

# The Minerals Law

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# **The Minerals Law**

## **Chapter One**

### **General Provisions**

#### **Article 1: The Basis**

This law has been enacted pursuant to the Article 9 of the Constitution of Afghanistan to regulate the affairs related to determining the ownership and control of the State over mineral deposits, preservation, management, utilization, attracting and support of State, private and joint investments in the mining sector operations and managing of other related operations and activities.

#### **Article 2: Management of Minerals**

The ownership, control, prospecting, exploration, exploitation, extraction, concentration, processing, transformation, transportation, marketing, sale, and export of minerals in the territory of Afghanistan, whether on the surface or sub-surface or in the water courses; shall be governed by the provisions of this Law.

#### **Article 3: Definitions**

For the purposes of this Law the following definitions apply herein:

1. "Artificial Deposit" means any concentration of minerals derived from storage of scraps, tailings, or processing of stores of tailings which are economically feasible to be processed (scraps, old metals, scrap deposits and so forth).
2. "Artisanal Exploitation" means any activity by means of which a person carries out extraction of minerals using traditional equipments and methods of processing at a depth not exceeding thirty meters.
3. "Authorization" means a permit granted by the Ministry of Mines under the provisions of this Law for quarry exploration, temporary quarry exploitation, permanent quarry exploitation, previously extracted tailings exploitation, exploitation, business, processing, transportation or transformation of minerals.
4. "Base Metal" means any metal found in any form and condition, other than precious metals.

5. "Bituminous Sand or Clay" means sand, clay or other rock material containing naturally occurring hydrocarbons that have a viscosity determined under the same conditions equal to or less than 12 degrees API.

6. "Cadastral Survey Map" means the specific topographical map indicating the limits of each perimeter in force or whose application is being processed, prepared for each province and zone by the Mining Cadastre Department pursuant to the provisions of this Law.

7. "Coal" means a fossil fuel consisting of carbonized vegetable matter deposited in sedimentary basins including anthracite, bituminous coal, sub-bituminous coal and lignite.

8. "Construction Materials" means crushed stone, dolomite, limestone, gravel and such other minerals that may be designated as Construction Materials from time to time in the Mining Regulations.

9. "Control" means power and ability to direct management directly or indirectly through ownership or participation in a contract

10. "Deposit" means any naturally or artificially occurring concentration of minerals the exploitation of which can be economically feasible.

11. "Environmental Impact Statement (EIS)" means a prior scientific foreseeable analysis of potential effects of an activity that would effect the environment and social conditions

- Analysis of the acceptable levels of these impacts on the environment and the mitigation measures for them,

- Mitigating the major impacts on the environment and social issues or other severe impacts.

- Compensation of the damages to the affected communities.

12. "Environmental Management Plan" means to describe the program and work plan in connection to the environment and the society, and to eliminate its negative impacts during the working period of the project and to reduce and or compensate the resultant damages in case of negative impacts; to ensure the benefits to local communities and rehabilitation of the mine sites.

13. "Exploitation" means any activity by means of which exploration, pre-production development and extraction of minerals takes place from an identified deposit by means of open pit or underground operations from a Deposit or an Artificial Deposit for its processing, using or selling.

14. " License" means a license for exploration or exploitation of mines granted pursuant to the provisions of this law.

15. "Exploration" means any activity carried out to discover minerals in order to demarcate the quality and quantity of the reserves contained within it, or to evaluate the possibilities of its exploitation.

16. "Forced Labor" means any work or service not voluntarily performed, that is exacted from an individual under threat of force or penalty.

17. "Gemstone" means any minerals or mineral substances consisting of one or more chemical elements which are precious and have high market value, including diamond, emerald, sapphire, ruby, tourmaline, topaz, aquamarine, garnet, peridot, amethyst and such other minerals that may be designated as Gemstones from time to time in the Mining Regulations.

18. "Qualification for mining industry" means the exercise of that degree of skill, diligence, prudence and foresight that would ordinarily be expected from a skilled and experienced operator under similar circumstances, adhering to internationally recognized standards.

