Metals
ICSID	International Centre for Settlement of Investment Disputes
ILO	International Labor Organization
IUCN	International Union for the Conservation of Nature and Natural Resources
KPK	Khyber Pakhtunkhwa
KPK	Khyber Pakhtunkhwa
MDRL	Mineral Deposit Retention License
MIFAs	Mineral Investment Facilitation Authorities Geographical Information System
MIFB	Mineral Investment Facilitation Board
ML	Mining Lease
MP	Mineral Policy
MPNR	Ministry for Petroleum and Natural Resources
NGO	Non-Governmental Organization
NMP	National Mineral Policy
RL	Reconnaissance License
SDF	Sustainable Development Framework
SOW	Scope of Work
US	United States
USAID	United States Agency for International Development
WPPF	Workers Profit Participation Fund
WWF	Workers Welfare Fund

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Executive Summary

Section 1 gives out preliminaries, which are introduction of the report, work methodology and acknowledgement.

Section 2 has two parts, firstly the Federal legislations and secondly, the provincial legislation. The federal part explains the constitutional context wherein mines and minerals, except oil, natural gas and nuclear mineral, were generally under the domain of the Provincial Government but some entries of the Concernment Legislative List (4th Schedule) empowered the federal as well as provincial legislatures to enact laws on matters relating to welfare of labour, conditions of labour, provident fund, employers liability and workmen's compensation, health insurance, invalidity pensions, old age pensions (Entry No. 26) trade unions, industrial and labour disputes (Entry No. 27) and regulation of labour and safety in mines, factories and oil fields (Entry No 30) The Regulation of Mines and Oil-fields and Mineral Development (Government Control) Act, 1948, the major federal law, does not appear to have a strong nexus with Constitution. Perhaps for this reason, it is a skeleton law which lays down no policy except that all matters falling under the preview of the Act will be dealt with by the Provincial Government through rules formed under the Act. Consequently, KPK Mining Concession Rules, 2005 were enacted this enactment.

It further explains that the Constitution (18 Amendment) Act 2010 has changed the entire scenario by removing these entries (26, 27 & 30) from the Concurrent Legislative List, thereby transferring them to the Provincial domain. Therefore, the above mentioned Federal Laws relating to labour welfare, industrial relations, working conditions and safety of labour etc have lost their constitutional nexus, though there laws have been protected by Article 276 and will continue to remain in force till such time these are amended or repealed by the Province.

The provincial legislation contains adoption of labour laws, including, Mining Concession Rules 200 Industrial Relations Act, 2010. Factories Act, 2013. Payment of Wages Act, 2013, Workmen's Compensation Act, 2013, Industrial & Commercial Employment (Standing Orders) Act, 2013 and Minimum Wages Act, 2013, etc.

KPK Mining Concession Rules, 2005, which were enacted to give effect to the Pakistan Mineral Policy 1995 (MP-I), deal with matters relating to grant of Mineral Titles of different types such as Reconnaissance License, Exploration License, Mineral Deposit Retention License and Mining Lease. The rules further provide for general conditions applicable to the mineral titles, giving of directions to the titleholders, surrender and revocation of titles, registration of titles, protection of environment, arbitration, royalties, surface rent, inspection of mines and appointment of Mines Inspectors and the Chief Mines Inspector. These rules do not refer to the Labour Welfare Laws because those laws are nonetheless applicable without any further legislation. The rules also provide for separate treatment of large scale mining, small scale mining and mining of minor minerals, that is, ordinary sand, gravel, bajri. Mineral agreements have been provided for mega projects to attract large scale foreign investments.

Section 3 deals with mines & mineral policy framework, beginning with Pakistan National Mineral Policy-2 (2012) presenting the objective of improving the international competitiveness of mineral sector and seeks to provide the basis for addressing these and other challenges, as well as responding to important government priorities and commitments to cater for research development enhancement, human resource development, as well as promotion and marketing. The main features of NMP-2 are outlined in some detail. It further provides insight through the Policy Note (2005) which concluded that the conditions and procedures for private investment in

and development of mineral resources in Pakistan are not particularly attractive / competitive in the current global market and gave some recommendations.

The USAID Firms Project Policy Framework provides for vision, mission statement and main objectives of the KPK Minerals Policy. The key strategic areas include Legal and regulatory framework, social and environmental protection and other important provisions include integrated infrastructure and value chain development, development of a modern minerals market, market-oriented mineral sector and capacity building. The Policy framework gives a specific note on Pakistan Mining Legal Framework, outlines KPK Mineral Policy Issues, policy objectives and strategic aspects of mining in KPK.

KPK Mines and Mineral Policy 2014, is the latest and the most relevant / important policy document on mines and minerals in the Province. The core policy principles include: internationally competitive, stable and conducive business climate, preference to integrated mining operations, equitable fiscal and regulatory regime, encouraging legal mining and preventing illegal mining, mechanisms for the evaluation of competing land, water and other resource-uses, elimination and mitigation of adverse social and environmental effects, supporting artisanal and small-scale mining,, equitable distribution of benefits, effective and transparent administration and management and preference to local value addition and processing of indigenous minerals.

Section 4 explores the good mining practises in Australia at national and state level (Western Australia) and India. The section also provides the best international practices enumerated by the FIRMS policy consultant, Ms Mary Louise Vitelli, Esq. These are, security of tenure, predictability and quality of investment, regulation of all aspects, revenue management and Information and transparency and stakeholder consultation and participation. The Consultant has also outlined the best international practices relating to institutional framework.

The section also enumerate thirteen ILO Conventions relating to mining which have been ratified in Pakistan making it easy for policy makers to benefit from this important aspect of mining and highlights the fact that the most relevant and recent ILO instrument, Convention No 176, Safety in Mines Convention, 1995, has not been ratified by Pakistan.

Section 5 outlines the main features of the proposed Act, which are: preamble reflecting the Policy, crisp and comprehensive definitions, autonomous regulatory board, redefined role of the Government, participation of stake holders, compatible with international regime, providing business friendly environment, security and adequacy of tenure of titles, reliable, efficient and alternative dispute resolution, protection of environment, provision for special mineral agreements for mega projects, rehabilitation of social displacement, comprehensive coverage of entire life of mining operation, safety of health and welfare of workers in mines, protection of labour rights, transparency in grant of titles, equitable and sustainable system, appropriate fiscal regime, clarity in jurisdictional matters, strict sanctions for enforcement, customary trappings, repeal of the 1948 Act to the extent of KPK Province, exclusion of Federal minerals and partial continuation of KPK Mining Concession Rules 2005, till framing of new rules.

The Annexure contains the Draft KPK Mines and Mineral Development Act, 2014.

1. Preliminary

1.1 Introduction

1.1.1. Nature has endowed Pakistan with rich minerals deposits, however, this potential has not been fully realized because of various factors, with result that minerals very little in the country's economy, out of which major shares is that of oil and gas which fall under the Federal domain.

1.1.2. At the Provincial level general trend of mining industry focuses on small scale mining, primarily, because large scale investors have not been attracted to this sector due to variety of reasons. Accordingly, major overhauling of the mining industry is required in order to make the sector investor friendly.

1.1.3. After the passage of 18th Amendment (2010) all matters relating to mining except oil, gas and nuclear minerals, have been transferred to the domain of premises, which are eager to promote and develop this industry. Therefore, KPK has approached USAID to provide technical support for reforms in industry. The USAID has entrusted this task to Chemonics International / FIRMS Pakistan, which have engaged separate consultants for rapid industry appraisal and policy and institutional framework. These Consultants have completed the work and submitted their reports. The remaining task relates to legal and regulatory framework; hence this consultancy.

1.1.4. The main objective of the consultancy is to prepare a modern Mineral Act for KPK so as to bring substantial reforms in mineral industry in line with the latest mineral policy and international best practices.

1.2 Methodology

1.2.1. The consultancy work is based on academic research and consultation with the stakeholder including the Provincial Government, mining entrepreneurs, person working in the industry and relevant labour organization and academicians.

1.2.2. The focus of academic research relating to the legal framework is literature review to analyze the existing legal framework (Laws, Rules & Regulation) of mining industry in Pakistan and to indentify its defects and deficiencies.

1.2.3. The academic research also relates to literature review of other countries, the existing policy framework, including the report of the Pakistan Mineral Policy, 2013 (PMP-2), the Policy Note (2005) jointly produced by the World Bank and the Government of Pakistan and KPK Mineral Sector Development Policy developed by the FIRMS Consultant on Policy Framework, primarily to identify the best international practices.

1.2.4. Consultation with stakeholder has primarily deal with the problems faced by the mining industry and the options for their solutions through formal meetings, seminar/conferences. Major reliance has been on consultation with the relevant KPK departments. The KPK Government has shown plenty of interest in the reform legislation. However, in the absence of policy guidelines from the Balochistan Mines and Mineral Department, the KPK draft law has also been recommended for the Balochistan Province, which the Province can adopt with modifications and improvements keeping in view of the local environment. A separate report on Balochistan will be submitted in due course of time, that is, after receiving adequate input from their Mines and Minerals Department.

1.3 Acknowledgment:

The consultancy so far done has been done under the guidance of FIRMS Senior Policy Advisor, Mr. Suleman Ghani and Mr. Farhan Shah, who provided valuable support in substantive as well as procedural matters. The expert advice from senior officers of the KPK Mineral Department helped the Consultant in understanding the major problems / issues of the mining sector and also in finalizing the work plan and future course of action. The most valuable support came from FIRMS Policy Consultant, Ms Mary Louise Vitelli, Esq. from whose Report many excerpts have taken by the Law Consultant. I am highly indebted to all these experts for guidance in developing the legal and regulatory framework. Many thanks are due to all of them.

2. Legal and Regulatory Framework

2.1 Constitutional Context

2.1.1 General

Under the court of Islamic Republic of Pakistan, mines and minerals, except oil, natural gas and nuclear mineral, were generally under the domain of the Provincial Government. However, some entries of the Concernment Legislative List (4th Schedule) empowered the federal as well as provincial legislatures to enact laws on matters relating to

a) Welfare of labour, conditions of labour, provident fund, employers liability and workmen's compensation, health insurance, invalidity pensions, old age pensions (Entry No. 26)

b) Trade Unions, Industrial and Labour disputes (Entry No. 27)

c) Regulation of labour and safety in mines, factories and oil fields (Entry No 30)

2.1.2 Constitution (18 Amendment) Act 2010

It has changed the entire scenario by removing these entries (26, 27 7 30) from the Concurrent Legislative List, thereby transferring them to the Provincial domain. Therefore, the above mentioned Federal Laws relating to labour welfare, industrial relations, working conditions and safety of labour etc have lost their constitutional nexus, though there laws have been protected by Article 276 and will continue to remain in force till such time these are amended or repealed by the Province.

2.2 Federal Laws

2.2.1 Labour Welfare Laws

Consequently a large number of Federal Laws are in force in Pakistan which are directly applicable to mines. These include-

1. Apprenticeship Ordinance, 1966
2. Employment of Children Act, 1991
3. Employees Cost of Living (Relief) Act, 1974
4. Disabled Person, Appointment and Rehabilitation) Ordinance, 1981
5. Industrial Relations Ordinance, 2002
6. West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968
7. West Pakistan Shops and Establishments Ordinance, 1969
8. Mines Maternity Benefit Act, 1941
9. Coal Mines Fixation of Wages Ordinance, 1960
10. Payment of Wages Act, 1936
11. Excise Duty on Minerals (Labour Welfare) Act, 1967

12. Employees Old Age Benefit Act, 1976
13. Minimum Wages Ordinance,1961
14. Mines Act, 1923
15. Workers Children Education Cess Ordinance, 1972
16. Workers Welfare Fund Ordinance, 1971
17. Workmen Compensation Act, 1923
18. Companies Profit (Workers Participation) Act, 1968
19. Industrial Statistics Act, 1942
20. West Pakistan Minimum Wages of Unskilled Workers Ordinance,1969
21. West Pakistan Social Security Ordinance, 1965

2.2.2 Regulation of Mines and Oil-fields and Mineral Development (Government Control) Act, 1948

The Act does not have a strong nexus with Constitution. Perhaps for this reason, it is a skeleton law which lays down no policy except that all matters falling under the preview of the Act will be dealt with by the Provincial Government through rules formed under the Act. Section 2 of the Act empower the Provincial Government to frame rules on the following matters-

(1) manner in which and the authority to whom , application for the grant or renewal of an exploration or prospecting license, a mining lease or other mining concession shall be made, and the prescribing of the fees to be paid on such application;

(2) condition in accordance with which the grant or renewal of an exploration or prospecting license, a mining lease or other mining concession may be made , and the prescribing of forms for the execution or renewal of such license, lease and concession ;

(3) circumstances under which renewal of a license, lease or concession as aforesaid may be refused, or any such license, lease or concession weather granted or renewed may be revoked;

(4) determination of the rates at which, and the condition subject to which, royalties, rents and taxes shall be paid by licensees, lessees and grantees of mining concessions;

(5) refinement of ores and mineral oils;

(6) control of production, storage and distribution of minerals and mineral oils;

(7) fixation of the prices at which minerals and mineral oils may be bought or sold; and

(8) any matter ancillary or incidental to the matters set out in the foregoing clauses (1-7)

2.2.3 Other Laws

Other laws relevant to the subject in hand include, Arbitration Act, 1940, Companies Ordinance, 1984 and various Tax Laws.

2.3 Provincial Legislation

2.3.1 Adoption of Labor Laws

The Constitutional 18th Amendment has changed the legal framework of mines and minerals in the Provinces. The KPK Province has asserted their authority over the newly

transferred subjects, including, the labor and related laws through the enactment of following laws:

- Khyber Pakhtunkhwa Industrial Relations Act, 2010;
- Khyber Pakhtunkhwa Factories Act, 2013;
- Khyber Pakhtunkhwa Payment of Wages Act, 2013;
- Khyber Pakhtunkhwa Workers' Compensation Act, 2013;
- Khyber Pakhtunkhwa Industrial & Commercial Employment (Standing Orders) Act, 2013;
- Khyber Pakhtunkhwa Minimum Wages Act, 2013;
- Khyber Pakhtunkhwa Maternity Benefits Act, 2013;
- Khyber Pakhtunkhwa Industrial Statistics Act, 2013;
- The Khyber Pakhtunkhwa Disabled Persons (Employment and Rehabilitation)Amendment Act, 2012 (Adaptation with amendments)
- The Khyber Pakhtunkhwa Apprenticeship (Amendment) Act, 2012.
- The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010.
- The Khyber Pakhtunkhwa Promotion, Protection and Enforcement Act, 2014

2.3.2 KPK Mining Concession Rules, 2005

Like all other Provinces of Pakistan, KPK has also framed Mining Concession Rules under the dispensation of the Act. The KPK Mining Concession Rule, 2005, were enacted to give effect to the Pakistan Mineral Policy 1995 (MP-I). These rules deal with matters relating to grant of Mineral Titles of different types such as Reconnaissance License, Exploration License, Mineral Deposit Retention License and Mining Lease. The rules further provide for general conditions applicable to the mineral titles, giving of directions to the titleholders, surrender and revocation of titles, registration of titles, protection of environment, arbitration, royalties, surface rent, inspection of mines and appointment of Mines Inspectors and the Chief Mines Inspector. These rules do not refer to the Labour Welfare Laws because those laws are nonetheless applicable without any further legislation. Some details are given in following paragraphs.

2 .3.2.1 Large scale mining and small scale mining of ordinary minerals: The rules provide for separate treatment of large scale mining and small scale mining though different mineral titles. A large scale mining undertaking is project of mining involving an investment/capital of more than three hundred million rupees and a small scale mining undertaking is one which involves an investment / capital of less than three hundred million rupees.

2. 3.3.2. Mining of minor minerals: Mining of minor minerals, that is, ordinary sand, gravel, bajri and any other minor mineral as may be declared as such by Government, is treated differently than ordinary minerals. In case of minor minerals, lease is only one mineral title, which can granted under the rules. Moreover, the lease is subject to auction by a committee at district level constituted by the Provincial Government.

2. 3.1.3.Types of mineral titles.---The following mineral titles may be issued for the purposes of large-scale mining -

- Reconnaissance License,
- Exploration License,
- Mineral Deposit Retention License, or
- Mining Lease.

2. 3.1.4. Mineral agreements. The Government may, at the request of a person proposing to carry on mineral operations, enter into an agreement, relating to a mineral title. It is pertinent to mention here that a mineral agreement does not absolve any party from complying with any requirement laid down by law for applying and obtaining any mineral title, license, approval, permission or other document required by any law for the time being in force. Such agreement shall make provision for –

- the grant, renewal, cancellation or transfer of a mineral title;
- minimum exploration operation to be carried on and related expenditures to be incurred for the purposes of those operations;
- the formation of joint venture;
- the basis on which the fair market value of any mineral or group of minerals may, from time to time, be determined on an arms-length basis;
- the payment of enhanced royalty in specified circumstances;
- the payment of additional profits/ tax in specified circumstances;
- the establishment of secondary and tertiary processing facilities;
- the circumstances in which, and the conditions on which, rights of pre-emption of minerals may be exercised by Government;
- guarantees to ensure the due and proper performance of the obligation of the holder of the mineral title;
- financial and insurance arrangements;
- settlement of any dispute which may arise in the interpretation or application of any provision of a mineral agreement by a sole expert;
- co-ordination of exploration or mining operation to be carried on by the person concerned under an exploration license or a mining lease with any such operation carried on by the holder of an exploration license or a mining lease in any neighbouring exploration area or mining area;
- other matters relating to mineral operations as Government may determine or as the parties to the agreement may consider necessary.

2. 3.1.5. General conditions of mineral titles: In addition to any condition contained in the title or a mineral agreement every mineral title is subject to the condition that the holder of a mineral title shall-

- exercise any right granted to the holder by or under these rules reasonably and the rights and interests of the occupier of the land are not adversely affected without compensation to the occupier.
- give preference to citizens of Pakistan for employment of qualified persons

- carry out training programmes in order to encourage and promote the development of Pakistani national employed by the holder of the mineral title;
- ensure technical and economic efficiency and make use of the products or equipments locally manufactured or produced, and the services locally available;
- co-operate with the persons involved in the mining industry to enable citizens of Pakistan to develop skills and technology and to render services in the interest of that industry;
- take measures to prevent damage to the environment, and where some adverse impact on the environment is unavoidable, take measures to minimize such impact;
- make good any damage caused to the environment, as far as possible, during the course of exploration or mining operations and on the cessation of such operations;
- give to the Licensing Authority, if the holder is a Company, notice of any change in its name, registered address, directors or share capital, within thirty days as from the date of the change;
- give to the Licensing Authority any change of his address, if it is a case of an individual, within thirty days of the change;
- give a thirty days notice to the Forest Officer concerned of the intention to commence the exploration operations within a reserved or protected forest,

2. 3.1.6. Directions to holder of mineral title: The Licensing Authority is empowered to give directions to the holder regarding good reconnaissance, exploration or mining practices, for: the carrying out of reconnaissance operations, exploration operations and mining operations; the conservation of any natural resources; the protection and preservation of the surface of mines or works and of buildings, road, railways and other structures, etc; the construction, erection, maintenance operation, use or removal of structures, equipment and other goods used in connection with the exploration or the mining or conveyance of minerals; the protection of the environment; the making safe of undermined ground and of dangerous structures; the safety, welfare and health of persons employed in every activity related to mining; the taking, preservation and furnishing of cores, cutting or samples of minerals to the Licensing Authority; the submission to the Licensing Authority of reports, returns and other information; the taking of logs or directional surveys or the making of other investigations; and the creation of safety zones in relation to structures erected on land.

2. 3.1.7. Reconnaissance license:

2. 3.1.7.1. Rights of holder of reconnaissance license: A reconnaissance license shall confer on the holder of the license a non-exclusive / exclusive right, to carry on reconnaissance operation in respect of licensed mineral /group of minerals and the right to carry on such other operations, including the erection or construction of ancillary works, in the reconnaissance area as may be reasonably necessary for any reconnaissance operation with the permission of the Licensing Authority.

2. 3.1.7.2. Duration of reconnaissance license: The duration of a reconnaissance license is 12 months, but if the holder of the license applies for an exploration license, his existing license will remain valid till such time that his application is disposed off.

2. 3.1.8. Exploration License:

2. 3.1.8.1. Rights of holder of exploration license: An exploration license shall confer upon the holder,-

(a) an exclusive right to carry on exploration operation in the area in question in respect of any mineral or group of minerals, the right to enter and occupy the land which comprises the exploration area for the purpose of carrying out exploration operations, subject to the rights of surface holder and the right to take and divert water on or flowing through such land and use it for any purpose necessary for exploration operations subject to and in accordance with the provisions of law for the time being in force; and

(b) with the permission in writing of the Licensing Authority previously obtained generally or in every particular case, the holder of an exploration license, the right to remove from the exploration area a mineral or group of minerals or sample thereof, for the purpose of testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of such exploration operations to any other place whether within or outside the Province or subject to such other permission as may be required under any law, outside Pakistan; and the right to sell or otherwise dispose of limited amounts of any such mineral or group of minerals or of material excavated during exploration operations, and the right to do all other things, including the erection or construction of ancillary works, in the exploration area, as may be reasonably necessary for, or in connection with, any exploration operations.

2. 3.1.8.2. Duration of exploration license. An exploration license shall be valid for such period, not exceeding three years, as may be specified in the license

2. 3.1.9. Mineral Deposit Retention License:

2. 3.1.9.1. Rights of holder of mineral deposit retention license. A mineral deposit retention license shall authorize the holder of the license-

- to retain the retention area for further mining operations;
- to carry out a programme of operations under the rules;
- to remove, with the permission of the Licensing Authority previously obtained whether generally or in every particular case, from the retention area any mineral or group of minerals or sample thereof, for the purposes of testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of carrying out such programme of operations to any other place whether within or outside the Province or, subject to any law for the time being in force, outside Pakistan;
- to sell or otherwise dispose of, with the permission of the Licensing Authority previously obtained whether generally or in every particular case, limited amounts of any mineral or group of minerals or material excavated during operations so carried out; and

- to do all other things, including the carrying out of investigations and operations and the erection or construction of ancillary works, in the retention area, as may be reasonably necessary for, or in connection with, any authorised operation.

2. 3.1.9.2. Duration of mineral deposit retention license: The duration of a mineral deposit retention license is up to two years which is renewable for a period of another one year.

2. 3.1.10. Mining Lease

2. 3.1.10.1. Rights of holder of mining lease. A mining lease confers on the holder of the lease,-

- the exclusive right to carry on mining operations in the mining area in respect of any mineral or group of minerals to which the lease relates;
- the right to enter and occupy the land which comprises the mining area for the purpose of carrying on mining operations and exploration operations;
- the right to carry on exploration operation in the mining area in conjunction with related mining operations; the right to remove from the mining area any mineral or group of minerals, from any place where it was found or mined in the course of mining operations or found or incidentally won in the course of exploration operations to any other place within or outside the Province or, subject to such other permission as may be required under any relevant law, to any place outside Pakistan;
- the right to take and divert water on or flowing through such land and use it for any purpose necessary for mining operations subject to and in accordance with the provisions of the relevant laws;
- the right to sell or otherwise dispose of any such mineral or group of minerals subject to any condition of the mining lease or mineral agreement relating to the satisfaction of the internal requirements of Pakistan; and
- he right to do all other things and carry on such other operations, including the erection or construction of ancillary works, as may be reasonably necessary for, or in connection with, the mining or exploration operations, removal, selling or disposal.

2. 3.1.10.2. Duration of Mining Lease

The duration of a mining lease is up to thirty years and renewable for a period up to ten years.

2. 3.1.11. Cancellation of mineral titles. The Licensing Authority may, by notice in writing, cancel the title on any of the following grounds,

(a) failure to use in good faith the land subject to the title for the purpose for which the title was granted or use of that land for any purposes other than the purpose for which the title was granted;

(b) failure to comply with any requirement of these rules with which the holder is

bound to comply;

(c) failure to comply with a condition of the title;

(d) failure to comply with a direction lawfully given under these rules or with a condition on which any certificate of surrender is issued or on which any exemption or consent is given under these rules; or

(e) failure to pay any amount payable by him under these rules within one month after the amount becomes due,

2.3.3 KPK Government Rules of Business, 2005

These rules cater for a **Industries, Commerce, Labour, Mineral Development & Technical Education Department,** which has been entrusted with the following matters relating to minerals and mine labour welfare:

- Mines and Minerals:
- Geological Survey;
- Development of Mineral resources and regulation of mines;
- Mineral Rules;
- Grant and transfer of prospecting licenses and mining leases;
- Import, purchase, distribution and price fixation of coal and coke.
- All matters affecting labour in general:
- Welfare and conditions of labour;
- Labour Laws, both Federal and Provincial; and
- Labour Legislation (Provincial)
- Resettlement and Employment of demobilized personnel.
- Administration of Labour Courts and Labour Appellate Tribunals.
- Administration of Minimum Wages Boards.
- Technical Training Centres.
- Social Security Scheme.

3. Mines & Mineral Policy Framework

3.1 Pakistan National Mineral Policy-2 (2013)

3.1.1 General:

The new policy serves as a clear and detailed representation of objective of improving the international competitiveness of mineral sector. NMP-2 seeks to provide the basis for addressing these and other challenges, as well as responding to important government priorities and commitments to cater for research development enhancement, human resource development, as well as promotion and marketing.

The main challenges the new National Mineral Policy (NMP-2) seeks to address revolve around the following five broad themes:

- *Increasing the economic contribution of the mining sector to Pakistan's economy through more private investment;*
- *Being competitive for scarce and mobile international capital for investment in the mining sector through a stable and enabling environment;*
- *Ensuring smooth operational and effective coordination between Federal and Provincial institutions in the implementation of the regulatory and legislative regime for the mining sector;*
- *Ensuring that the exploration for, and development and production of, Pakistan's mineral resources are environmentally sustainable; and*
- *Encouraging small scale mining and local private participation in the development of the sector.*

The broad goals are to enhance the contribution of the mineral sector to the GDP by efficient and sustainable development of mineral resources through private sector investment for the benefit of the people of Pakistan. In order to achieve this goal, the National Mineral Policy – 2 aims to achieve the following:

(a) Enhancement and sustenance of revenue flow to the Provincial and Federal Governments.

(b) Creation of an investment-friendly climate to enhance international competitiveness.

(c) Optimization of exploration, development and exploitation of minerals;

(d) Mitigation of adverse environmental effects of mineral development;

(e) Generation of mass scale employment and socio-economic uplift through enhanced skills, sustainable mineral development, technology transfer and regional infrastructure development;

(f) Administrative restructuring of relevant federal and provincial mineral sectors;

(g) Generation of geological data, development of a national cadastre and provision of online accessibility to such data; and

(h) Ensuring safe mining operations and safety and security of investors.

3.1.2 Main Features of NMP Policy-2 (2013)

NMP 2013 outlines the constitutional position of mines and minerals in the country and clearly explains that regulation, detailed exploration, mineral development and safety concerns in these operations, whereas geological/geophysical survey and mapping, mineral identification, regional exploration, national and international coordination and formulation of national polices and plans are federal responsibilities.

Mineral Investment Facilitation Authorities (MIFAs) are to be established at both Federal and Provincial level. At the Provincial level, these will be mandatory bodies as provided for in the Provincial Mining Concession Rules.

Each MIFA will execute the following functions:

(a) Monitor and direct mineral related activities and programs of the respective Government/

(b) federating unit and public sector on a regular basis;

(c) Act as a facilitator to all stakeholders and provide a one-window permitting and approval operation to

(d) mining companies proposing large scale projects;

(e) Review and ensure compliance by the respective Government/federating unit with mineral/project agreements;

(f) Carry out periodic review of implementation of the regulatory and fiscal regimes and functioning of the mineral administration set-up in the federating units/federation.

(g) Introduce measures for promoting the manufacture and use of local goods and services, thus creating opportunities for industrial development and appropriate education and training of locals in modern mining skills;

(h) Evaluate and if appropriate, promote the establishment of secondary and tertiary mineral processing facilities within the country, subject to environmental, social and economic viability;

(i) Arrange and approve mineral portfolios for attracting private investment;

(j) Carry out any other function assigned by the respective Government/federating unit; and

The policy stresses upon the need for restructuring and strengthening of the Ministry for Petroleum and Natural Resources (MPNR) at the national level and that of the Departments of Mines and Minerals with independent Secretaries at Provincial / Federating Units level.

The NMP 2 recognizes the role of the Federal Government in the development of mineral resources, not only in the context of fiscal policies but also in international contacts with donor agencies and negotiation of mineral agreements. Therefore, a

Mineral Investment Facilitation Board (MIFB) will be established as consultative forum, under the Chairpersonship of the Federal Minister for Petroleum and Natural Resources.

The Policy extends the Government's drive to ensure the modernization of the mining sector regulatory instruments. This will be done, in addition to other measures, through the following:

- Addressing the concerns of mining companies as well as aspirations of the Federal and Provincial Governments/federating units and to reflect the Provincial Mineral Concession Rules in the mineral agreements entered into between mining companies and the Provincial Governments;
- Providing for mineral titles to be granted or renewed for sufficient periods to allow for the full commercial exploration, development and exploitation of any mineral deposit by the mineral title holders;
- Eliminating discretionary powers, provide time frames and ensuring transparency of decisions.
- Updating the mining laws to deal with international mining practices in Pakistan such as open pit mining and working practices.

The Mining Concession Rules will provide for four types of mineral titles, namely:

- Reconnaissance License (RL); Non exclusive (generally) right will be granted for a period of one year over an area of 100 to 10,000 sq. km. in respect of a mineral or a group of minerals.
- Exploration License (EL); An Exploration License will be granted over an area not exceeding 1,000 sq km. for a period not exceeding three years and renewable for another three years over 50% of the area of the EL.
- Mineral Deposit Retention License (MDRL); When an Exploration Licensee can demonstrate that the deposit, though potentially viable, cannot be commercially developed, due to depressed metal/mineral prices utilizing proven technology or with financing on commercial terms which are reflective of current market conditions for other mining projects, he may apply for a Mineral Deposit Retention License (MDRL) which may be granted to him for a period of three years and may be renewed for a period of one year.
- Mining Lease (ML).The holder of an Exploration License or an MDRL may be granted as of right mining lease over an area subject to a maximum of 100 sq km. within his Exploration License or MDRL in respect of the mineral(s) covered. The mining lease will be granted for the lesser of a period of 30 years or the estimated life of the mine. A mining lease may be renewed for a period not exceeding 10 years or the life of the mine whichever is lesser in the light of the circumstances prevailing at that time. Any other person may be grated mining lease n the discretion of the Licensing Authority.

The NMP-2 states that to ensure that the mineral resources development activities are undertaken in an appropriate manner, environmental stewardship needs to be incorporated throughout the development process, through:

- The implementation of the regulatory environmental management measures including Environmental Impact Assessment, as well as environmental management system, plan and audit;

- The compliance with the Environmental Protection Act and other appropriate national and international standards, codes, guidelines, and policies;
- Ensuring effective implementation of progressive post-mining rehabilitation;
- Promoting the recovery, recycling and reuse of minerals, metals and mineral-based products;
- Ensuring the implementation of effective mine waste management measures;
- Promoting and disseminating information on the use of best mining practices, public disclosure and corporate social responsibility (CSR); and
- The effective implementation of a Mine Safety and Health Plan.

The Policy also provides for Mineral Investment Facilitation Board (MIFB) to be established at Federal level as a consultative forum, under the Chairpersonship of the Federal Minister for Petroleum and Natural Resources.

Alternative dispute resolution mechanism has been provided for settlement of disputes between the foreign mining investors and the Government will be submitted to the procedures for sole expert determination or arbitral or other tribunal agreed in a mineral agreement or, where there is no such agreement or such agreement does not specify a tribunal, to the International Centre for Settlement of Investment Disputes (ICSID) or International Chamber of Commerce (ICC) for arbitration.

Social Welfare: The Policy caters for various social welfare aspects

- Workers Profit Participation Fund (WPPF) A levy is payable to the Trustees of WPPF at an agreed percentage of net profits as per accounts for the year by companies and associations of persons with more than 20 members (partners) engaged in industrial undertaking, and employing 50 persons or more, whose paid-up capital is Rs 2.00 million or more and/or the fixed assets are Rs 4.00 million or more.
- Workers Welfare Fund (WWF) A levy is payable by companies engaged in industrial undertaking at an agreed percentage of the taxable income of the year where such income is Rs 500,000 or more.
- Workers Children Education Cess. A provincial levy which is payable in every quarter by an establishment employing 20 workers or more at Rs 25.00 per worker per quarter, except where the employer has made arrangements for the education of children of his or her workers
- Employees Social Security Institution. A provincial levy requiring every employer employing ten or more workers with wages up to Rs 7000.00 per month to pay 370 per wage earner including Rs 20.00 contributed by the wage earner per month to the Institution while the workers and their family members are provided free medical treatment, maternity benefits and other assistance.
- Employees Old Age Benefits Institution. Every employer employing ten or more persons is to contribute 6% of their salary up to a maximum of Rs 210.00 per month to the Employees Old Age Benefits Institution in respect of each employee, including Rs.30 per month contributed by such employee who will be entitled to old age pension on attaining the age of 55 & 60 years in the case of women and men respectively.

- Excise Duty on Minerals: All dispatches of specified minerals from mines are subject to levy of a cess/duty of excise at the notified rate from one to five rupee per ton, meant for financing measures for promoting the welfare of labour employed in the mining industry.
- Surface Rent: The Provincial Governments will ensure adequate access and freedom to the license holder and/or the leaseholders to carry out the prospecting and exploration activities while the license holders and leaseholders etc., will provide fair compensation to the landowners.
- Social Uplift Obligations: Leaseholders are expected to ensure provision of adequate facilities for sustained development of the mining area and the community.
- Restoration and Rehabilitation: Leaseholders are obliged under the agreement with Government to carry out necessary and adequate restoration including landscaping to turn the mine site to the original position as far as possible.
- Research, Development & Monitoring: The Mineral Departments of the federating units and Mineral Wing of the Ministry of Petroleum and Natural Resources through necessary skills development will carry out economic & legal analysis for the Federal & Provincial Governments mineral sectors to safeguard their interests.
- Accounting and Record Keeping: Effort will be made through seminars and conferences to encourage the mining community/investors to prepare their financial statements in accordance with International Financial Reporting Standards.

3.2 Mineral Sector Development Policy Note (2005)

3.2.1 General

This policy note was a joint effort of the Ministry of Petroleum and Natural Resources, and the World Bank, which was based on extensive work prepared by the Ministry and includes the findings of World Bank missions consisting of Messrs. Peter van der Veen, Manager, Leo Maraboli, Senior Mining Engineer, [redacted], Senior Private Sector Development Specialist, Enrique Ortega, Consultant and Bob Parsons, Consultant, based on interviews with representatives of the Ministry of Petroleum and Natural Resources, Provincial Governments, the Geological Survey of Pakistan, the Environmental Protection Agency, private mining companies, other stakeholders and a desk-review of the legal framework by John Williams, Consultant.

3.2.2 Conclusion

The Policy Note concluded that despite a commendable achievement in harmonizing policy and regulations among the Federal and provincial governments through the NMP (1995) and the provincial rules, the conditions and procedures for private investment in and development of mineral resources in Pakistan are not particularly attractive/competitive in the current global market.

3.2.3 Main Recommendations

Therefore, it recommended that Federal policy and provincial regulations be brought more in line with international best practice in the following areas:

(a) ***Institutional Capacity***. The Public Mining Institutions lack the technical capacity, managerial skills, and material support for the implementation of the National Minerals Policy in order to improve the development of the mining sector. It is necessary to create, over a period of 3-5 years, the organizational capacity and trained manpower which will allow the institutions to fulfil their functions as regulatory bodies, supervisors and promoters of private investment.

(b) ***Institutional Structure.*** The focus of the licensing division of the Departments of Mineral Development should be exclusively on the processing of applications for, and the grant or refusal, recording, maintenance, amendment, transfer, renewal and cancellation of mineral titles, and the compilation and publication of information related thereto. There is a need for a separate mines department and inspectorate, as well as an environmental permitting and compliance monitoring unit, in the Departments of Mineral Development.

(c) ***Information.*** Rigorous rules for the use and maintenance of a registry of applications for mineral rights should be established and implemented.

(d) ***Standardization***. The procedures for the grant of reconnaissance and exploration licenses should be simplified and speeded up. Overall, the criteria and procedures for the processing of applications for and grant of mineral rights are in need of substantial streamlining, standardization, rationalization and objectification, starting with the establishment of standard map-based criteria for locating areas subject to all mineral rights.

(e) ***Transferability.*** The international trend is to allow transfers of titles with greater ease than under the provincial rules in effect in Pakistan.

(f) ***Security of Tenure***. Reconnaissance and exploration rights should be made exclusive as to (at least) all metallic and precious minerals, in order to effectively compete for investment capital. Longer terms and renewal periods for reconnaissance and exploration licenses are necessary for international competitiveness; and the terms of the MDRL should be re-considered. Discretionary political criteria should be eliminated from the process for the grant or refusal of mining leases. Grounds for cancellation should be limited to failure to comply on a timely basis with one or two specific, financial, title maintenance obligations.

(g) ***Obligations***. Consistent with international best practice, it is recommended that the provincial rules distinguish between title maintenance obligations, on the one hand, which must be met in order to maintain the validity of the mineral title, and operating obligations, on the other hand, non-compliance with which is punishable by fines and suspensions of operations pending remediation.