19. "Gross Revenue" means the revenues, whether in cash or in kind, obtained from the sale of output of a mine or quarry including all by-products sold, without taking into consideration the costs of exploration, development or exploitation.

20. "Harmful Child Labor" means the employment of persons under the age of eighteen years who are economically simply exploitable; and the work interferes with the child's education, is harmful to their health and has a mal effect on the child's physical, mental or social development.

21. "Health and Safety Plan" means a description of the potential health and safety hazards for any project based upon the specific activities being or to be carried out. The response plan for such hazards are designed and implemented through provision of technically appropriate equipment, better implementation of relevant measures, and adoption of accurate methods.

22. "Right Holder" means a person to whom a Mineral Right is registered by the Mining Cadastre. A lessee of a Mineral Right under a Lease registered with the Mining Cadastre is also included in this definition.

23. "Hydrocarbons" has the meaning given to that term in the Hydrocarbons Law.

24. "Industrial Mineral and Stones" means barite, bentonites, borates, diatomite, massive rocks, quartzites, basalts, diorites, kaolinites, magnesites, silicates, phosphates, zeolites and such other minerals that may be designated as Industrial Minerals and Stones from time to time in the Mining Regulations.

25. "Mineral" means any chemical element forming a naturally-occurring substance, simple or complex, inorganic or organic, in solid or gaseous states; or as solution in water.

26. "Mineral Activity" means the prospecting, exploration, exploitation, processing, transformation, transportation, export, marketing or sale of Minerals whether on surface or sub-surface or in water courses.

27. "Mineral Certificate" means the special certificate issued by the Mining Cadastre in accordance with the provisions of this Law for the purpose of undertaking mineral activities.

28. "Mineral Royalties" means the mineral royalties paid to the state as a certain parentage of the gross productions in accordance with this Law.
29. "Mineral Substance" means any naturally occurring substance which has economic value and contains one or more Minerals in amorphous or crystalline form, solid, liquid or gaseous. Hydrocarbons, water, Coal, Bituminous Sand, Bituminous Clay and Quarry materials are not included in this definition.
30. "Mining Contract" means a contract entered into by the State and other natural or legal Persons or between two other legal or natural persons to conduct Mineral Activities in accordance with the provisions of this Law.
31. " Rehabilitation and Mitigation Plan" means a plan required for the operations relating to an Exploration License or an Authorization for Quarry Exploration pursuant to which a License Holder undertakes to carry out certain mitigation measures of the impact of its activities on the environment and social conditions as well as rehabilitation measures, and provides a cash guarantee to cover the costs of mitigation and rehabilitation of the environment and social conditions.
32. "Small size Mining Contract" means a mining contract in which the capital investment is up to five million United States dollars equivalent.
33. "Medium size Mining Contract" means a mining contract in which the capital investment is up to twenty five million United States dollars equivalent.
34. "Large size Mining Contract" means a mining contract in which the capital investment is up to fifty million United States dollars equivalent.
35. "Very large size Mining Contract" means a mining contract in which the capital investment is up to more than fifty million United States dollars equivalent.
36. "National Territory" means all the surface area, subsurface, waters and atmosphere comprising the territory of the country and its exclusive economic zone.
37. "Ornamental Stone" means a mineral or mineral substance having use as an ornamental material including lapis lazuli, onyx, amber, marble, turquoise, petrified wood, jade, malachite and such other mineral substances that may be designated as Ornamental Stones from time to time in the Mining Regulations. Gemstones shall be excluded from this definition.
38. "Mine Perimeter" means an area demarcated on the surface as per the Mineral Right while the depth is indefinite.
39. "Person" means a natural or a legal person.
40. "Precious Metals" means gold, silver, platinum, and such other Minerals that may be designated as Precious Metals from time to time in the Mining Regulations.