(h) ***Environmental Protection.*** The respective scope of Federal and provincial regulation is in need of clarification. The impact of mineral development projects on the social environment should be given greater attention. Environmental mitigation requirements for exploration need to be adapted to the normal progression of exploration work; and more specific rules are needed as to the implementation of environmental and social mitigation measures and the provision of environmental surety.

(i) ***Stability.*** The mineral agreements authorized by the NMP and the implementing rules of the provinces, while helpful to investors, are time consuming, costly, and inefficient as a means of regulating mineral exploration and production activities.

International best practice relies on standardized terms and conditions in the law, stabilized by standard form, non-negotiable, fixed-term stability agreements available to investors who qualify by committing to an investment program that exceeds a specified threshold amount.

(j) ***Fiscal Regime.*** Pakistan has a contemporary and complete set of laws dealing with corporate income tax, mineral royalties, customs duties, and other imposts that are important to the mining sector. The NMP sets out a fiscal framework that was agreed to by consensus of the federal and provincial governments. These laws and the NMP contain some significant provisions that are favorable to attracting investment to the sector. However, these laws and the NMP also contain some possible constraints to attracting investment. Perhaps most notably, the fiscal "package" of income tax, royalty, and customs duty rates makes Pakistan relatively uncompetitive internationally as compared to other mineral endowed nations that are actively seeking to attract investment capital.

3.3 Khyber Pakhtunkhwa Minerals Sector Policy

The FIRMS Policy Framework Consultant has prepared a comprehensive KPK Mineral Sector Policy, which has been adopted by KPK Government with some modifications. The following paragraphs (3.3.1- 3.5) of this section are generally excerpts taken from the said Policy.

3.3.1 Vision

To establish Khyber Pakhtunkhwa (KPK) as a preferred mining destination for domestic and international investors that positions mining in KPK as a fundamental driver for economic and social development in the province and country.

3.3.2 Mission Statement

To ensure that the development of KPK minerals is done in a socially and environmentally responsible way that will achieve financial return, economic growth and improved quality of life through reinvigorated institutional and regulatory arrangements, construction of new infrastructure, job creation, and skills and education development, that unifies provincial residents.

3.3.3 Main Objectives of the KPK Minerals Policy

- To strengthen Government capacity and coordination to implement a modern mining regime in support of clear mining, environmental, water, land and other rights and responsibilities.
- Introduction of modern mining techniques and improved technical "know how" to reduce waste of mineral resources.
- Enhanced mineral revenue generation and allocation to ensure community engagement and receipt of benefits of mining.
- Resolution of land access and land use permits and compensation relevant to mining and related activities.
- Establishment of credible conflict resolution mechanisms that are accessible for all stakeholders and grievance mechanisms for mineral sector workers.
- Attraction of legitimate and technically qualified investment that may include large-scale mining and foreign investment.

- To develop KPK minerals in an integrated way that will improve the quality of life of KPK community residents, protect the environment, and manage mineral revenues for near-and long-term benefit.
- To build educational and skills-building opportunities that results in a professionally qualified workforce at all levels of mining.

3.3.4 Key Strategic Aspects of KPK Minerals Policy 2013

The main relevant areas are being highlighted in some detail-

3.3.4.1. Legal and regulatory framework

a. The KPK government will support MDD in the revision and updating of the legal and regulatory framework including:
    - Adoption of a KPK Minerals Act
    - Assessment of the value of the 1923 and other antiquated legal acts; whether they should be repealed or modified.
    - Amendment of the Mining Concession Rules

b. The KPK government will support MDD in the revision and updating of the legal and regulatory framework including:

c. Government will assess its current licensing and leasing framework including how mine sizes are defined (i.e., small, large) and the introduction of additional license types (i.e., artisanal), rights and obligations of licenses to include more social and environmental standards.

d. Government will regularize an inter-departmental mechanism (i.e., Mining Committee) to actively assess the different department roles in mineral development, harmonize rules, and promote transparency amongst all segments of the sector.

e. Assessment of district, village and mine level institutional needs to support improved social and environmental protection, safeguard workers, and promote information exchange will be conducted to promote stakeholder participation closer to the actual mining sites.

f. Financing of institutional requirements such as computers, communication equipment, testing equipment, laboratories will be included as part of the KPK Government budgeting to ensure that institutions are technically equipped to implement their mandates.

3.3.4.2. Social and Environmental Protection

g. The KPK Government is committed to implementing the highest standards of social and environmental protection and seeks to develop the province's mineral resources in a manner that will include conservation measures and require environmental and social safeguards.

h. The KPK Government will work with mine communities and mine operators to identify areas for "community development agreements" through which mine communities may directly benefit from mining occurring in their districts and villages.

i. Government may determine that certain mine areas will be conserved and not available for licensed operations based on good resource management principles to safeguard the water, soil, and forests of KPK.

j. As part of all mineral operations in KPK, at a minimum, an "Environmental Screening" will be required; for medium and larger operations an Environmental Impact Assessment and regular Environmental Management Plan shall be required.

k. As part of license/leases, Government shall assess mechanisms to require "escrow" payments by operators to be made available for the life of the mine operation should any social or environmental damage occur and require remediation.

3.3.4.3. Other important provisions: Other important provisions include integrated infrastructure and value chain development, development of a modern minerals market, market-oriented mineral sector and capacity building.

3.3.5 Specific note on Pakistan Mining Legal Framework

The FIRMS Consultant Policy Framework has also written a special note on Pakistan Mining Legal Framework, in which she has opined as under.

- The legal framework of mining needs to compare favorably with the frameworks of other countries having successful mining, which will require a comparison of the existing framework in Pakistan with those of the recently reformed mining countries.
- Particular emphasis will need to be given to: i) the modernization of mineral law, regulations, and fiscal regime; ii) incorporation of environmental controls and social mitigation; and iii) institutional frameworks.
- Good minerals law and supporting regulations will help to clarify the rights and obligations of stakeholders.
- Pakistan needs to review the legal and regulatory framework, because mining is a provincial jurisdiction, provincially-led legal frameworks are essential.
- Collaboration and coordination amongst the provinces will help to promote Pakistan as an attractive destination for mineral investments.

3.3.6 KPK Minerals Policy Issues

This Minerals Policy is intended to set out a foundation of policy approaches to critical issues that challenge mineral development in Khyber Pakhtunkhwa. Some of the critical issues include:

- Government capacity and coordination to implement a modern mining regime in support of clear mining, environmental, water, land and other rights and responsibilities.
- Introduction of modern mining techniques and improved technical "know how" to reduce waste of mineral resources.
- Enhanced revenue generation and allocation to ensure community engagement and receipt of benefits of mining.
- Resolution of land access and land use permits and compensation.

- Conflict resolution that is accessible for all stakeholders and grievance mechanisms for mineral sector workers.
- Where feasible, increased large-scale mining.
- Attraction of legitimate and technically qualified investment that may include foreign investment.
- Improving linkages of mining to infrastructure development and improving value-chains and value-added benefits to minerals mined in KPK.

4. International Context

4.1 Good Practices in mining – South Australia context

4.1.1 Key features

The Department for Manufacturing, Innovation, Trade, Resources and Energy (DMITRE) of South Australia has outlined the effective and efficient regulation of mining industry. The key features of regulatory processes that will deliver effective and efficient regulation are outlined as under:

- **Fair and equitable.** The interests of all stakeholders will be considered.
- **Timely.** Decisions will be made in the minimum possible time.
- **Transparent.** Public release of information on the regulatory processes and decisions will be timely and appropriate.
- **Predictable.** Processes will be consistent leading to clearly identifiable, social and economic outcomes.
- **Practical.** Outcomes will be achievable in a practical sense.
- **Flexible.** Alternative and innovative approaches that take account of changing circumstances (e.g. in technology and community expectations over the long life of a mine) will be enabled.
- **Efficient.** Red tape will be minimised and regulatory processes simplified and made 'fit for purpose' to achieve timely decision-making.
- **Objective.** Decisions will be based on sound scientific and technical information.
- **Inclusive.** Stakeholders will be engaged and informed and their views will be taken into account.

4.1.2 Regulatory approach

DMITRE has also given that their approach to effective regulation and decision-making will be achieved by:

- *Application of recognised industry and national standards*.
- A *whole-of-mine-life* approach through exploration, pre-production phases, production phase and the post-production phases including mine closure and completion.
- *Balanced assessment* of the economic, social and environmental impacts.
- *Risk-based approach* to determine what impacts must be managed.
- *Performance-based criteria* focusing on outcomes rather than inputs.
- *Minimisation of liability* for both government and the community.
- *Clear accountability for the explorer or miner* to achieve community and government expectations including:
    - *stakeholder engagement to establish best practice environmental and site management processes and outcomes which are appropriate for the*

exploration program or for a mining development through life-of-mine and beyond mine closure

- *demonstration of ability to achieve agreed outcome*
- *demonstration of achievement of agreed outcomes.*

- *Collaboration* with other government agencies to achieve government priorities, engaging their expertise and authority where required.
- *Ensuring compliance* through best practice strategies, which may include enforcement actions that ensure explorers and miners consistently achieve agreed outcomes.

4.2 Good practices in mining- Indian context

4.2.1 General

A High Level Committee which was set up in the year 2005, to review the National Mineral Policy recommended that there was need to introduce best practices in implementation of environment management and to take into account the global trends in sustainable developments. The Committee took into account the work of International Council of Mining and Metals (ICMM and International Union for the Conservation of Nature and Natural Resources (IUCN) and recommended development of a Sustainable Development Framework (SDF) specially tailored to Indian context.

4.2.2 Main principles

The following seven principles form the core of the Sustainable Development Framework for India.

(i) Incorporating environmental and social sensitivities in decisions on leases at the earliest phase of the mining life cycle.

(ii) Strategic assessment in key mining at regional level, developing a regional plan and creating an institutional structure to own and implement such plans in key mining regions.

(iii) Managing impacts at the mine level through impact assessment of key environmental, social, health and safety issues, development of management framework and systems and continuous improvement on the basis of international standards on a self driven basis.

(iv) Addressing economic land and social issues, including, resettlement and rehabilitation.

(v) Community engagement, benefit sharing and contribution to socio-economic development.

(vi) Integrated approach in mine closures and post closure operations.

(vii) Assurance and reporting the performance of stakeholders regarding the sustainability of mining.

4.3 International good practices – FIRMS Policy Framework

4.3.1 Best international Practices in mining

The FIRMS Policy Consultant has opined that it is useful to compare the country policies, notably those having federal-provincial mining policies such as Australia and

Argentina and because of the status of mining in Pakistan, have a closer review of policies in transition mining markets such as India, Mozambique, South Sudan. The Consultant has highlighted that sophisticated mining markets have recognized certain core principles attached to mining phases, i.e., (i) award of mineral rights; (ii) pre-production; (iii) production; (iv) post-production (i.e., mine closing) and best practices in mining policy that include:

- *Security of tenure* – certainty of mineral rights is essential to attracting and maintaining legitimate investment.
- *Predictability and quality of investment* – investors need predictable frameworks to make multi-million dollar investments; in addition, a combination of factors must be in place to ensure that investors do not "mine and run" and are invested for the long-term.
- *Regulation of all aspects* – in addition to mining, regulation and close oversight of how workers citizens, communities and environment are treated and protected is essential.
- *Revenue management* – Government must take a lead role in defining revenues (See Appendix 2) and ensuring that mineral revenues are not only captured in the near time but that they have long-term positive impact on economy and society.
- *Information and transparency* – mining is a local activity; absent stakeholder consultation and participation in sector developments, projects tend to fail.

4.3.2 International Best Practices - Institutional Frameworks

Each country has developed specific institutional arrangements to optimize mineral development. No matter the levels of Government, the most critical functions of government's mining institutions include:

- *A Cadastre Office* (commonly referred to as the Cadastre) maintains a register of licenses/leases and activities related to licenses and leases ("cadastre"), using a cadastral map that is a comprehensive register of the metes-and-bounds of mines. The cadastre includes details of the ownership, license terms, and increasingly, the precise location (i.e., GIS coordinates) of the mines. License/lease holders are obligated to report to the cadastre as part of their license/contract terms and typically the cadastre is a fundamental source of data in disputes and law suits between landowners.
- *A Geological Survey* is an institution charged with the systematic investigation of the geology of a country and/or province and for maintaining the country/province's geological map. Geological Survey maps are available for investor and public review although survey. Core mineral and rock samples are maintained, where possible, by the Geological Survey.
- *A Mine Inspectorate* (commonly referred to as Inspectorate) is an essential institutional component in the minerals sector. It is charged with the implementation and oversight of health and safety of the mines. This includes mine safety, worker health and safety, and some poorly defined environmental and social aspects. Regulatory drafting should be an inherent part of the Inspectorate work, technical certification and enforcement power to stop mining operations that are not in compliance with operating requirements.

4.4 ILO Conventions ratified by Pakistan

4.4.1. The International Labour Organization has created about two dozen labour rights conventions. Pakistan has ratified following thirteen of these conventions, which have substantially influenced the labour legislation in Pakistan.

- Convention No 1. Hours of Work (Industry) Convention, 1919
- Convention No 19. Equality of Treatment (Accident Compensation) Convention, 1925
- Convention No 45. Underground Work (Women) Convention,1935
- Convention No 59. Minimum Age (Industry) Convention, 1937
- Convention No 81 Labour Inspection Convention, 1947
- Convention No 87. Freedom of Association and Protection of the Right to Organize Convention, 1948
- Convention No 89. Night Work (Women) Convention, (Revised) 1948
- Convention No 90. Night Work of Young Persons (Industry) Convention, (Revised), 1948
- Convention No 98. Right to Organize and Collective Bargaining Convention,1949
- Convention No111. Discrimination (Employment and Occupation) Convention, 1958
- Convention No 118. Equality of Treatment (Social Security) Convention,1962
- Convention No 144. Tripartite Consultation (International Labour Standards) Convention, 1976
- Convention No159. Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983.

Note. Convention No 176, Safety in Mines Convention, 1995 has not been ratified; in fact only a few countries have done so.

4.4.2. However, the constitutional context has changed and though the treaties are a federal subject, the KPK Government may use these conventions as guidelines and may modify the existing legal provisions relating to mines labour rights through the proposed Mineral Act.

5. Proposed Mineral Law of KPK

Main features of proposed Enactment

- Preamble reflecting the Policy
- Crisp and comprehensive definitions
- Autonomous regulatory board
- Redefined role of the Government
- Participation of stake holders
- Compatible with international regime
- Providing business friendly environment
- Security and adequacy of tenure of titles
- Reliable, efficient and alternative dispute resolution
- Protection of environment
- Provision for special mineral agreements for mega projects
- Rehabilitation of social displacement
- Comprehensive coverage of entire life of mining operation
- Safety of health and welfare of workers in mines
- Protection of labour rights
- Transparency in grant of titles
- Use of technical data (Strade Service)
- Equitable and sustainable system
- Appropriate fiscal regime
- Clarity in jurisdictional matters
- Strict sanction for enforcement
- Customary trappings
- Repeal of the 1948 Act to the extent of KPK Province
- Federal minerals excluded
- KPK Mining Concession Rules 2005 to partially continue.

The Khyber Pakhtunkhwa Mines and Minerals (Development & Regulation) Act, 2014

Preamble: Whereas it is necessary for implementation of the policy of the Government: to establish an effective and transparent administration and management of the mineral sector to cater for internationally competitive, stable and conducive business climate; to formulate an equitable fiscal and permitting regime; to cater for impartial and efficient dispute resolution system; to set up a robust and efficient institutional framework; to simplify and streamline the procedures; to eliminate adverse social conditions and environmental degradation; to support artisanal and small scale mining; to ensure consultation of stakeholders; and, to **cater for the matters connected with and ancillary thereto, in the manner hereafter appearing:** It is hereby enacted as follows:

Part I - Preliminary

1 Short title and commencement:

(1) This Act may be called the KPK Mines and Minerals (Development and Regulation) Act, 2014

(2) It shall extend throughout the Province.

(3) It shall come into force at once.

2. Definitions.---In this Act, unless the text or context otherwise requires,-

"Act" means KPK Mines and Minerals (Development and Regulation) Act, 2014

(i) "Appellate Authority" means the person or entity to which the appeal lies against the decision of any person or entity under the Act or rules.

(ii) "assignee" means a person, a Company to whom a Mining Lease is assigned, transferred or mortgaged or to whom an Exploration License is transferred under the Act.

(iii) "authorized officer" means an officer designated by the Licensing Authority to be an authorized officer; provided that if more than one officers are designated as such, the jurisdiction of each such officer shall also be defined;

(iv) "Board" means the KPK Mines & Mineral Development Board established under the Act.

(v) "Collector" means a Collector appointed under the West Pakistan Land Revenue Act, 1967 (W.P. Act No. XVII of 1967), or any other person notified as Collector under the Act.

(vi) "Company" means a Company as defined in the Companies Ordinance, 1984 (Ordinance No. XLVII of 1984), and includes a Firm registered under the Partnership Act, 1923;

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

(viii) "dead rent" means the rent of the leased area to be charged under the Act at the rates specified by Government from time to time;

(ix) "Directorate" means the Directorate General of Mines and Minerals, Government of the Khyber Pakhtunkhwa Province.

(x) "Director General" means the Director General, Mines and Minerals, Government of the Khyber Pakhtunkhwa Province.

(xi) "Director" means the Director Licensing, Directorate General Mines and Minerals Government of the Khyber Pakhtunkhwa Province.

(xii) "drilling" means the perforation of the earth's surface for collection of core samples otherwise than by pitting, trenching or sinking a shaft, whether the hole is vertical, inclined or horizontal, and includes all operations for preventing the collapse of the sides of the hole or for preventing the hole from becoming filled with extraneous matter, including water;

(xiii) "exploration" means search for minerals, and includes the determination of its extent and economic value and evaluation;

(xiv) "exploration area" means the area of land, including its lateral limits, to which an Exploration License relates;

(xv) "Exploration License" means a License for exploration issued under the Act or the rules;

(xvi) "exploration operation" means any operation carried out in connection with exploration including access to the Licensed areas, geological mapping and the collection of surface/subsurface mineral sample for the purpose of mineralogical examination, assaying, and the test work but such work shall not include commercial mineral extraction or marketing;

(xvii) "financing institution" means an institution recognized as such by the State Bank of Pakistan for the purpose of advancing credit or loan facilities;

(xviii) "Government" means the Government of the Khyber Pakhtunkhwa Province.

(xix) "group of minerals" means group of minerals described in the Schedule.

(xx) "land" includes surface bearing any mineral, land beneath water and the subsoil of land;

(xxi) "large scale mining undertaking" means a project of mining involving an investment or capital of more than three hundred million rupees or any higher amount fixed by the Government;

(xxii) "lateral limits" in relation to an area of land pertaining to a Mining Lease or a prospecting License means the vertical lines towards the earth passing through the sides by which that area is bounded;

(xxiii) "lease" means a Mining Lease granted under the Act;

(xxiv) "lessee" means a person or a Company to whom a Mining Lease is granted under the Act and includes their successors-in-interest;

(xxv) " License" means a Reconnaissance License, an Exploration License, a Prospecting License, or, as the case may be, a Mineral Deposit Retention License granted under the Act;

(xxvi) " Licensee" means a person or a company to whom a License is granted under the Act;

(xxvii) "Licensing Authority" means,

(a) in relation to large scale mining project, the Secretary in consultation with the Board;

(b) in relation to small scale mining project, the Director General, on the advice of Mines Committee; and

(c) in relation to minor minerals, the Director on the recommendation of the Auction Committee, which shall be binding on the Director.