41. "Processing" means ore dressing or metallurgical processes applied to ore or other Mineral Substances which results in obtaining of products for sale including crushing, concentration, beneficiation, washing, and refining.
42. "Processing Entity" means any natural or legal person carrying out Processing.
43. "Products for Sale" means any Mineral Substances extracted and/or any products obtained from these substances after Processing or Transformation for commercial purposes.
44. "Restricted Area" means any unauthorized area designated as a prohibited area in accordance with Article 13 of this Law.
45. "Prospecting" means any activity which a Person carries out to search and to discover indications of the existence of Mineral Substances by studying the information observable from the surface, including by means of physical observation, remote or aerial sensing techniques or rock sampling without disturbing the land or the surface of land and without harming the environment.
46. "Quarry" has the meaning given to that term in Article 9 of this law.
47. "Quarry Authorization" means an Authorization for Quarry Exploration, an Authorization for Quarry Exploitation or an Authorization for Tailings Exploitation (artificial deposits of quarry materials), which is granted by the Ministry of Mines in accordance with the provisions of this Law and the Mining Regulations.
48. "Quarry Material" has the meaning given to that term in section 3, paragraph (1) of Article 10 of this Law.
49. "Restricted Substance" means any substance designated as unauthorized in accordance with Article 12 of this Law.
50. "Small and medium-scale Exploitation License" means an Exploitation License with specific economic parameters issued in accordance with Article 37 of this Law.
51. "Small and medium size Mining Deposit" means a deposit designated as such in accordance with Article 37 of this Law.
52. "Start of Commercial Production" means the first day of the first 90-day period throughout which a Mine or Quarry operates at least at 60% of its rated capacity.
53. "Sub-contract" means a contract where the contractor directly or indirectly enters into a contract with another person to carry out work or services relating to Mineral Activities.
54. "Surface Rent" means the fees of the demarcated area of the Mining Contract the payment conditions and duration of which shall be established in the Mining Regulations.
55. "Stores of Tailings" means the material remained from the exploitation of Mines or Quarries or any solid or liquid residues derived from processing.



56. "Tailings Exploitation" means any activity by means of which an individual or a legal entity extracts mineral substances from an Artificial Deposit of scrap material, and processes them in order to sell them.

57. "Transformation" means any industrial process which changes the form and nature of a processed mineral or prepares finished or semi-finished products for sale.

58. "Transformation Entity" means any natural or legal Person carrying out Transformation of minerals.

59. "Inter-Ministerial Commission": A commission of Ministers established for addressing the mineral operation issues in accordance with the provisions of Article 7 and Article 17 of this Law.

60. "Authorized Entity" means the Ministry of Mines, Inter-Ministerial Commission and the Government.

61. "Small-Contracts Evaluation Team": means a team of the experts of the Ministry of Mines for evaluating the Mining Operation Contracts of small scales.

62. "Associated and non-associated Minerals" means other minerals or mineral substances that are obtained during the studies, exploitation or process of the main minerals.

63. "Proposal": means the document carrying the proposal of the bidder for obtaining the Minerals Right in accordance with the provisions of the Article 17 of this Law.

64. "Construction Stone" means all those stones that as per the recognition of the Ministry of Mines are not among the Ornamental Stones and under the existing conditions do not carry any identifiable mineral substances in them and are used for the construction purposes.

#### **Article 4: Ownership of Minerals**

(1) All naturally occurring Minerals and all Artificial Deposits of Minerals on surface or subsurface of the territory of Afghanistan or in its water courses (rivers and streams) are the exclusive property of the State.

(2) Mineral operations shall be conducted in Afghanistan by the State. A Person can also carry out mining operations by obtaining a License or Authorization in accordance with the provisions of this Law.

(3) The License Holder can do Mineral Activities and have control over the minerals and minerals substances produced.

(4) The Ministry of Mines is the authorized body to grant Licenses and authorizations mentioned in this Law.

(5) In cases where minerals are discovered on or under private land, the State may acquire the land in accordance with the law of eminent domain; unless the owner of the

private land gets a Mineral Operation License in accordance with this Law. The provisions of sections 1 and 2 of this Article shall prevail in any case.

### **Article 5: Management of Mineral Operations**

(1) The Ministry of Mines shall be obliged to regulate Mineral Activities in accordance with this law and to develop, promote and ensure the efficient management of the Minerals industry by the private sector for the benefit of the people of Afghanistan.

(2) The Ministry of Mines may by itself, through other public entities, or in association with the private sector, carry out Mineral activities, in accordance with the provisions of this Law.

## **Chapter Two**

### **Duties and Authorities**

#### **Article 6: Duties and Authorities of Ministry of Mines**

The Ministry of Mines shall have the following duties and authorities in order to implement the provisions of this law:

1. To formulate and implement policies relating to Minerals and their development in Afghanistan, including policies for the promotion of private sector investment in mining operations;
2. To approve the classification, declassification or reclassification of an area as a Prohibited Area for Mineral Activities;
3. To approve the classification, declassification or reclassification of a Mineral or a Mineral Substance as a "Precious Metal", "Gemstone", "Ornamental Stone" or "Restricted Substance";
4. To approve the classification, declassification or reclassification of Deposits of Mineral Substances as Mines or Quarries;
5. To accept or refuse the extension of a License or other Mineral Right to cover associated or non- associated substances;
6. To cancel or withdraw Licenses or other Mineral Rights, acknowledge declarations of relinquishments of Mineral Rights and certify the expiration of Mineral Rights;
7. To grant or withdraw Licenses and to establish the particular rights and obligations attaching thereto;

8. To approve the small scale mining Contracts;
9. To propose to the Inter-Ministerial Commission for their approval the medium scale mining Contracts;
10. To propose to the cabinet for their approval the large scale and very large scale mining Contracts;
11. To make announcements and arrange the bidding process for mineral deposits;
12. To approve and register transfers and related securities in Licenses and other Mineral Rights;
13. To process, transform, transport, market, sale and/or export the Mineral Substances;
14. To supervise the mining operations of public entities or other institutions which have invested in the public sector of Mineral activities;
15. To determine the Royalty rate of minerals in normal situations and ensure its proper collection;
16. To determine the surface rent and ensure its proper collection as referred to in Article 8, paragraph 2, section 2 of this Law;
17. To order certain areas to be restricted or closed for Mineral Activities in accordance with section 1 Article 11 of this Law;
18. To carry out such other duties and authorities as provided by this Law.

#### **Article 7: Inter-Ministerial Commission**

(1) An Inter–Ministerial Commission shall be established in order to achieve the followings:

1. To monitor the bidding process of small and medium scale mining Contracts,
2. To approve the medium size mining contract,
3. To grant exemptions from surface rent as per the provisions of this Law,
4. To approve the royalty rate of mining operations as per Article 87 of this Law,

(2) The following composition will make up the Inter–Ministerial Commission:

1. The Minister of Mines, as Chairman
2. The Minister of Finance, as vice – chairman
3. The Minister of Economy, as member
4. The Minister of Commerce, as member
5. The Minister of Foreign Affairs, as member
6. The President of National Environmental Protection Agency, as member

## **Article 8: Mining Cadastre**

(1) There shall be established within the Ministry of Mines a Mining Cadastre.

(2) The Mining Cadastre shall have the following duties and authorities:

1. To assess fees, in accordance with the Mining Regulation, for the acceptance and processing of applications for Mineral Rights and for other relevant acts, and to transfer Mining Rights to be executed in accordance with this law.
2. To collect Surface Rights Fees, in accordance with the provisions of Article 61 of this law and to transfer such amounts to the relevant bank account.
3. The acceptance and processing of applications for Mineral Rights;
4. The evaluation of the admissibility of the applications for Mineral Rights;
5. The execution of the technical and environmental evaluation of applications for Mineral Rights;
6. The issuance of Mineral Certificates evidencing Mineral Rights;
7. Acceptance of applications for renewals and extensions of Mineral Rights;
8. Notifying the applicants concerning the processing and status of and determinations relating to applications for Mineral Rights;
9. Issuing the opinion of the Ministry of Mines in the event of the classification, declassification or reclassification of a Prohibited Area;
10. Registering Applications for the granting of Mineral Rights;
11. Registering Mineral Rights granted, as well as refusals to grant them;
12. Registering cases of relinquishment, withdrawal, termination and expiry of Mineral Rights;
13. Registering extension of Mineral Rights to other substances;
14. Registering transfer, lease, or assignments of Mineral Rights;
15. Registering Security interests, pledges and other encumbrances on Mineral Rights and mining assets.