(xxviii) "mineral" means all surface and sub-surface natural deposits of ores and metals and other metallic and non-metallic substances including naturally occurring aqueous solutions containing more than one per cent mineral salt but does not include nuclear substances; mineral oil; and natural gas;

(xxix) "mine" means any surface or underground excavation where any operation for the purpose of searching for or obtaining a mineral has been or is being carried on, and includes all works, machinery, tramway, ropeway and siding, whether above or below ground, on or adjacent or belonging to or appurtenant to a mine but does not include the manufacturing or processing plant;

(xxx) "Mineral Deposit Retention License" means a Mineral Deposit Retention License granted under the Act.

(xxxi) "mineral operation" means geological and geochemical exploration operations or mining operations or both;

(xxxii) "Mineral Title" means a Reconnaissance License, Exploration License, Mineral Deposit Retention License or Mining Lease granted under the Act.

(xxxiii) "Mines Committee" means the Mines Committee constituted under section 5 of the Act.

(xxxiv) "mining area" means an area of land, including its lateral extractions with in the Mining Lease limits;

(xxxv) "mining concession" means any License or any lease covered by or under the Act.

(xxxvi) "mining operation" means any operation carried out in connection with the development of a mine, or the production of minerals from the mine, or both;

(xxxvii) " prescribed" means prescribed by the rules;

(xxxviii) "prospecting License" means a License granted under the Act;

(xxxix) "Province" means the Province of the Khyber Pakhtunkhwa;

(xl) "reconnaissance operation" means any operation carried on for a general search of any mineral by means of aerial photographs and remote sensing techniques through satellite imageries and air borne geophysical surveys, for geological mapping and other reconnaissance stage exploration techniques;

(xli) "retention area" means the area of land, including its lateral limits, to which a Mineral Deposit Retention License relates;

(xlii) "Regulation" means Regulation framed under the Act.

(xliii) " Rule" means the Rule framed under the Act

(xliv) "Schedule" means a Schedule appended to the Act; and

(xlv) "Small Scale Mining" means a project of mining where the likely scale of capital investment is less than 300 million rupees and such other relevant factors as may be prescribed.

(xlvi) "Tribunal" means the Tribunal established under section 88 of the Act

(xlvii) "under the Act" means under the Act, Rules, Regulations and other instruments made under the Act.

3. Confidentiality.---No information received in connection with the Act by an official employed by the Department or Directorate shall be disclosed to any other person, who is not authorized to receive it, without the prior approval of the competent authority, except to the extent that the-

(a) disclosure is authorized or required by law;

(b) disclosure is required by order of a competent court, or for the purpose of any arbitration or litigation involving Government;

(c) disclosure is necessary to compile and publish official statistical information concerning geology and mineral resources of the province;

(d) disclosure is for the purpose of the implementation of the Act or a mineral agreement, the formation of mineral policy or of giving advice to other departments or agencies of Government or for the purpose of any discussion or dealing with Federal Government;

(e) disclosure is affected with the prior permission in writing of Government granted in respect of any matter which, in the opinion of Government, is of a general nature and may be disclosed in the public interest; or

(f) disclosure is in accordance with the provisions of a relevant mineral agreement or of a mineral title.

(2) The holder of a mineral title shall not disclose information acquired by him as such, except as provided under the Act or in his mineral title.

Part II- Administration

A. KPK Mines & Mineral Development Board

4. Establishment of Board:

(1) Within a period of four months of the coming into force of this Act, the Government shall establish Khyber Pakhtunkhwa Mines & Mineral Development Board as provided under the Act.

(2) The Board shall be a body corporate having a common seal, perpetual succession and power to acquire, and dispose of property, enter into agreements and may sue or be sued in its own name.

(3) The Board shall have its office at Peshawar; provided that the Board may establish such regional offices as it may deem fit.

(4) The Government, if it is satisfied, for reasons to be stated in the notice, that the functions of the Board are not being carried on in accordance with the provisions of the Act, rules, or regulations, may after due notice to the Board and independent inquiry, by notification:-

(a) declare that the functions of the Board to such extent as may be specified in the notification be exercised by the Government or such person or persons as it may direct;

(b) assume to itself all or any of the powers vested in or exercisable by the Board;

(c) make incidental and consequential provisions as may appear to be necessary or expedient for giving effect to the objects of the notification.

(5) Appeal against the order of the Government may be filed before the Tribunal within thirty days of the decision, which shall be decided within three months of the filing of appeal before it.

5. Constitution of the Board:

(1) The Board shall comprise a Chairman and fourteen members as under

(a) Representative of Environment Department,

(b) Director General, Mines and Minerals,

(c) Representative of Finance Department,

(d) Representative of P & D Department,

(e) Representative of Labor Department,

(f) Representative of KPK Mines Owners Association,

(g) Representative of KPK Chamber of Commerce and Industry,

(h) An academician in the field of mining,

(i) A representative of mines labor welfare organization,

(j) A eminent person in the field of law,

(k) Three eminent persons from private sector in the field of mining, and

(l) Chief Executive Officer of the Board

(2) A person shall not be qualified for appointment as the Chairperson of the Board unless he,—

(a) has a post-graduate degree in mining, engineering, technology, science, commerce, public administration or law from an HEC recognised university or an institute established by law and special knowledge; and,

(b) experience of not less than three years in matters relating to policy, regulation and operations in extractive industry;

(3) Subject to the provisions of sub-sec (2), a person shall not be eligible to be appointed as a Chairman or a member of the Board, if he is:-

(a) less than 30 years of age (except for ex-officio members)

(b) an insolvent or of unsound mind;

(c) convicted of an offence involving moral turpitude;

(d) disqualified to hold any public office

(e) holding a public office except in case of members mentioned at serial (a) – (e) and (l) of sub section (1) of this section.

(f) not eligible under the prescribed criteria, if any.

(4)The tenure of the members other than ex-officio members shall be three years from the date of appointment.

6. Functions of Board:

The Board shall perform the following functions, namely:-

(a) Advise the Government on conservation strategies of important minerals;

(b) Advise the Government on matters relating to the framework for sustainable development of the mining sector;

(c) Advise the Government on measures to increase transparency in the grant of mineral concessions;

(d) Review of the existing rates of royalty and dead rent and make recommendations for consideration of the Government;

(f) Recommend strategies and institutional mechanisms to the Government for attracting long-term investments in the mining sector;

(g) Recommend to Government mechanisms to protect the interests of the end-use industries in the country for assured long-term supply of minerals;

(h) Review the mineral related activities and programmes in the public sector on a regular basis and advise the Government accordingly.

(i) Act as a facilitator to all stakeholders and provide guidance to mining companies proposing large scale projects;

(j) Review and advise the Government on compliance of mineral agreements;

(k) Carry out periodic review of implementation of the regulatory and fiscal regimes and functioning of the mineral administration set-up in the Province;

(l) Advice the Government on measures to protect the environment;

(m) Promote measures for promoting the mining industry;

(n) Evaluate and if appropriate, promote the establishment of secondary and tertiary mineral processing facilities within the country;

(o) Arrange and approve mineral portfolios for attracting private investment;

(p) Frame Regulations to regulate the performance of its functions;

(q) Carry out the functions entrusted under the Act; and.

(r) Carry out any other function assigned by the Government.

7. Meetings of the Board

(1) The Board shall hold at least one ordinary meeting during each quarter of a year, one budget meeting and any number of special meetings as may be provided by the Regulations.

(2)The conduct of business of Board shall be governed by the Regulations.

(3)The quorum for the meeting of the Board shall be at least 50% members including at least five non official members.

(4) The decisions of the Board shall be taken by the majority of the members.

(5) The Chairman shall preside over the meetings of the Board.

(6) In the absence of the Chairman, non official members may nominate a non official member from amongst themselves to preside over the meeting of the Board.

B. Mines Committee

8. Mines Committee: (1) There shall be a Mines Committee which shall advise the Licensing Authority in relation to matters concerning the administration of the Act with respect to -

(a) grant or renewal of a mineral title

(b) refusal to grant or renew a mineral title.

(c) cancel a mineral title

(d) to amend the terms or conditions of any mineral title

(e) to invite the competitive bids;

(f) to grant a mineral title to a person in excess of the limit specified;

(g) to grant a mineral title in respect of area of land exceeding the maximum limit specified in the Act in relation to that title.

(h) evaluation of options relating to competing use of land, water, mineral and other resources.

(2) The Mines Committee shall comprise a Chairman, four members from the public sector and four independent members from the private sector, to be notified by the Government within three months of commencement of the Act.

(3) The members from private sector shall include a person having seven years experience in the field of law, a person from academia, a professional in the field of environment and a mining engineer.

(4) No person shall be appointed, or remain a member of the Mines Committee, if he has a conflict of interest in the performance of his responsibilities as such member.

(5) Where any matter is referred to the Mines Committee for its advice and the licensing authority decides to dispose of the matter otherwise than in accordance with the advice of the Mines Committee, the licensing authority shall before disposing of the matter, furnish the committee with a statement of its reasons for so doing.

Part III - Large Scale Mining- Mineral Titles

Division 1- General

9. Mineral agreements:

(1) Government may, at the request of a person proposing to carry on large scale mineral operations, enter into an agreement, relating to a mineral title if Government is satisfied that substantial investment is likely to be made in mineral operations and that the carrying on the undertaking is desirable in the interest of development of the mineral resources.

(2) A mineral agreement may, in particular, make provisions with respect to all or any of the following matters:

(a) the grant, renewal, cancellation or transfer of a mineral title;

(b) minimum exploration operation to be carried on and related expenditures to be incurred for the purposes of those operations;

(c) the formation of joint venture;

(d) the basis on which the fair market value of any mineral or group of minerals may, from time to time, be determined on an arms-length basis;

(e) the payment of enhanced royalty in specified circumstances;

(f) the payment of additional tax in specified circumstances;

(g) the establishment of secondary and tertiary processing facilities;

(h) the circumstances in which, and the conditions on which, rights of pre-emption of minerals may be exercised by Government;

(i) guarantees to ensure the due and proper performance of the obligation of the holder of the mineral title;

(j) financial and insurance arrangements;

(k) settlement of any dispute which may arise in the interpretation or application of any provision of a mineral agreement by a sole expert;

(l) co-ordination of exploration or mining operation to be carried on by the person concerned under an Exploration License or a Mining Lease with any such operation carried on by the holder of an Exploration License or a Mining Lease in any neighbouring exploration area or mining area;

(m) other matters relating to mineral operations as may be prescribed; and

(n) other matters as the parties to the agreement may consider necessary.

(3) Any provision contained in a mineral agreement, which is inconsistent with any provision of the Act or rules framed there under or any other law or the Constitution, shall to the extent of the inconsistency, be of no legal effect.

(4) Nothing contained in a mineral agreement shall be construed as absolving any party thereto from complying with any requirement laid down by law for applying and obtaining any mineral title, License, approval, permission or other document required by any law for the time being in force.

(5) For the purpose of determining whether substantial foreign investment is likely to be made in any particular case, the Government shall have regard to-

(a) the likely scale of the capital investment to be made;

(b) the expenditure and work programme proposed by the applicant;

(c) the likely scale of operation and required infrastructure in the event of a commercial discovery;

(d) the mineral or group of minerals to which the mining title, if granted, would relate and the potential export of that mineral or group of minerals;

(e) the techniques to be used for the recovery of that mineral or group of minerals;

(f) the technical and financial capabilities of the applicant for a mineral title; and

(g) any other relevant factor.

10. Applications:

(1) An application for the grant of a mineral title or other mining concession under the Act shall be-

(a) made to the Licensing Authority;

(b) in the prescribed form along with prescribed documents and information

(c) accompanied by the proof of payment of fee fixed by Government from time to time.

(c) accompanied by an environmental impact assessment in terms of the Environmental Protection Act, 1997, and shall identify the extent of any adverse effect which the plan for development and operation of the mine and the carrying out of the programme of proposed mining operations would be likely to have on the environment and on any monument or relic in the area over which the lease is required, and proposals for eliminating or controlling that effect;

(d) accompanied by proposals for the prevention of pollution, the treatment and disposal of wastes, the safeguarding, reclamation and rehabilitation of land disturbed by mining operations, the protection of rivers and other sources of water and for monitoring and managing of any adverse effect of mining operations on the environment;

(e) accompanied by details of particular risks (whether to health or otherwise) involved in mining the mineral or group of minerals which it is proposed to mine, and proposals for their control or elimination;

(f) specify the mineral or group of minerals for which the application is made.

(g) specify the period for the grant of mineral title.

(h) any other matter which in the opinion of the applicant is relevant to the application.

(2) An application may be withdrawn by the applicant by a written request addressed to the Licensing Authority.

(3) A separate application shall be made in respect of each area and for each mineral.

(4) Where more than one applications are made in respect of the same area of land, the applications shall be dealt with in the order in which they are received by the Licensing Authority.

(5) The application shall not be considered unless the applicant is eligible according to the prescribed criteria.

(6) The provisions of this section shall mutates mutandis apply to the application for renewal of a mining concession.

11. Powers of Licensing Authority in respect of application:

(1) The Licensing Authority shall scrutinise the application within 20 working days and may return the application with the remarks about the defects and deficiencies in the application and may seek further information to be provided within reasonable time.

(2) Where the applicant removes the defects or makes up the deficiencies as the case may be, within specified time, the Licensing Authority shall not make any further objection and proceed with the case under sub section (8) of this section.

(3) Where the applicant does not remove the defects, make up the deficiencies or provide the required information, as the case may be, within specified time or such other as may be given by the Licensing Authority, the Licensing Authority may reject the application.

(4) In order to enable the Licensing Authority to consider any application the Licensing Authority may-

(a) cause such investigations or negotiations to be made or undertaken as it may, in its discretion, deem necessary; or

(b) require the applicant, by notice in writing, to furnish to the Licensing Authority, within such period as may be specified in the notice, with such proposals, by way of alternative or in addition to the proposals set out in the application.

(5) In considering any application and the conditions of the Act and rules subject to which the application may be granted, the Licensing Authority shall take

into account the need to conserve and protect the natural resources in, on or under the land to which the application relates including adjoining or neighbouring land.

(6) Where the Licensing Authority is prepared to grant an application subject to certain conditions, the Licensing Authority shall give notice to the applicant accordingly, stating in the notice those conditions and the conditions referred to in sub section (5)

(7) The applicant may, within the period of fifteen days after notice is given to him pursuant to sub section (6) or within such further period as the Licensing Authority may, on good cause shown, accept in writing the conditions stated in the notice and such other conditions as may be agreed to between the Licensing Authority and the applicant.

(8) Subject to the provisions of the Act and rules, the Licensing Authority may accede to on such conditions as may be prescribed, or refuse to accede to any such application.

(9) In case of refusal, the reason there for shall be communicated to the applicant within seven days of the decision.

(10) Preference shall be given to

(a) integrated mining operations with linkages to upstream and downstream mining operations, and

(b) local value addition and processing of indigenous minerals

(11) The Licensing Authority shall decide the case under this section within 120 days of the receipt of the complete and valid application.

12. General conditions of mineral titles.

(1) In addition to any condition contained in the title or a mineral agreement, it shall be a condition of a mineral title that the holder thereof shall-

(a) exercise any right granted to the holder by or under the Act reasonably and in such manner that the rights and interests of the occupier of the land to which the title relates are not adversely affected except to the extent that the occupier is compensated;

(b) give preference to citizens of Pakistan for employment of persons, who possess appropriate qualifications, expertise and experience for the purposes of the operations to be carried on under the mineral title;

(c) carry out training programmes in order to encourage and promote the development of citizens of Pakistan employed by the holder of the mineral title;

(d) ensure technical and economic efficiency and make use of the products or equipments locally manufactured or produced, and the services locally available;

(e) co-operate with the persons involved in the mining industry to enable citizens of Pakistan to develop skills and technology and to render services in the interest of that industry;

(f) take measures to prevent damage to the environment, and where some adverse impact on the environment is unavoidable, take measures to minimize such impact;

(g) make good any damage caused to the environment, as far as possible, during the course of exploration or mining operations and on the cessation of such operations due to expiry or cancellation of the mineral title or otherwise;

(h) give to the Licensing Authority, if the holder is a Company, notice of any change in its name, address, directors or share capital, within thirty days as from the date of the change; or

(i) give to the Licensing Authority any change of his address, if it is a case of an individual, within thirty days of the change.

(j) make a written report to the Licensing Authority regarding the discovery, presence or prospects of presence of nuclear minerals or natural gas or mineral oil.

(2) It shall be a condition of every mineral title that before the commencement of exploration operations within a reserved or protected forest, thirty days notice in writing shall be given to the Forest Officer concerned of the intention to commence the operations, and that the operations shall be conducted subject to any condition regarding the use of land which may, for the time being, be provided by the Technical Committee under Section 83 .

(3) A mineral title may provide for the pre-emption of minerals by Government in such circumstances as are specified in the title, subject to the payment of the fair market price determined on the basis so specified.

(4) It shall be a condition of a mineral title that the holder of the title shall make such contributions to Government as may be provided for in the title or the mineral agreement, to be utilised for the benefits of the local population in such manner as may be prescribed.

(5) It shall be a condition of a mineral title that the holder of the title shall have no right to nuclear minerals or natural gas or mineral oil, found, discovered or obtained during the mining operations.

(6) A mineral title may make provision with respect to any of the matters referred to in section 9.

13. Restriction on exercise of rights by holder of mineral title.

(1) The holder of a mineral title shall not carry on exploration or mining operations at or upon any point within a distance of fifty meters from the boundary of the exploration area or, as the case may be, the mining area, except with the previous permission in writing of the Licensing Authority and in accordance with the conditions, if any, that it may impose.

(2) The holder of a mineral title shall not carry on exploration or mining operations at or upon any point within a distance of one hundred meters from any railway line, reservoir, canal or other public works, or buildings, except with the previous permission in writing of the Licensing Authority.

(3) The holder of a mineral title shall not erect any building or carry on any surface operations upon any public play ground, cremation or graveyard, or place held sacred by any class of persons, or any house or village site, or public road or on any other place, which the Licensing Authority may exclude from such operations.

(4) The holder of a mineral title shall not, without the written permission of the competent authority,-

(a) cut or injure any tree on occupied land;

(b) disturb the surface of any road;

(c) enter upon any public play ground, cremation or graveyard, or place held sacred by any class of persons; or

(d) interfere with any right of way, well, tank or cultivated agricultural land.

(5) All surface operations conducted under the Act within a reserved or protected forest shall be subject to such conditions as may, for the time being, be imposed by the Environment Department by a general or special order in accordance with guidelines issued by the Government In the event of any disagreement between the Environment Department and the holder of a mineral title the matter shall be referred to the Government whose decision shall be final.

(6) Before occupying any land for surface operations or clearing any land, the holder of a mineral title shall give to the Licensing Authority one month's prior notice in writing specifying by name or other sufficient designation and quantity the land proposed to be occupied and the purpose for which the same is required.

(7) The holder of a mineral title shall make and pay such reasonable compensation as may be assessed in accordance with the law in force on the subject applying to the lands over which the title has been granted, for all damage, injury or disturbance which may be done by the holder in exercise of the powers granted by the title, and the holder shall indemnify the Licensing Authority against all claims which may be made by third party in respect of any such damage, injury or disturbance.

14. Directions to holder of mineral title:

(1) The Licensing Authority may, with due regard to good reconnaissance, exploration, or mining practices, by notice in writing given to the holder of a mineral title, give directions to the holder in relation to-

(a) the carrying out of reconnaissance operations, exploration operations and mining operations, including any works connected therewith;

(b) the conservation of any natural resources, including mineral resources, and the prevention of the waste of such resources;

(c) the protection and preservation of the surface of mines or works and of buildings, road, railways and other structures and enclosures on or above the surface of land, and the conditions under which such building, road, railway, structure and enclosures on or above the surface of land, and the conditions under which such building, road, railway, structure and enclosure may be undermined;

(d) the construction, erection, maintenance operation, use or removal of structures, equipment and other goods used in connection with the exploration for, or the mining or conveyance of minerals;

(e) the protection of the environment including the prevention and combating of pollution of the air or land which arises or may arise in the course of the operations involved in exploration or mining of any mineral or after such operations;

(f) the making safe the undermined ground and of dangerous slimes, tailings, dams, waste dumps, ash dumps, shafts, holes, trenches or excavation of whatever nature made in the course of exploration or mining operations;

(g) the safety, welfare and health of persons employed in or in connection with reconnaissance operations, exploration operations and mining operations and the conveyance of mineral;

(h) the taking, preservation and furnishing to the Licensing Authority of cores, cutting or samples of minerals from mines or excavations;

(i) the submission to the Licensing Authority of reports, returns and other information;

(j) the taking of logs or directional surveys or making of other investigations; and

(k) the creation of safety zones in relation to structures erected on land to which the mineral title relates.

(2) The Licensing Authority may, if the holder of a mineral title fails to comply, within such period as may be specified in a notice given under sub section (1), or such further period as the Licensing Authority may, on good cause shown, allow in writing, with any direction given under sub section (1), cause such steps to be taken as may be necessary to comply with the direction, and may recover from the holder the costs incurred in connection with the taking of any such steps, as a debt due to Government.

(3) The action under sub section (2) shall be in addition to any penalty provided in section 92.

15. Obligations of holder:

(1) It shall be a condition of a mining concession that the holder shall-

(a) commence operations within three months of the issue of the License, and carry on exploration operations in the exploration area in accordance with good exploration practices;

Provided, that in case of Mining Lease, the said period shall be six months.

(b) take all reasonable steps necessary to secure the safety, welfare and health of persons employed for purposes of those operations in the exploration area and to protect the environment;

(c) maintain in good condition and repair all structures, equipments and other goods in the exploration area and used in connection with the exploration operations;

(d) remove from the exploration area all structures, equipments and other goods not used or not intended to be used in connection with the exploration operations;

(e) take reasonable steps to warn persons who may, from time to time, be in the vicinity of any such structures, equipments or other goods of the possible hazards resulting there from;

(f) give to the Licensing Authority notice of the discovery of a deposit of any mineral or group of minerals to which the holder's License relates within ten days after the holder determines that the deposit is of potential commercial interest;

(g) give to the Licensing Authority notice of the discovery of a deposit of any mineral or group of minerals including radioactive minerals necessary for the generation of nuclear energy, mineral oil and natural gas, other than a mineral or group of minerals to which his License relates, within ten days after making the discovery.

16. Records, etc. to be kept by the holder of Mineral Titles:

The holder of a License or lease shall-

(a) maintain such records, in such form and at such place as provided by the Act or may be prescribed;

(b) submit to the Licensing Authority such books, reports, returns, records, plans or any other information as provided under the Act; and

(c) submit any other relevant and necessary information, document or record as the Licensing Authority may require.

Division 2 – Reconnaissance License

17. Duration of Reconnaissance License.---(1) Subject to the Act, a Reconnaissance License shall be valid for such period, not exceeding twelve months, as may be specified in the License.

(2) Notwithstanding the provisions of sub section (1), but subject to the other provisions of the Act, where an application is made by the holder of a Reconnaissance License for the grant of an Exploration License,-

(a) in relation to area of land which constitutes the reconnaissance area; and

(b) in respect of a mineral or group of minerals in relation to which the holder of the License has the exclusive right under sub section (3) of section 20 to carry on reconnaissance operations, the Reconnaissance License shall not expire in relation to that area of land and mineral or group of minerals while the application is considered until the License applied for is issued, or the application is refused or withdrawn, whichever first occurs.

18. Restrictions on grant Reconnaissance License. The Licensing Authority shall not grant an application for a Reconnaissance License,-

(a) unless the Licensing Authority is satisfied that the applicant is a qualified and a proper person to hold the License subject to the Act and Rules.

(b) if the applicant is, at the time of the application, in default, unless the Licensing Authority is of opinion that special circumstances exist which justify the grant of the application notwithstanding the default.

(c) unless the Licensing Authority, on reasonable grounds, is satisfied,-

(i) with the programme of reconnaissance operations to be carried on and the expenditure to be incurred on reconnaissance operations; and

(ii) that the applicant has the technical and financial resources to carry on those reconnaissance operations and to make that expenditure; or

(d) in respect of an area of land in relation to a mineral or group of minerals in respect of which an exclusive right has, under sub section (3) of section 20 been conferred on any other holder of a Reconnaissance License.

(e) if the application in respect of an area of land which is more than five thousand square kilometres, except where special exemption is granted by the Government.

19. Issue of Reconnaissance License.

Subject to the Act where the Licensing Authority has no objection to the grant of Reconnaissance License, it shall issue the License on such conditions and in such form as may be prescribed.

20. Rights of holder of Reconnaissance License.---(1) Subject to the Act and conditions prescribed for the License, a Reconnaissance License shall confer on the holder of the License,-

(a) non-exclusive right, or where sub section (4) applies, the exclusive right, to carry on reconnaissance operation in relation to the reconnaissance area in question in respect of any mineral or group of minerals to which the License relates; and

(b) the right subject to sub section (2), to carry on such other operations, including the erection or construction of ancillary works, in the reconnaissance area as may be reasonably necessary for, or in connection with, any reconnaissance operation of the kind referred to in clause (a).

(2) The holder of a Reconnaissance License may erect or construct any of the ancillary works such as are referred to in clause (b) of sub section (1) but only with the prior consent in writing of the Licensing Authority given on the application of the Licensee.

(3) The Licensing Authority may grant the consent subject to such conditions, if any, as may be imposed by it.

(4) Subject to sub section (3), the Licensing Authority, if it is satisfied on reasonable grounds that the extent of the reconnaissance operations to be carried out and the expenditure to be incurred in relation to the area of reconnaissance justify the grant of exclusive right referred to in clause (a) of sub section (1), may-

(a) allow such exclusive right to a person being granted a Reconnaissance License; or

(b) make an endorsement on the Reconnaissance License, by virtue of which an exclusive right is conferred on the holder of Reconnaissance License.

(5) An exclusive right such as is referred to in sub section (4) shall not be granted in respect of any area of land,-

(a) to which any other mineral title giving an exclusive right to carry on reconnaissance, exploration or mining operations relates; or

(b) to which a prospecting License relates, to carry on reconnaissance, exploration or, as the case may be, mining operations for the same mineral or group of minerals as those to which the exclusive right would, if granted, relate.

21. Work programme of reconnaissance operations.---(1) Where the holder of a Reconnaissance License is, by virtue of the conditions of the License, required to carry out or to make within a particular period, in accordance with a work programme, certain minimum reconnaissance operations and expenditure, he shall

furnish the Licensing Authority, on such date or dates as may be specified in the License, or as may be determined by the Licensing Authority and made known by notice in writing given to the holder, with particulars of such reconnaissance operations carried out and the expenditure made.

(2) The Licensing Authority may, on application made to it by the holder of a Reconnaissance License by notice in writing to the holder, amend any work programme or expenditure referred to in sub section (1)in accordance with the proposals contained in the application or to such extent as the Licensing Authority may deem expedient.

(3) The holder of a Reconnaissance License who fails to comply with the requirements of a work programme referred to in sub section (3)shall, subject to the provisions of section 74, be liable to pay under the Provincial Mineral Head of Account such fine which shall not be less than five thousand rupees and not more than fifty thousand rupees.

Division 3 – Exploration License

22. Grant or refusal of License

(1) Subject to the Act, where an application for an Exploration License-

(a) is made by the holder of a Reconnaissance License and the application relates to an area of land which constitutes the reconnaissance area or is in respect of any mineral or group of minerals in relation to which the holder of the Reconnaissance License has, under sub section (3) of section 20 the exclusive right to carry on reconnaissance

operations in that area of land, the Licensing Authority shall grant the Exploration License; or

(b) is made by any other persons, the Licensing Authority, subject to making an application may grant or refuse to grant the Exploration License;

(2) The Licensing Authority shall not grant an Exploration License to any person in relation to any area of land in respect of any mineral or group of minerals if, at the time the application is made,-

(a) the area of land constitutes a mining area for large scale mining;

(b) any Mineral Deposit Retention License is held by any person in relation to the area of land, unless

(i) the Licensing Authority deems it desirable in the interests of the development of the mineral resources to grant any area to the applicant and,

(ii) if the Mineral Deposit Retention License is in respect of the mineral or group of minerals to which the application relates, the holder of Mineral Deposit Retention License has no objection to such grant; or

(c) any Reconnaissance License or Exploration License conferring an exclusive right to carry on reconnaissance operations or exploration operations, in the area of land in respect of the mineral or group of minerals to which the application relates, is held by any other person unless the holder thereof has no objection to such grant.

(3) The Licensing Authority shall not grant an Exploration License to any person in relation to a mineral within an area which already stood granted, under a small scale mining undertaking.

(4) An application for an Exploration License shall not be granted to an applicant,-

(a) if the applicant is, at the time of the application, in default, unless the Licensing Authority is of the opinion that the default is not substantial and that special circumstances exist which justify the grant of the application notwithstanding the default; and

(b) unless the Licensing Authority is, on reasonable grounds, satisfied-

(i) with the proposed programme of exploration operations to be carried on and the proposed expenditure to be incurred on exploration operations; and

(ii) that the applicant has the technical and financial resources to carry on the exploration operations.

(b) if the applicant has caused substantial damage to the environment

during the reconnaissance operations unless he is willing to restore the environment to a reasonable extent or pay the fine determined by the Licensing Authority in consultation with the Department dealing with protection of environment.

(5) An application for an Exploration License shall not be granted in respect of an area of land exceeding five hundred square kilometres.

23. Grant of Exploration License.

(1) Subject to the Act where the Licensing Authority has no objection to the grant of Exploration License, it shall issue the said License on such conditions as may be prescribed.

(2) An Exploration License shall be in such form and contain such particulars as may be prescribed.

24. Duration of Exploration License.

(1) Subject to the Act, an Exploration License shall be valid for such period, not exceeding three years, as may be specified in the License and subject to clause (b) of sub section (2) of section 26 be renewable for such further period, not exceeding two terms of three years each, from the date of expiry as may be determined by the Licensing Authority in relation to any renewal of the License as from the date on which the License would have expired if an application for its renewal had not been made, or, on the date on which the application for the renewal is granted, whichever is later.

(2) Notwithstanding the provisions of sub section (1)but subject to the other provisions of the Act-

(a) an Exploration License shall not expire during any period when an application for renewal of the License is being considered until the application is refused or withdrawn, whichever first occurs, or if the application is granted, until such time as the License is renewed in consequence of the application; or

(b) where the application is made by the holder of the Exploration License for the grant of Mineral Deposit Retention License or a Mining Lease in relation to an area of land which constitutes the exploration area, and in respect of a mineral or group of mineral to which the Exploration License relates, the Exploration License shall not expire in relation to that area of land and that mineral or group of minerals until the application is refused or withdrawn, whichever is earlier, or if the application is granted, until the Mineral Deposit Retention License or, as the case may be the Mining Lease, applied for is issued.

25. Rights of holder of Exploration License.

(1) Subject to the Act and the conditions of the License, an Exploration License shall confer upon the holder,-

(a) an exclusive right to carry on exploration operation in the area in question in respect of any mineral or group of minerals to which the License relates;

(b) the right to enter and occupy the land which comprises the exploration area for the purpose of carrying out exploration operations, subject to the rights of surface holder;

(c) the right to take and divert water on or flowing through such land and use it for any purpose necessary for exploration operations subject to and in accordance with the provisions of law for the time being in force;

(2) With the permission in writing of the Licensing Authority previously obtained generally or in every particular case, the holder of an Exploration License shall also have the right,-

(a) to remove from the exploration area a mineral or group of minerals or sample thereof, for the purpose of testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of such exploration operations to any other place whether within or outside the Province or subject to such other permission as may be required under any law, outside Pakistan; and

(b) to sell or otherwise dispose of limited amounts of any such mineral or group of minerals or of material excavated during exploration operations, subject to sub section (3), to do all other things, including the erection or construction of ancillary works, in the exploration area, as may be reasonably necessary for, or in connection with, any exploration operations of the kind referred to in clause (a) of sub section (1).

26. Renewal of License:

(1) Subject to this section, the provisions of sections 10 and 22 shall apply mutatis mutandis in relation to an application for the renewal of an Exploration License as they apply in relation to an application for the grant of an Exploration License.

(2) An application for the renewal of an Exploration License shall-

(a) be made not later than ninety days before the expiry date of the License or such later date, but not later than such expiry date, as the Licensing Authority may allow,

(b) not be made-

(i) in the case of an application for a first renewal of the License, in respect of an area of land greater in extent than fifty per cent of the exploration area on the date of the issue of the Exploration License; or

(ii) in the case of an application for a second renewal, in respect of an area of land greater in extent than fifty per cent of the exploration area immediately prior to the date of the application for the second renewal, or such other proportion of the exploration as the Licensing Authority may, for good technical or other reason, grant; or

(iii) in the case of a second renewal unless it is shown by the holder of the Exploration License that a further renewal is necessary for the completion of a full feasibility study of the discovered deposits and that the proposed activities were not reasonably completed during the first renewal;

(c) be accompanied such reports, documents and information as may be prescribed.

(3) The renewal shall not be granted for more than two terms.

(4) Subject to the provisions of sub section (5) and (6), the Licensing Authority shall not renew an Exploration License,-

(a) if the minimum exploration operations and expenditures proposed to be carried out or expended in the renewal period in respect of the area of land to which the application relates, is not satisfactory; or

(b) if the applicant is, at the time of the application, in default, unless the Licensing Authority is of the opinion that the default is not substantial and that special circumstances exist which justify the grant of the application notwithstanding the default.

(5) The Licensing Authority shall not refuse under clause (a) of sub section (4)to renew the License, if the proposals in respect of exploration operations and expenditures are in accordance with the terms and conditions of a mineral title or mineral agreement relating to proposals of that kind in respect of the Exploration License in question.

(6) The Licensing Authority shall not refuse under clause (b) of sub section (4) to renew the License, unless the Licensing Authority has informed the holder of the License in writing about the details of the default made by him and has required him to rectify that default on or before a date specified in the notice and the holder has failed to rectify that default or has failed to make representations which, in the opinion of the Licensing Authority, removes the ground for the intended refusal.

(7) The Licensing Authority shall not grant the second renewal of an Exploration License unless the application has shown that the renewal sought is necessary for the completion of feasibility studies which could not have been reasonably completed during the first renewal.

27. Application for amendment of License---A person may apply for amendment of Exploration License, which shall be dealt with under the provisions of section 54.

28. Work programme of exploration operations.

The provisions of section 21 shall apply mutatis mutandis in relation to the holder of an Exploration License, as they apply in relation to the holder of a Reconnaissance License, and for that purpose any reference in that section to Reconnaissance License or reconnaissance operations shall be deemed to be a reference to Exploration License or, as the case may be, exploration operations.

29. Effect of issue of Mining Lease on exploration area

Where a Mining Lease is issued to the holder of an Exploration License in respect of an area of land which constituted the exploration area and in respect of a mineral or group of minerals to which the Exploration License related, the Exploration License shall cease to have effect in relation to that area of land from the date on which the Mining Lease is issued.

30. Effect of issue of Mineral Deposit Retention License on exploration area

Where a Mineral Deposit Retention License is issued to the holder of an Exploration License in respect of an area of land which constituted the exploration area in respect of a mineral or group of minerals to which the Exploration License relates, the Exploration License shall cease to have effect in relation to that area of land on the date on which the Mineral Deposit Retention License is issued.

Division 4- Mineral Deposit Retention License

31. Application for Mineral Deposit Retention License

Subject to the provisions of section 10, an application for the grant of a Mineral Deposit Retention License shall -

(a) be made in respect of an area of land not greater than the exploration area over which the License is sought;

be made not later than one hundred and eighty days before the expiry of the Exploration License or any renewal thereof, or such later date but not later than such expiry date, as the Licensing Authority may allow.

32. Pre-requisite for grant of Mineral Deposit Retention License:

No person shall apply for the grant of a Mineral Deposit Retention License, unless-

(a) he is the holder of an Exploration License in relation to the area of land and the mineral or group of minerals to which the application relates;

(b) a potentially economic discovery of mineral deposit has been made in the exploration area;

(c) the applicant has completed a full feasibility study to determine whether the mineral discovered can be developed and produced on a profitable basis;

(d) the applicant wishes to retain the exploration area or a part thereof for future development of the mineral deposit discovered as development could not then be reasonably undertaken on a profitable basis for good economic or technical reasons; and

(e) exploration operations and relevant studies have been undertaken to the reasonable extent feasible in the circumstances.