(3) The Mining Cadastre shall establish, maintain and keep up-to-date a special registry book for registering the cases referenced in paragraph two of this Article.

(4) The Mining Cadastre shall develop Cadastral Survey Maps regarding Mineral Rights, which shall be open to the public for information.

(5) The Mining Cadastre is authorized to officially confirm the Mineral Rights and mining certificates.

(6) The Mining Regulations shall set forth the conditions for the processing of applications and the registration of Mineral Rights, for the execution of the technical and environmental evaluation of the applications, for determining the forms of applications for Mineral Rights, and other relevant situations.

## **Article 9: The Department of Environment**

(1) There shall be established within the Ministry of Mines an Environmental Protection Department for the protection of the environment in connection with Mineral Activities.

(2) The Environmental Protection Department shall have the following duties and responsibilities:

1- The technical evaluation of Mitigation and Rehabilitation Plans in relation to the Exploration for Minerals and Mineral Substances;

2- The technical evaluation of Environmental Impact Statements and the Environmental Management Plans presented by the applicants requesting Licenses and Exploitation Licenses;

3- Monitoring of compliance by participants in Mineral Activities with the environmental requirements of this Law, the Mining Regulations and Mitigation and Rehabilitation Plans to the extent applicable;

4- Recommendations on compliance with Mining Regulations concerning environmental protection with regard to Mineral Activities;

5- Cooperation with other state agencies which are responsible for protection of Environment, social welfare of the local indigenous populations, and natural and cultural heritage in connection with Mineral Activities, in accordance with the provisions of this law.

6- The mineral right holder is obliged to abide by all the instructions given by the Environmental Protection Department with regards to the prevention and mitigation of risks and impacts on the environment.

7- Provided that the instructions of section 3 of this Article are not implemented, the authorities can perform them in emergency situations without prior consultation and the expenses would be on the mineral right holder.

8 - The authorities of the Environmental Protection Department can take appropriate actions in the emergency situations or potential risks or disasters, and if needed can ask the local entities, mineral right holders, employees, and local people for cooperation.

9 - The authorities of the Environmental Protection Department can enter the area of mineral right holders in order to inspect and oversee any violations of the provisions of this law and related regulations and implementation of environmental protection guidelines, through inspect their operations.

## **Chapter Three**

### **Classification of Mineral Deposits, Restricted Areas and Prohibited Minerals**

#### **Article 10: Classification of Mineral Deposits**

(1) Deposits are classified as Mines or Quarries and shall be defined as follows:

1-- "Mine" means any Deposit or Artificial Deposit of Mineral Substances and/or any plant for the Processing or Transformation of the products within the Perimeter for such Mine, including the installations, movable equipment and fixtures used in the Exploitation process. Quarry Materials which can be economically exploited shall be an exception to the definition.

2-- "Quarry" means any Deposit of Quarry Materials which can be economically exploited and/or any plant for the Processing or Transformation of the products of such Exploitation located within the Perimeter for such Quarry, including the installations, movable equipment and fixtures used in the Exploitation process.

3-- "Quarry Material" means a non-metallic Mineral Substance which can be used as building materials, as ballasting and road building materials, in the ceramics industry, as fertilizers for plants [to improve land cultivation], including: natural sands and gravels, and sedimentary, igneous and volcanic rock. This definition excludes phosphates, nitrates, alkaline salts and other associated salts, which may be classified as Mines in the same Deposits.