33. Grant or refusal of License- (1) The Licensing Authority shall not grant an application for a Mineral Deposit Retention License to a person who, under section 32, is not entitled to apply for such License-

(a) in respect of an area, other than the area located outside the boundaries of the area granted under the Exploration License, or falls otherwise in the area reserved for mineral deposits retention License;

(b) in relation to any mineral or group of minerals, unless the Licensing Authority, on reasonable grounds, is satisfied-

(i) that the deposit of the mineral or group of minerals in the area to which the application relates cannot, for the reasons set out in the application, be mined on a profitable basis at the time and can probably be mined on the expiration of the period contemplated in section 35;

(ii) that no further work can be usefully carried on in the exploration area which may have the effect of negating the reasons so given;

(iii) that it is desirable, having regard to the future utilization of the mineral resources of the Province, to grant such License; and

(c) in relation to the area of land to which such application relates in respect of any mineral or group of minerals, if at the time of such application,-

(i) such area of land forms part of any exploration area in relation to any mineral or group of minerals, other than the mineral or group of minerals to which the application relates, unless the applicant has given a notice in writing, not later than the date on which such application is made, to the holder of the Exploration License in respect of that exploration area, of his application or intended application, as the case may be, for such Mineral Deposit Retention License;

(ii) the Licensing Authority has afforded the holder referred to in clause (i) a reasonable opportunity to make representation in relation to such application;

(iii) the Licensing Authority, with due regard to any representation made in terms of clause (ii), deems it desirable to grant such License having regard to the future utilization of the mineral resources of the Province; or

(iv) such area of land forms part of any retention area in relation to any mineral or group of minerals, other than the mineral or group of minerals to which the application relates, unless the Licensing Authority deems it desirable, having regard to the future utilization of the mineral resources of the Province to grant such License;

(v) the Licensing Authority, on reasonable grounds, is satisfied that the programme of operations and any other investigations and operations to be carried on by virtue of such License, if issued, will not detrimentally affect the rights of any holder of the Mineral Deposit Retention License in respect of any such area; and

(vi) the holder of the Mineral Deposit Retention License has consented to the application for the grant of the Mineral Deposit Retention License .

(2) The Licensing Authority shall not refuse to grant an application for a Mineral Deposit Retention License on any ground contemplated in clause (b) of subsection (1), unless the Licensing Authority-

(a) has by notice in writing informed such holder of its intention to refuse such application,-

(i) setting out particulars of the grounds for that intention; and

(ii) requiring such holder to make representation to explain his point of view, to the Licensing Authority in relation to such grounds or to rectify any matter relating to such grounds specified in such notice, and such holder has failed to rectify such matter or to make representations; and

(b) has taken into consideration any representation made by such person.

(3) Where the Licensing Authority refuses to grant the License, it shall inform the applicant in writing about the refusal along with the reasons of such refusal.

(4) Where the Licensing Authority decides to grant the Mineral Deposit Retention License, it shall issue the said License in the prescribed form

34.Disclosure of Information: The Director General may disclose the information with respect to the retention area to a person if the Director General is satisfied that such a disclosure of information would be in the interest of development of that mineral deposit.

35. Duration of Mineral Deposit Retention License:

(1) Subject to the Act, a Mineral Deposit Retention License shall be valid-

(a) for such period, not exceeding two years, as may be specified in the License; and

(b) for such further period, not exceeding one year, as may be determined by the Licensing Authority at the time of renewal of the License.

(2) Notwithstanding the provisions of sub section (1), but subject to the other provisions of the Act,-

(a) a Mineral Deposit Retention License shall not expire during the period an application for renewal of the License is being considered, until the renewal is refused or the application is withdrawn, whichever is earlier, or if the application is granted, until such time as the License is renewed in consequence of the application; or

(b) where an application is made by the holder of a Mineral Deposit Retention License for the grant of a Mining Lease in relation to an area of land which constitutes the retention area, and in respect of any mineral or group of minerals to which the License relates, the License shall not expire in relation to that area of land and that mineral or groups of minerals until the application is not acceded to or withdrawn, whichever first occurs, or if the application is granted, until such time as the Mining Lease applied for is issued.

(3) Where a Mining Lease is issued to the holder of a Mineral Deposit Retention License in respect of an area of land which forms part of the retention area and in respect of any mineral or group of minerals to which the Mineral Deposit Retention License relates,-

(a) the Mineral Deposit Retention License shall cease to have effect in relation to the area of land as from the date of issue of the Mining Lease; and

(b) any other Mineral Deposit Retention License for the same mineral shall cease to have effect, unless the Licensing Authority has, with the concurrence of the holder to whom the Mining Lease is issued, determined otherwise on such conditions as may be specified in writing by the Licensing Authority.

36. Renewal of Mineral Deposit Retention License

(1) Subject to sub section (2), the provisions of sections 33 and 37 shall apply mutatis mutandis in relation to an application for the renewal of a Mineral Deposit Retention License as they apply in relation to an application for the grant of a Mineral Deposit Retention License.

(2) An application for the renewal of a Mineral Deposit Retention License shall be made not later than ninety days before the date on which the License expires or such later date, but not later than such expiry date, as the Licensing Authority may, on good cause shown, allow.

(3) Subject to the provision of sub section (4), the Licensing Authority shall ordinarily allow the renewal of the Mineral Deposit Retention License, unless the applicant has, by notice, been informed that he is a defaulter;

Provided that if the Licensing Authority is of the opinion that the default is not substantial and that special circumstances exists which justify the grant, it may renew the License.

(4) The Licensing Authority shall not refuse, under sub section (3), to grant the application in question, unless the authority has, by notice in writing, informed the holder of the License of its intention to refuse the application,-

(a) setting out particulars of the alleged default; and

(b) requiring the holder to make representation to the Licensing Authority in relation to the alleged default or to rectify that default on or before a date specified in the notice, and the holder has failed to rectify that default or make representation, which, in the opinion of the Licensing Authority, is a ground for the intended refusal.

37. Rights of holder of Mineral Deposit Retention License:

(1) Subject to the Act, rules and the conditions of the License, a Mineral Deposit Retention License shall authorize the holder of the License-

(a) to retain the retention area in question for further mining operations subject to the provisions of 35.

(b) to carry out a program of operations such as is referred to in section 39;

(c) to remove, with the permission of the Licensing Authority previously obtained whether generally or in every particular case, from the retention area any mineral or group of minerals or sample thereof, for the purposes of testing, assaying or pilot plant studies, from any place where it was found or incidentally won in the course of carrying out such program of operations to any other place whether within or outside the Province or, subject to any law for the time being in force, outside Pakistan;

(d) to sell or otherwise dispose of, with the permission of the Licensing Authority previously obtained whether generally or specially, limited amounts of any mineral or group of minerals or material excavated during operations so carried out; and

(e) to do, subject to sub section (2), all other things, including the carrying out of investigations and operations and the erection or construction of ancillary works, in the retention area, as may be reasonably necessary for, or in connection with, any operation as contemplated in clause (b).

(2) The provisions of section 20 shall apply mutatis mutandis in relation to the holder of a Mineral Deposit Retention License wishing to erect or construct accessory works under sub section (1) as they apply in relation to the holder of a Reconnaissance License wishing to do so under section 20.

38. Direction to apply for Mining Lease.

(1) The Licensing Authority, if it wishes to proceed with the development of the mineral deposit, shall, before doing so, afford the holder of the Mineral Deposit Retention License an opportunity to apply for a Mining Lease.

(2) The Licensing Authority shall, by notice in writing given to the holder of the Mineral Deposit Retention License , direct the holder to apply, within such reasonable period as is specified in the notice, for a Mining Lease over the land which constitutes the retention area, in respect of the mineral or group of minerals to which the mineral deposits retention License is applied.

(3) Where, in a case referred to in sub section (2), the holder of a Mineral Deposit Retention License , before the expiration of the period so specified under sub section (2), fails to apply for the Mining Lease as directed, the Licensing Authority may cancel the Mineral Deposit Retention License on the expiration of that period.

(4) Where a Mineral Deposit Retention License is deemed to have been cancelled, the Licensing Authority may by a notice in writing invite other person to apply under the Act, within the period specified in the notice, for a Mining Lease subject to his giving sound proposals for the development of mining area acceptable to the Licensing Authority.

39. Work programme under Mineral Deposit Retention License .---The holder of a Mineral Deposit Retention License shall carry out any program of operations, including evaluation, from time to time, of the mineral deposit concerned, as may be specified in the License or directed to be performed by the Licensing Authority, as a condition of any renewal of the License.

Division 5- Mining Lease

40. Application for Mining Lease

(1) Subject to provisions of section 10, an application for the grant of a Mining Lease may be made only by a Company registered under Companies Ordinance, 1984.

(2) An application for the grant of a Mining Lease shall be made in respect of an area of land not exceeding two hundred and fifty square kilo meters

41. Grant or refusal of Lease

(1) Subject to sub section (2), where an application for the grant of a Mining Lease is made by the holder of an Exploration License or a Mineral Deposit Retention License and the application relates to an area of land which constitutes the exploration area or, as the case may be, the retention area and the application is in respect of any mineral or group of minerals to which such Exploration License or Mineral Deposit Retention License relates, the Licensing Authority shall grant the application.

(2) Subject to the Act, where an application is made for the grant of a Mining Lease by any person other than a person referred to in sub section (1), the Licensing Authority may grant or refuse to grant the application.

(3) The Licensing Authority shall not grant an application for a Mining Lease in relation to any area of land in respect of any mineral or group of minerals if, at the time the application is made,-

(a) any Exploration License conferring an exclusive right to carry on exploration operations in that area of land in respect of that mineral or group of minerals; or

(b) any mining concession for small scale mining in relation to that area of land in respect of that mineral or group of minerals; or

(c) any Mineral Deposit Retention License in relation to that area of land and in respect of that mineral or group of minerals, is held by any person other than the applicant or the Mining Lease, unless,-

(i) that other person agrees to the application being granted; and

(ii) the Licensing Authority, is of the opinion that it is desirable in the interest of the development of the mineral resource of the Province to grant the lease, by getting a consensus from the holder.

(4) The Licensing Authority shall not grant an application for a Mining Lease in relation to any area of land in respect of any mineral or group of minerals if at the time the application is made, the period specified in an invitation, given under sub section (4) of section 38 a person, other than the applicant, to apply for such a Mining Lease, has not expired.

(5) Notwithstanding the provisions of sub section (1) , but subject to the provisions of this section, an application for the grant of a Mining Lease shall not be granted,

(a) unless-

(i) the feasibility study shows that the mine can be profitably developed and operated;

(ii) the proposed plans for development and operation of the mine and the programme of the mining operations of the applicant in question ensure the efficient, beneficial and timely use of the mineral resources in question;

(iii) the applicant in question has the technical and financial ability and experience to carry out effective mining operations; and

(iv) the Director General is satisfied in respect of environmental effect of the project and any condition or limitation prescribed by the law relating to environmental protection; or

(b) if the applicant in question is, at the time of the application, in default, unless the Licensing Authority is of the opinion that the default is not substantial and that special circumstances exist which justify the grant of the application; or

(c) in the case of an application made in relation to any area of land and in respect of any mineral or group of minerals, to a person who does not hold an Exploration License or a Mineral Deposit Retention License in relation to that area of land, or in respect of that mineral or group of minerals, unless the Licensing Authority is of the opinion that the mineral or the group of minerals is present in the area of land in potentially commercial quantities.

(6) The Licensing Authority shall not, in the case of an application for a Mining Lease by the holder of a mineral title referred to in sub section (1), refuse to grant the lease under sub section (5) unless the Licensing Authority has, by notice in writing given to the applicant, communicated its intention to so refuse the application and has --

(i) informed the applicant of the reasons for its intention;

(ii) afforded the applicant an opportunity to make, within such reasonable period as may be specified in the notice, representations; and

(iii) taken into consideration any such representation.

(7) The Licensing Authority shall not refuse an application for a Mining Lease on the ground that any proposal in the application is inadequate or unsatisfactory, unless the Licensing Authority has, by notice in writing, informed the applicant accordingly and afforded the applicant a reasonable opportunity to modify the proposals concerned.

(8) Where the Licensing Authority has no objection to the grant of Mining Lease, it shall do so on such conditions and in such form as may be prescribed.

42. Duration of Mining Lease

(1) Subject to the Act and Rules, a Mining Lease shall be valid-

(a) for such period, not exceeding thirty years or the period representing the life of the mine based on exploration and evaluation of a mineral deposit and the development work plan, as determined by the Licensing Authority, whichever is lesser, as may be specified in the lease; and

(b) for such period, subject to sub section (2), as may be determined by the Licensing Authority in relation to any renewal of the lease, as from the date on which the lease would have expired if an application for its renewal had not been made or on the date on which the renewal is granted, whichever is later.

(2) A Mining Lease may be renewed for a period not exceeding ten years, or for the period representing the estimated life of the mine by the Licensing Authority, as determined on the basis of available data, whichever is the lesser period as from the date on which the application for renewal is received by the Licensing authority.

(3) Notwithstanding the provisions of sub section (1) of this section, but subject to the other provisions of the Act, where an application is made for the renewal of a Mining Lease, the lease shall not expire during the period the application is being considered, unless the application is refused or withdrawn, whichever is earlier.

(4) The Licensing authority shall not grant the renewal of a Mining Lease if mineral resource has depleted.

43. Rights of holder of Mining Lease.

(1) Subject to the Act and the conditions of the lease, a Mining Lease shall confer on the holder of the lease,-

(a) the exclusive right to carry on mining operations in the mining area in question in respect of any mineral or group of minerals to which the lease relates;

(b) the right to enter and occupy the land which comprises the mining area for the purpose of carrying on mining operations and exploration operations referred to in clause (a);

(c) the right to carry on exploration operation in the mining area in conjunction with mining operations such as are referred to in clause (a) above in relation to any such mineral or group of minerals;

(d) the right to remove from the mining area any mineral or group of minerals, from any place where it was found or mined in the course of mining operations such as are referred in clause (a) or found or incidentally won in the course of exploration operations referred in clause (b), to any other place within or outside the Province or, subject to such other permission as may be required under any relevant law, to any place outside Pakistan;

(e) the right to take and divert water on or flowing through such land and use it for any purpose necessary for mining operations subject to and in accordance with the provisions of the relevant laws;

(f) the right to sell or otherwise dispose of any such mineral or group of minerals subject to any condition of the Mining Lease or mineral agreement relating to the satisfaction of the internal requirements of Pakistan; and

(g) the right, subject to sub section (2), to do all other things and carry on such other operations, including the erection or construction of ancillary works, as may be reasonably necessary for, or in connection with, the mining or exploration operations, removal, selling or disposal contemplated in clauses (a), (b), (c), or (e).

(2) The provision of sub section (2) of section 20 shall apply mutatis mutandis to the holder of Mining Lease who wishes to erect or construct ancillary works under sub section (1) as they apply in relation to the holder of a Reconnaissance License wishing to do so under section 20.

44. Notice of cessation of mining operations

(1) The holder of a Mining Lease shall, where he intends to temporarily cease mining operations, or to reduce the normal rate of production, give notice in writing of that intention to the Licensing Authority on a date not later than-

(i) thirty days in the case of such intended cessation of mining operations; or

(ii) seven days in the case of such intended reduction of production; or such other period as the Licensing Authority may, on good cause shown, allow for such intended cessation or intended reduction.

(2) If, for any reason beyond the control of lease holder, the holder of a Mining Lease at any time temporarily ceases mining operations, or reduces the normal rate of production, he shall notify the Licensing Authority of such temporary cessation or reduction along with reasons there for as soon as possible after such cessation or reduction.

(3) On receipt of information referred to in sub section (1) and (2), or if the Licensing Authority has otherwise reason to believe that the holder of any Mining Lease has ceased mining operation, whether permanently or temporarily, or reduced mining operations, the Licensing Authority may cause the matter to be investigated and-

(a) give its approval on such conditions, as the Licensing Authority may determine, to the cessation or reduction; or

(b) refuse its approval on reasonable grounds and give such directions to the holder as the authority deems appropriate.

45. Unit development

(1) The Licensing Authority may permit the holders of the Mining Leases in respect of those areas to coordinate their operations or develop their deposit as one unit based on the feasibility report.

(2) The Licensing Authority shall not permit under sub-section (1) unless it is-

(a) in the interest of the effective recovery of minerals from neighbouring or contiguous mining areas; or

(b) to secure the rational development and ultimate recovery of any mineral from neighbouring or contiguous mining areas,

(2) The Licensing Authority shall after the receipt of an application from the holders of Mining Leases in this behalf, direct in writing the holders of the Mining Leases to enter into an agreement within a period specified in the direction for or in relation to the coordination of their operation or the development of their deposit as a unit.

(3) The provisions of sections 15 ,41, 43 and 44 -shall apply mutatis mutandis to the unit area as they apply to a Mining Lease.

(4) The liability of the coordinated or joint development as a unit shall be joint and several as provided in section 51.

Division 6 – Cancellation and surrender

46. Cancellation of mineral titles

(1) Subject to this section and section 66, where the holder of a mineral title,-

(a) fails to use in good faith the land subject to the title for the purpose for which the title was granted;

(b) uses that land for any purposes other than the purpose for which the title was granted;

(c) fails to comply with any requirement of the Act or rules with which the holder is bound to comply;

(d) fails to comply with a condition of the title;

(e) fails to comply with a direction under the Act or a condition on which any certificate of surrender is issued or on which any exemption or consent is given under the Act; or

(f) fails to pay any amount payable by him under the Act within one month after the amount becomes due, the Licensing Authority may, on that ground, by notice in writing, cancel the title.

(2) The Licensing Authority shall not, under sub section (1) , cancel a title on a ground referred to in sub section unless,-

(a) it has, by notice in writing served on the holder of the title, given not less than thirty days notice of its intention to so cancel the title on that ground;

(b) it has, in the notice, specified a date before which holder of the title may, in writing, submit any matter which he wishes the Licensing Authority to consider; and

(c) the Licensing Authority has taken into account,-

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

(ii) any matter submitted to the Licensing Authority by the holder of the title pursuant to clause (b).

(3) The Licensing Authority shall not, under sub section (1), cancel a title on the ground referred to in clause (f), if, before the date specified in the notice referred to in sub section (2)-, the holder of the title pays the amount of money concerned together with any mark-up arising pursuant to sub section (2) of section 67.

(4) The Licensing Authority may, by notice in writing served on the holder of a Mineral Deposit Retention License, cancel the License if the holder fails to make application for a Mining Lease in accordance with a notice given to him under section 38.

(5) The Licensing Authority may, by notice in writing, cancel the title,-

(a) if the holder (being an individual),-

(i) is adjudged bankrupt; or

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

(b) if the holder is a Company, an order is made or a resolution is passed for winding up the affairs of the Company, unless the winding up is for the purpose of amalgamation or reconstruction and the Licensing Authority has been given notice thereof.

(6) Where an application has been made under section 50 for the transmission of a mineral title or of rights or interests to or in a mineral title consequent upon the death of an individual who is the holder of the title, the Licensing Authority shall not cancel the title.

(7) Where two or more persons are holding a mineral title, the Licensing Authority shall not, under sub section (5), cancel the title on the occurrence of an event entitling the Licensing Authority to so cancel the mineral title, unless it is satisfied that any other person or persons holding the mineral title are unwilling, or would be unable, to carry out the duties and obligations of the holder of the mineral title.

(8) On the cancellation of a mineral title the rights of the holder of the title there under shall cease, and the cancellation shall not affect any liability incurred before the cancellation and any legal proceeding that might have commenced against the former holder of the title shall continue against him.

47. Surrender of mineral titles

(1) The holder of a mineral title who wishes to surrender all or a part of the land subject to the mineral title shall apply to the Licensing Authority in the prescribed form for a certificate of surrender in respect of the land not less than three months before the date on which he wishes the surrender to have effect.

(2) Subject to rules, on an application made under sub section (1), the Licensing Authority shall issue a certificate of surrender, either unconditionally or subject to such conditions as are specified in the certificate, in respect of the land to which the application relates.

Division 7 – Registration and transfer of mineral titles

48. Titles Register

(1) The Licensing Authority shall cause a record to be made in a Titles Register, kept for the purpose, of every mineral title issued and of any dealings with, or affecting, a mineral title as may be prescribed.

(2) When a mineral title is issued, the Licensing Authority shall cause the name of the person to whom the mineral title is issued to be recorded in the Title Register as the holder of the mineral title.

(4) Where the Licensing Authority is satisfied that there is an error or omission in the Title Registered, it shall rectify the Register by recording reasons thereof.

49. Inspection of Titles Register

(1) On an application made, a copy of any entry in the Titles Register may be obtained on payment of appropriate fee as notified by Government.

(2) On an application made, the Title Register shall be open for inspection by the applicant and the applicant may take copies of any License or entry in the Register.

50. Transfer, assignment, etc:

(1) The Licensing Authority may approve a transfer of, or a cession or assignment of rights of interest to or in, a mineral title, or the joining of a person as a joint holder of a mineral title or of rights or interests to or in a mineral title, and, unless it is so approved by the Licensing Authority, it shall have no effect.

(2) Where an application is made to the Licensing Authority for any approval, the Licensing Authority may, subject to sub section (3) and (4), give its approval, subject to such conditions as it deems necessary in the circumstances to impose but the Licensing Authority shall not unreasonably withhold its consent.

(3) The Licensing Authority shall not give its approval to any of the dealings such as are referred to in sub section (4) with a Reconnaissance License, or, subject to sub section (4), to any dealing with an Exploration License during the first two years of its term.

(4) An application under this section shall give, in respect of the person to whom the License is to be transferred, ceded or assigned or who is to be joined, the information required by or under section 10 in respect of an applicant and all other relevant information.

(5) The Licensing Authority may require any person making an application for any approval such as is referred to in sub section (4) to furnish to it such information as it may reasonably require enabling it to dispose of the application and the applicant shall comply with the requirement.

Division 8 – Other provisions relating to Mineral Titles

51.Joint liability: Where a mineral title is held by more than one holder, the liability of any holder in respect of any breach thereof, shall be joint and several, but without prejudice to any right of contribution which a particular holder may have against any other holder in respect of any liability incurred by the particular holder in respect of breach.

52. Competitive bids

The Licensing Authority may invite competitive bids for the issue of an Exploration License or a Mining Lease in respect of any area of land which is not subject to:

(a) a Reconnaissance License which gives the holder an exclusive right such as is referred to in ----

(b) an Exploration License, a Mining Lease or a Mineral Deposit Retention License or a prospecting License or a Mining Lease for mineral under small scale mining, and may, in accordance with the Act, issue the appropriate mineral title to the successful bidder.

53. Performance guarantees.

A person shall, at the time of the grant of a mineral title, other than a Reconnaissance License, deposit with the Licensing Authority prescribed security for compliance with the holder's obligations under the Act, rules and the title.

54. Amendment of Mineral title:

(1) The holder of a Mineral Title may apply for the amendment of the title by extension or reduction, or both, of the exploration area to which the License relates; or by the addition of any mineral or group of minerals, discovered in the exploration area, to which the License does not relate.

(2) The Licensing Authority may allow or refuse such amendment for reasons to be recorded in writing.

(3) If an application is accepted by the Licensing Authority, it shall amend the said Mineral Title accordingly.

Part III - Special provisions for small scale mining

Division 1 - General

55. Application under this Part:

(1) Application for the grant of mining concession for Small Scale Mining shall be made in the prescribed form and manner.

(2) The provisions of section 10 and 11 shall mutatis mutandis apply to this Part.

56. Persons who may hold Prospecting License or a Small Scale Mining Lease: A person may not hold a Prospecting License or a Small Scale Mining Lease unless he -

(a) is a citizen of Pakistan; or

(b) is a company formed by or under a law for the time being in force in Pakistan whose articles of association contain a provision providing that —

(i) only citizens of Pakistan may own shares in the company; or

(ii) only another company whose articles of association contain such a provision may own shares in the company.

57. Grant of other minerals over the already granted area for a mineral.

(1) The Licensing Authority may grant mining concession under this Part for one mineral over one area to a person:

(2) In case of discovery of another mineral over the same area, the right of acceptance or refusal for the grant of second mineral would be offered to the Licensee or the lessee, as the case may be, within a specified period.

(2) In case of no response or refusal of the Licensee or lessee for the grant of second mineral located apart separately, the Licensing Authority may delete any viable portion of the area containing the other mineral for grant to the other person, or grant a mineral title over the same area for the other mineral or mines in favour in any other person.

(3) In case two different minerals are inter-bedded or closely located, the Licensing Authority shall direct the Licensee or lessee, as the case may be, to get the grant of second mineral for systematic mining operation and utilization of mineral resource, within three months failing which the main License or the lease may be cancelled.

(4) The second applicant shall deposit application fee as prescribed by Government, for grant of the applied mineral.

Division 2 – Prospecting License

58. Grant of prospecting License.

The Licensing Authority may in accordance with the Act and rules grant a prospecting License, for a period of two years, in the prescribed form, for a mineral over the area not exceeding five square Kilometres.

59. Rights of Holder of Prospecting License:

(1) Subject to sub-section (2) and (3), the holder of an Prospecting License shall be entitled -

(a) to carry on exploration operations on any and for any mineral;

(b) with the permission of the licensing authority, to sell or dispose of any mineral found or incidentally won in the course of carrying on exploration operations; and

(c) to do al! such other acts and things as are necessary for, or reasonably incidental to, the carrying of exploration operations.

(2) The holder of an Prospecting License shall not exercise any rights conferred under sub-section (1)-

(a) in respect of any mineral on land forming part of reconnaissance area in relation to which an exclusive right referred to in section 20 has been conferred upon any person in respect of that mineral;

(b) on land in an exploration area, a mining area, a retention area or in an area subject to a Small Scale Mining Lease; or

(c) on land in relation to which an application is pending for an exploration License, a mineral deposit retention License, a Mining Lease or Small Scale Mining Lease.

(3) The provisions of Section 14 shall apply with necessary modifications in relation to an Prospecting License.

(4) The holder of a Prospecting License may remove any mineral from the land where it was found in the course of carrying operations referred to in sub section(1) for conducting a mineral analysis, conducting test on a mineral or determining the value of a mineral,

(5) Subject to sub section (4), the holder of a Prospecting License may remove any mineral from the land where it was found in the course of carrying operations referred to in sub section (1) with the written permission of licensing authority and shall, when so removing any mineral comply with such conditions as the licensing authority any specify in that permission:

(6) The provisions of section 12 shall apply, with necessary modification in relation to a Prospecting License.

60. Right of the Licensee to a Small Scale Mining Lease

Subject to the provisions of the Act, the Licensee shall have a right to a Small Scale Mining Lease if

(a) he makes an application in the prescribed form along with prescribed documents at least one month before the expiry of the License

Provided the Licensing Authority may, condone the delay up to a maximum period of two months subject to payment of prescribed fine.

(b) he has carried on geological prospecting to the satisfaction of the Licensing Authority, proved mineral reserves and has been paying all Government dues regularly and has paid such compensation, if any, as is provided under the Act.

Division 3: Small Scale Mining Lease

61. Grant of Small Scale Mining Lease:

(1) The Licensing Authority may, on application, grant a Small Scale Mining Lease under the Act, for a mineral over the area specified therein not exceeding five square kilometres.

(2) The provisions of sections 10 and 11 shall be mutatis mutandis applicable to sub section (1)

62. Duration of small scale Mining Lease:

The provisions of section 42 shall mutatis mutandis apply to duration and renewal of Small Scale Mining Lease**:**

Provided, that the lessee may apply for renewal within not less than six months and not more than one year.

63. Lessee's right under a Small Scale Mining Lease. A lease shall, subject to the Act and rules and the conditions contained in the lease, confer on the lessee the rights as envisaged in section 43.

64. Failure to act according to the development scheme.

If at any time after six months of the grant of the lease, or its renewal it is found that the lessee is not working in accordance with the approved development scheme, the Licensing Authority may impose a fine as prescribed and shall direct the lessee in writing to rectify the violations within six months.

Provided, that if the lessee fails to rectify the violations without reasonable cause within the time limit fixed by the Licensing Authority, the lease may be cancelled.

65. Provisions of Part II to apply to Part III:

(1) The Government may by Order make applicable all or any of the provisions of sections 12 except sub section (1) clause (c), sections 13 to15, section 46 other than sub section (4), and sections 47 to 50,with modifications, to Prospecting License or Small Scale Mining Lease.

(2) The order under sub section (1) shall cater for the protection and promotion of small scale mining in the Province.

(3) The Order under sub section (1) shall be subject to prior publication under the General Cluses Act, 1956

Part IV - Financial Provisions

66. Royalties payable on minerals.

(1) Subject to the Act, the holder of

(a) a Mining Lease or Small Scale Mining Lease, who has won or mined any mineral or group of minerals in the course of any exploration or mining operations carried on by the holder; or

(b) an exploration License or a mineral deposit retention License, who has found or incidentally won any mineral or group of minerals in the course of any exploration operations carried on by the holder, shall be liable to pay to Government, in respect of any such mineral or group of minerals disposed of by the holder, royalty at the prescribed rate.

(2) For the purposes of sub section (1), any mineral or group of minerals shall be deemed to have been disposed of if it is-

(a) sold, donated or bartered;

(b) appropriated to treatment or other processing without having been dealt with as provided in clause (a) prior to appropriation; or

(c) exported from the Province without having been dealt with as provided in clause (a) or (b) prior to export.

(3) Where a mineral agreement makes provision for the payment of royalty, by the holder of mineral title, at an enhanced rate or rates in respect of any mineral or group of minerals won, mined or found as provided in sub section (1) the enhanced rate of royalty shall be determined and payable in accordance with the terms of the agreement; provided that the rate of royalty payable at any time shall not be less than the prescribed rate under that section.

67. Payment of royalty.

(1) Royalty in respect of any mineral or group of minerals won, mined or found as provided in section 66 and disposed of shall be payable not later than thirty days after the end of the calendar month in which the mineral or group of minerals is disposed of in the prescribed manner.

(2) Where any person has failed to pay any amount of royalty as required by sub-section (1), mark-up calculated at the rate of one per centum per day on the amount or any part thereof from time to time remaining unpaid, shall be payable from the due date of payment until all outstanding amount is paid.

(3) The holder of a mineral title shall submit, in respect of each month and in such form and detail as may be prescribed, a return showing the amount of royalty paid in respect of any mineral or group of minerals disposed of in the month.

68. Deferment of royalty.

The Licensing Authority, on application made in writing by the holder of a Mining Lease, may in consultation with the Mines Committee, by order in writing, defer payment of such royalty or mark-up for such period and on such conditions as may be determined by Government and specified in the order, or may refuse to so defer the royalty or mark-up payable.

69. Powers of Licensing Authority in case of failure to pay royalty.

If the holder of mineral title referred to in section 66 fails to pay any royalty payable by him in accordance with section 67 or, if applicable, on or before such date to which the payment of the royalty has been deferred under section 68, the Licensing Authority may, by notice in writing given to the holder, prohibit-

(a) the removal of any mineral or group of minerals from the exploration area, mining area, retention area, the land subject to the Mining Lease or, in the case of the holder of prospecting License, from the place where the mineral or group of minerals is found, won or mined; or

(b) any dealing in connection with any mineral or group of minerals found, won or mined from any such area, land or place, until such time as the royalty has been paid, or the payment has been deferred under section 68.

70. Local Area Charge.

(1) The Government may by Order impose Local Area Charge at the prescribed rate.

in respect of any such mineral or group of minerals disposed of by the holder of any mining concession.

(2) For the purposes of sub section (1), any mineral or group of minerals shall be deemed to have been disposed of if it is-

(a) sold, donated or bartered;

(b) appropriated to treatment or other processing without having been dealt with as provided in clause (a) prior to appropriation; or

(c) exported from the Province without having been dealt with as provided in clause (a) or (b) prior to export.

(3) The amount received as Local Area Charge shall be spent on the welfare and development of the area affected by the mining operations.

71. Rent and renewals.

(1) Annual rent in respect of a mineral title shall be paid as prescribed in respect of the category of mineral title in accordance with the provisions contained in sub-section (2)

(2) Payment of the annual rental pursuant to sub-section (1) in respect of a mineral title shall be made within thirty days after the date of the issue of the mineral title and thereafter shall be made within thirty days of the same date of each year.

(3) Where, any person has failed to pay any amount of annual rent, mark up calculated at the rate of one per centum per day on the amount or any part thereof, from time to time remaining unpaid, shall be payable from the due date of payment until all outstanding amount is paid.

(4) A renewal fee in respect of the mineral title shall be payable as prescribed.

72.Proof of amounts payable under the Act. In any proceedings in a competent court to recover any amount payable under the Act, a certificate purporting to be a certificate under the hand of the Licensing Authority certifying that the amount of money specified in such certificate is payable under the Act by any holder such as is referred to in section 96 named in such certificate shall be received in evidence as prima facie proof of the facts stated in the certificate.

Part VI – Miscellaneous Provisions

73. Rights over data:

(1) Subject to sub section (2) Government shall have the exclusive right to all data and information in respect of mining operations.

(2) The holder of a mineral title shall have the right to make use of the data free of cost, for the purpose of exploration or mining operations and to retain copies or samples of material or information constituting the data subject to sub section (3)

(3) Data permitted to be used or retained as provided in sub section (2), which is not in the public domain, shall not be disclosed to any person without the prior consent of the Licensing Authority, except as may be necessary for the purpose of, or in connection with, exploration and mining operations, or as required by law, or for the purpose of arbitration or litigation.

74. Vis majeure:

(1) Any failure on the part of the holder of a mineral title to fulfil any of the conditions of the License, or to meet any requirement under the Act, shall not be treated as a breach of the holder's mineral title in so far as the failure arises from an act of war, hostility, insurrection, or an act of God, or from any other cause specified in the conditions of the mineral title as constituting vis majeure.

(2) Where the holder of a mineral title fails to fulfil any of the conditions of the mineral title as a result of the occurrences of any circumstances of a kind referred to in sub-section (1), the holder shall forthwith give notice to the Licensing Authority, giving particulars of the failure and its cause.

(3) The Licensing Authority may, on application made to it by the holder of a mineral title who has been prevented from exercising any right under the mineral title conditions as determined by the Licensing Authority, the period for which the minerals title in question has been issued, may be extended by such reasonable period as may be determined by the Licensing Authority.

(4) The Licensing Authority may refuse any application referred to in sub section (3) if the holder of the mineral title could, by taking reasonable steps which were available to the holder, have exercised the rights concerned during that period.

(5) Nothing in this section shall construed as absolving any holder of a mineral title from complying with any obligation to pay royalties, annual charges, rent or fees.

75. Retention of fees. Where any application under the Act is refused, the application fee, which was paid at the time of the application, shall not be refunded and shall be retained to meet administrative costs.

76. Notice of applications made and titles issued, etc.

(1) The Licensing Authority shall, not later than seven days after the date on which an application for mineral title is received by it, by posting a notice in prominent news papers and other means, make it known for general information that the application has been made which shall contain such other information as may be prescribed.

77. Order in which applications to be considered.

(1) All applications made under the Act and received by the Licensing Authority shall be considered by the Licensing Authority in the order in which they are received.

(2) For the purposes of sub section (1), applications so received on the same date and time shall be deemed to have been received and priority shall be determined by the Licensing Authority on the basis of earlier receipts.

78. Removal and sale of property, etc concerning mining title:

(1) Where a mineral title has been cancelled or surrendered, or has expired, or if any area of and has ceased for any reason to be part of the area of the land pertaining to title, the Licensing Authority may, by notice in writing given to the person who is or was holder of the title, direct him to do take or any of the prescribed steps.

(2) The Licensing Authority may take consequential measures as prescribed.

79. Weighing of minerals.---The holder of mining concession shall provide in the area of concession, a properly constructed and correct weighing machine or other suitable means for determining the weight of any mineral or group of minerals won or mined in the exercise of his rights under the Act.

80. Release of lands included by inadvertence.---In the event of the inclusion, by inadvertence, of the area under a License or a lease in respect of which it may subsequently transpire that the rights for the same mineral have already been granted to another individual, firm or Company or part of the area has been included through typographical or clerical mistake, the Licensee or the lessee shall immediately release to the Licensing Authority any such land or area when required to do so by the Licensing Authority without any claim or compensation:

81. Power of Licensing Authority to obtain information.

Where the Licensing Authority has reason to believe that a person is capable of furnishing information or data relating to reconnaissance, exploration or mining operations, or to minerals won, mined, found or sold or otherwise disposed of, or the value thereof, it may, by notice in writing require that person to provide such information as prescribed.

82**. Liability for pollution.**---(1) Where in the course of reconnaissance, exploration or mining operations carried on under a mineral title, any mineral is spilled on land, or in any water on or under the surface of any land, or any land or any such water is otherwise polluted or damaged, or any plant or animal life, whether in water or on, in or under land, is endangered or destroyed, or any damage or loss is caused to any person, including Government, by such spilling, pollution or damage, the holder of the mineral title or prospecting License shall forthwith-

(a) report such spilling, pollution, loss or damage to the Licensing Authority; and

(b) take at his own cost all such steps as may be necessary in accordance with good reconnaissance, exploration or mining practices or otherwise as may be necessary to rectify the spilling, pollution, loss or damage.

(2) If the holder of mineral title or prospecting License referred to in sub section (1) fails to comply with the provisions of clause (b) of that sub-section within such period as the Licensing Authority may deem in the circumstances to be reasonable, the Licensing Authority may order the holder, by notice in writing given to him, to take, within such period as may be specified in such notice, such steps as may be specified in order to rectify the spilling, pollution, damage or loss and the Licensing Authority may, if the holder fails to comply with the order to the satisfaction of Licensing Authority within the period specified in the notice or such further period as the Licensing Authority may, on good cause shown, allow in writing, cause such steps to be taken as may be necessary to rectify the spilling, pollution, damage or loss and recover the costs incurred thereby from such holder.

83. Operation in the reserved and protected forests.

(1) Every application for the grant of a Mining Lease or a License except the Reconnaissance License in a reserved or protected forest shall be referred to a Technical Committee constituted by Government, having members one each from Directorate General of Mines & Minerals and Environment Department. The Committee shall decide the matter in the light of prescribed guidelines.

(2)The decision of the Technical Committee on the application shall be final and in case of any disagreement between the members of the Technical Committee, the matter shall be referred to the Secretary to Government of the North-West Frontier Province Industries, Commerce, Mineral Development, Labour and Technical Education Department, for appropriate decision.

(3) Subject to sub section (1) all operations under this section shall be carried out in the prescribed manner.

84. Inspection, etc, by authorized officer

(1) An officer authorized by the Licensing Authority -

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

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

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

(d) may inspect, take extracts from, and make copies of, any data, relating to any of the operations mentioned in clause (a);

(e) may, with respect to the health and safety of persons employed by a holder of a mineral title or prospecting License in connection with any of the operations referred to in clause (a), issue in writing directions to, and impose restrictions on, the holder or any person so employed;

(f) may, for reason to be recorded in writing, order-

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

(ii) the discontinuance of the use of any machinery or equipment, which he considers unsafe, unless and until such action as is necessary for safety and specified in the order is taken and completed; or

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

(2) Any person who is aggrieved by a decision, direction or order of an authorized officer made under this rule may appeal in writing to the Licensing Authority which shall, as soon as practicable, hear and dispose of the appeal.

(3) On an appeal under sub-section (2), the Licensing Authority may rescind or affirm the decision, direction or order appealed against or may make a fresh decision, direction or order and that decision, direction or order shall be final.

(4) In exercising his powers under sub-section (1), an authorized officer may be accompanied by any person whom the authorized officer believes has special knowledge of any matter being inspected, tested or examined.

(5) A person who is a titleholder in relation to any matter referred in sub section (1), shall provide an authorized officer all reasonable facilities and assistance including the provision of necessary means of transport, for the effective exercise of the authorized officer's powers under this section.

85. Further powers of authorized officers. If a person who was the holder of a License or lease, such as referred to in section 16, fails to comply with the requirement of that section, authorized officer may-

(a) at all reasonable times, enter upon any premises whatsoever and search for the records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents ; and

(b) seize any such records, maps and plans, reports, photographs, tabulations, tapes, discs, books and documents which were not delivered to the Licensing Authority as required under the Act.

86. Appeal.

(1) If a person is aggrieved by an order of the Licensing Authority relating to a mining concession passed under the Act, he may, within thirty days of the communication of the impugned order and payment of such fee as may, from time to time, be specified, by Government, prefer an appeal to –

(a) the Tribunal against the original orders of Secretary; and,

(b) the Secretary against the original orders of Director General.

(2) Subject to the provisions of sub section (2) of section 89, no further appeal shall be admissible against the decision of the appellate authority under Clause (a) and (b).

(3) The Appellate Authority, while hearing the appeal under sub section (1) may, if it so considers necessary in the interest of justice, grant a stay order; provided that no such order shall be passed in respect of Government dues unless the appellant deposits twenty-five per cent of the disputed amount with the Licensing Authority.

(4) If the appeal in which a stay order has been granted is finally rejected and the Appellate Authority is of the view that the appeal was preferred on frivolous grounds or the stay order was obtained by deceit or fraud on the part of the appellant, it may while deciding the appeal, impose a penalty up to five per cent of the disputed amount.

(5) The amount deposited under sub-section (3) shall first be adjusted towards the penalty imposed under sub-section (4) and the remaining amount may be adjusted towards the recovery of Government dues.

Part VI- Minor Minerals

87. Lease of Minor Minerals:

(1) There shall be no mining of minor minerals except under a lease granted under the Act.

(2) The "minor minerals" mean bajri, ordinary sand and gravel:

Provided, the Government may declare any other mineral as minor mineral, which is not specified in the Schedule or for which no mining concession is held under the present Act and rules framed under it or under the Regulation of Mines, Oil-fields and Mineral Development (Government Control) Act, 1948

(3) Notwithstanding the contrary provisions of the Act, but subject to the provisions of this section, a Minor Mineral Lease may be granted and regulated under the rules framed by the Government under this section.

(4) Subject to the provisions of this section and rule framed under it, the Director shall have the authority to grant the lease for mining of the minor minerals.

(5) The lease shall be for non renewable period of up to three years

(6) A lease shall be granted on "as is, where is basis" through open auction conducted by an Auction Committee constituted by the Secretary.

(7) The area granted under a Mining Lease shall not be altered or changed in any case

(8) The highest bidder shall be granted the lease unless the Director, after consultation with the Auction Committee, is satisfied for reasons to be recorded, that the lease should not be granted to the said bidder.

(9) Appeal

(a) Appeal against the decision of the Director may be filed, in the manner prescribed by the rules framed under this section, before the Director General, within a period of 15 working days of the issue of the allotment letter:

Provided that the Director General may, after recording reasons, condone the delay in filing the appeal up to a period of 20 days, subject to payment of fine determined by him.

(b) The Director General, shall decide the appeal within 20 working days, unless he is satisfied that for reasons beyond the control of the parties, it cannot be decided within this period.

(c) Subject to the other provisions of the Act, the decision of the Director General shall be final.

(10) The provisions of Part VI of the Act shall *mutatis mutandis* apply to offences

relating to minor minerals and their trial by the Special Courts.

Part VI- Adjudication

Division 1- Tribunal

88.Tribunal

(1) The Government shall, within six months of the coming into force of the Act, establish a Tribunal to exercise jurisdiction under the Act.

(2) The Tribunal shall be appointed on the recommendations of the Peshawar High Court and shall comprise the Chairman and two members.

(3) The Chairman shall be a retired judge of the Peshawar High Court appointed with the concurrence of the said High Court.

(4) One member shall be a mining engineer of good repute having at least fifteen years experience in mining and the other member shall be from the field of law with a minimum experience of ten years.

(a) The Tribunal shall have its principal office at Peshawar and in its discretion may have regional benches as and when needed.

89. Jurisdiction, working, etc, of the Tribunal:

(1) The Tribunal shall exercise such jurisdiction which is vested in it by the Act or Rules.

(2) The Tribunal may, on the application of an aggrieved person call for the record of any case, which has been finally decided by the Licensing Authority so as to satisfy itself about the legality and proprietary of the proceedings and may pass such order as it may deem fit.

(3) The Tribunal may, on the application of an aggrieved person, issue directions to the Licensing Authority to expedite the process, if the Tribunal is satisfied that there has been unreasonable delay in the process before the Licensing Authority or a person working under its administrative control.

(4) The Tribunal shall not pass any order or take any action without affording a reasonable opportunity of hearing to the person likely to be adversely affected by the order or action.

(5) Subject to sub section (4), the Tribunal shall conduct its proceedings according to the prescribed procedure.

(6) Subject to the provisions of sub section (4) and (5), the Tribunal shall follow the principles of justice, equity and fair play.

(7)The Government, the Board and any other person, working or exercising any authority or performing any functions with relation to any matter covered under the Act, shall faithfully implement the decisions of the Tribunal

Division 2: Special Courts, powers and procedure

90. Establishment of Special Courts: (1) The Government shall, for the purposes of

providing speedy trial of offences under the Act or rules shall constitute as many

Special Courts as may be necessary in the Province and determine their territorial jurisdiction.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is a District and Session Judge, an Additional District and Session Judge

or holding a judicial office equivalent to any of them.

(4) The Special Court shall be deemed to be a Session Court for matters relating to transfer of cases under section 526 of the Code of Criminal Procedure, 1898,

91. Procedure and powers of Special Courts:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence punishable under the Act shall be tried only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where a court, other than the Special Court, is conducting a trial of an offence, which appears to such court to be cognizable by the Special Court, such court shall transfer the case along with the record of the case to the Special court having the jurisdiction over the offence.

(3) The Special Court, to which the case is transferred under sub-section (2), may continue the trial on the basis of the record sent to it under that sub-section or start the fresh trial in the case.

(4) The Special Court may, notwithstanding anything contained in sub section (1) of section 260 of the Code of Criminal Procedure, 1898, try the offence under the Act in a summary way in accordance with the procedure prescribed in the said Code and provisions of sub section (2) of section 260 and sections 262 to 265 of the Code shall, so far as may be, apply to such trial.

(5) Save as otherwise provided in this Act, provisions of the Code of Criminal Procedure, 1898, in so far as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court, and the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session under the Code.

(6) The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898, as if the Special Court within the local limits of the jurisdiction of the High Court is a Court of Session, trying cases within the local limits of jurisdiction of the High Court.

(7) The provisions of section 526 of the Code of Criminal Procedure, 1898 shall be applicable to the transfer of cases from Special Courts.

Division 3: Offences, penalties, etc.

92. Offences and penalties:

(1) Any person employed in or by the Department, who uses, for the purpose of personal gain, any information falling within the purview of the Act or rules that comes to him in the course of, or by reason of, being that employee, shall on conviction by the Special Court, be punishable with imprisonment up to seven years or with fine up to three hundred thousand rupees or both.

(2) Any person who carries on reconnaissance, exploration or mining operations or mining activity in the Province, except under and in accordance with a License or lease shall be guilty of an offence and will be punishable with imprisonment upto seven years of fine upto ten million rupees or both.

(3) Any holder of a mineral title, who contravenes or fails to comply with a notice given to him under sub section (1) of section 14, shall on conviction by the Special Court, be punishable with a fine which shall not be less than twenty thousand rupees or more than two hundred thousand rupees.

(4)The holder of a Mineral Title, Prospecting License or Small Scale Mining Lease who does not fulfil his obligations under section 15 or violates the provisions of section 16 shall on conviction by the Special Court, be punishable with fine up to five hundred thousand rupees.

(5) Any person, who contravenes or fails to comply with a notice given to him under section 69, shall on conviction by the Special Court, be punishable with a fine which shall not be less than three hundred thousand rupees or more than one million rupees.

(6) Any person who-

(a) refuses or fails to comply with the requirement in a notice under sub-section (1) of that section 81, or

(b) knowingly or recklessly furnishes information that is false or misleading in a material particular; or

(c) knowingly or recklessly makes a statement or furnishes any data which are false or misleading in a material particular-

shall on conviction by the Special Court, be punishable with imprisonment up to one year or fine up to two hundred thousand rupees, or both.

(7) Any person who knowingly or recklessly makes a statement or produces document that is false or misleading in a material particular to an authorized officer, under sub section (1) of section 84, shall on conviction by the Special Court, be punishable with a fine which shall not be less than five thousand rupees or more than fifty thousand rupees.

(8) Any person who violates the provisions of sub section (1) of section 87 shall on conviction by the Special Court, be punishable with imprisonment up to seven years or with fine up to one million rupees or both.

(9) Any person who makes or causes to be made in connection with any application, under the Act or rules, any statement knowing it to be false or misleading shall on conviction by the Special Court be punishable with imprisonment up to three years and fine up to one million rupees or both;

(10) Any person who submits or causes to be submitted in connection with any notice, report, return or statement issued or given under any provision of the Act or rules or the conditions of any mineral title, or prospecting License or small scale Mining Lease any document, information or particulars which are false or misleading knowing them to be false or misleading shall on conviction by the Special Court be punishable with fine up to five hundred thousands rupees.

(11) Any person who fraudulently and with the intent to mislead any other person to believe that a mineral or group of minerals exists at any place, places or deposits or causes to be so placed or deposited any mineral or group of minerals in or at any such place shall be punishable with a fine up to five hundred thousand rupees.

(12) Any person who fraudulently and with intent to deceive mingles or causes to be mingled with any sample of ore any substance which may increase the value or nature of the ore, shall be punishable with a fine which shall not be less than fifty thousand rupees and more than three hundred thousand rupees.

(13) Any person who obstructs free access of a Licensee or a lessee to the Licensed or leased area or directly or indirectly tries to interfere with the prospecting or mining operations by a Licensee or a lessee, he shall on conviction by the Special Court, be punishable with imprisonment for a term not less than three months which may extend to three years or with a minimum fine of one hundred thousand rupees which may extend to five hundred thousand rupees or both.

(14) Any person who makes, or causes to be made or concurs in making, a false entry in the Titles Register or produces or tenders in evidence a document falsely purporting to be a copy of an extract from an entry in the Title Register, shall on conviction by the Special Court, be punishable with imprisonment up to three years or fine which shall not be less than fifty thousand rupees or more than five hundred thousand rupees or both.

(15) Any person who fails to pay the amount of royalty due under Part IV shall, on conviction by the Special Court, be punishable with imprisonment up to one year or fine equal to amount of royalty due under Part IV or both.

Any person who violates any provision of the Act or rules for which no penalty has been provided under the Act, shall on conviction by the Special Court, be punishable with imprisonment up to six months or fine upto fifty thousand rupees or both/

(16) Where a person is convicted of an offence under the Act, the court before which he is convicted may, in addition to any penalty imposed or other forfeiture ordered, order that any mineral or group of minerals won or mined in the course of the commission of the offence, be forfeited to Government or, in the event of any such mineral or group of minerals having been sold or otherwise disposed of, that an amount equal to the proceeds of the sale or the market value of the mineral or group of minerals, as determined by the court, be paid by such person to the Government.

(17) The Government shall,after a period of three years from the commencement of the Act and after every three years thereafter, review the upper limit of the fine under this section and may increase the upper limit of fine in order to make it more effective under the prevailing circumstances.

(18) The Order under sub section (17) shall be subject to prior publication under the General Clauses Act, 1956.

93. Nature of offences:

Notwithstanding the relevant provisions of the Code, the offences under sub sections (1), (2), (8), (13) and (14) shall be cognizable and non-bailable.

94. Cognizance of offences: A Special Court shall not take cognizance of any offence

punishable under this Act except upon a complaint in writing made by an officer of the Department authorized by the Secretary by general or special order.

95. Compounding of offences:

(1) The offences punishable with imprisonment under the Act, may be compounded by, either before or after the institution of prosecution, by any officer of the Department authorized by the Secretary, on payment to the Government of such sum as the compounding fee at such rate as may be prescribed which shall not exceed ten times the maximum rate of the fine for the offence.

(2) Where an offence is compounded under subsection (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded and, if the offender is in custody, he shall be released forthwith.

Part VII- Delegated Legislation

96. Rules and guidelines:

(1) The Government may make rules to--

(a) carry out the functions entrusted to it under the Act,

(b) implement the provisions of the Act relating to the matters prescribed.

(c) give effect to the provisions of the Act except such matters which are covered under sub section (2) of this section.

(2) Subject to clauses (a) and (b) of sub section (1) of this section, the Government shall not make rules relating to the matters entrusted to the Board under this Act.

(3) The Rule making shall be subject to previous publication under the General Clauses Act, 1956.

(4) Subject to the Act and rules, the Government may, in the light of good and adoptable international practices, issue guidelines for the proper working under the Act.

97. Regulations:

(1) Subject to the Act and the rules, if any, the Board may frame regulations to carry out the functions entrusted to it under the Act.

(2) The Government may direct the Board to modify any regulation which is repugnant to the provisions of the Act or rule

98. Modification of the Schedule:

(1) The Government may amend the Schedule after consultation with the Board.

(2) The amendment of Schedule shall be subject to prior publication under the General Clauses Act, 1956.

99. Removal of Difficulties:

(1) If any difficulty arises in the application of the Act which, in the opinion of the Government, is clearly detrimental to the purposes of the Act, the Government may, on the recommendations of the Board or on its own motion, make such order as it may consider necessary and proper in the circumstances.

(2) The making of the order under sub section (1) shall be subject to previous publication under the General Clauses Act, 1956.

(3) The Government shall not exercise any power or pass any order under sub section (1) of this section beyond the period of three years of the commencement of the Act.

Part VIII- Relationship with other laws

100. Application of Labour Welfare Laws.

(1) Subject to sub section (2) all labour welfare laws shall be applicable to the mines labour.

(2) Government may by order extend any labour welfare law or any of its provisions, which is not applicable to mines labour except by the operation of sub section (1) to all mines or any category of mines.

101. Amendment in Ordinance No XIX of 2002:

(1) Sub clause (iv) of clause (b) of sub section (19) of section 2 is hereby repealed.

(2) In clause (c) of sub section (19) of section 2, the words,“ except minerals and products of mines and quarries” shall be inserted between the words, “produce” and “which”.

102. Repeal and Savings:

(1) The Regulation of Mines, Oil-fields and Mineral Development (Government Control) Act, 1948 in its application to the Province, in all matters relating to mines and minerals, except oil, natural gas and nuclear minerals, shall stand repealed on coming into force of the Act.

(2) Notwithstanding the repeal under sub section (1) all rights acquired and liabilities incurred, under the repealed law, shall continue to remain in force and shall be deemed to be acquired or incurred under the present Act.

(3) All proceedings being conducted under the repealed Law shall continue and shall be deemed to be instituted or conducted under the present Act.

(4)The existing rules framed under the Act repealed by sub section (1) of this section, which are not inconsistent with the present Act or rules framed under it, shall remain in force and shall be deemed to be made under the present Act, till new rules replace them

SCHEDULE

(APPLICABLE TO LARGE SCALE MINING)

GROUPS OF MINERALS

A. CONSTRUCTION AND INDUSTRIAL MINERALS GROUP

Alunite, andalusive-sillimanite-kyanite, anhydrite, aplite, asbestos, barite, beryl, boron minerals, calcium carbonate, celestite, clay (including bentonite and Fuller‟s Earth (Palygorsite and attapulgite), ball clay, halloysite, hectorite, kaolin, refractory clay), corundum diatomite, dolomite, epsomite, feldspar, emeralds, garnet (for industrial purposes), graphite, gypsum, heavy mineral sands, ioding minerals leucoxence, emerald minerals, limestone and marble, magnesite, mica nepheline syenite, nitrate, olivine, perlite, phosphate, fossil guano, quartz (for “emeralds” 1 purposes), picture-stone, potash, pumice, pyrophyllite, salt, sepiolite, silica sand, soapstone, soda-ash and other sodium compounds, strotianite, sulpher and pyrite, talc, vermiculite, wollastonite and any other mineral as declared by the Government.

B. PRECIOUS STONES GROUP

Diamonds, Emeralds, rubies and sapphires

C. PRECIOUS METALS GROUP

Gold, silver, platinum, palladium, osmium, rhodium, iridium and ruthenium.

D. SEMI-PRECIOUS STONES GROUP

Amozonite, aventurine, beryl (including aquamarine, heliodor and morganite, but excluding beryl as a source of beyllium metal or as an industrial mineral), chrysoberyl, chrysocolla, cordierite, dioptase, dumortierite, garnet, milarite, quartz (including amethyst, citrine, rock crystal, rose and strawberry quartz, agate, carnelian, chalcedony, chrysoprase, jasper, moss agate, hyalite, opal, pietersite and tiger‟s eye), sodalite, topaz, tourmaline and turquoise.

E. BASE METALS GROUP

Aluminum, antimony, arsenic, beryllium, bismuth, cadmium, caesium, chromium, cobalt, copper, gallium, geranium, hafnium, indium, iron, lead, manganese, mercury, molybdenum, nickel, riohium, radium, “Rare Earths” or lanthanides, including the actinides, scandium and yttrium, rhenium, rubidium, selenium, tantalum, tellurium, thallium, tin, tungsten, vanadium, zinc or zin-conium, but does not include any such minerals if such mineral is incidentally ingroup of minerals.

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