(2) The Ministry of Mines may, if deemed necessary, present the proposal to classify, declassify or reclassify deposits mentioned in section (1) of this Article, or vice-versa to the Inter-Ministerial Commission for approval.

#### **Article 11: Restricted Areas**

(1) If the national interest, including the health or safety of the population, national security, requirement of public order, the incompatibility of the mining and quarry activities with other uses of the soil or sub-soil, the protection of the environment or cultural heritage or other natural values, the protection of indigenous peoples or the welfare of affected local communities so requires, the Ministry of Mines may submit the proposal to declare an area

to be off-limits to, or restricted in scope for, Mineral Activities to the cabinet of Ministers for approval.

(2) The Ministry of Mines may temporarily reserve an area for Mineral Activities in order to be awarded pursuant to a tender or on the basis of a Mining Contract.

(3) The declaration of classification of an area as a Prohibited Area shall be adopted by means of a Mining Regulation and may or may not have a fixed term.

(4) The Mining Cadastre shall compile and maintain up-to-date the map indicating the Prohibited Areas where mining activity and quarry works are forbidden or restricted.

(5) Mineral Rights in existence prior to the declaration of an area as a Prohibited Area shall continue to be valid unless the Mineral Rights are withdrawn or terminated on the basis of public order or necessity and compensation is paid to the Holder thereof in accordance with the provisions this law and Mining Regulation.

#### **Article 12: Prohibited Minerals**

(1) If national security, the health or safety of the population, public order or necessity or the protection of the environment so requires, the inter-Ministerial committee may, on the proposal of the Ministry of Mines, declare a Mineral Substance a "Restricted Substance".

(2) All radioactive ores shall be Restricted Substances.

(3) The provisions for use of the restricted substances referenced in paragraph one and two of this Article shall be regulated in the Mining Regulations.

## **Chapter Four**

### **Mineral Rights**

#### **Article 13: Types of Mineral Rights**

(1) Mineral Rights consist of Licenses and Authorizations, which shall be classified as follows:

1- Licenses consist of Exploration Licenses and Exploitation Licenses. Exploitation License consist of ordinary Exploitation Licenses and Small and medium-scale Exploitation Licenses. The provisions of this Law applicable to Exploitation Licenses apply equally to Small and medium- scale Exploitation Licenses unless otherwise specified in this Law or the Mining Regulations.

2- Authorizations consist of:

- (a) Authorizations for Quarry Exploration;
- (b) Authorizations for Temporary Quarry Exploitation;
- (c) Authorizations for Permanent Quarry Exploitation;
- (d) Authorizations for Tailings Exploitation;
- (e) Authorizations for Artisanal Exploitation; and
- (f) Authorizations for the treatment, Processing, Transformation, transportation or trading of Minerals.

(2) The Holders of Mineral Rights shall constitute interests in possessed property within the validity period of the contract, which shall be assignable and transferable in accordance with the provisions of this Law and the Mining Regulations provided that it is not inconsistent with, the civil law of Afghanistan. A Mineral Right does not entitle its Holder any ownership right of land.

(3) Subject to Article 14 and the limitations set forth elsewhere in this Law, a Person may hold one or more Licenses and/or Authorizations simultaneously.

(4) The procedures for the evaluation of applications, issuance of licenses and/or authorizations, maintenance, renewal, assignment and transfer and transformation of Mineral Rights shall be regulated in the Mining Regulations.

#### **Article 14: Eligibility of Obtaining Mineral Rights**

(1) The following Persons are eligible to hold Mineral Rights:

- 1- Any individual who is eighteen and a citizen of Afghanistan;
- 2- Any foreign national who has completed the age of 18 and has legally obtained the right of residence and investment in Afghanistan.
- 3- Any legal entity organized in accordance with law or a legal entity established as a cooperating legal entity;
- 4- Any foreign legal entity organized or cooperating under foreign law, that is legally entitled to reside, invest, or do business in Afghanistan. Foreign person may not hold Authorization for Artisanal Exploitation.

(2) The following are not eligible to obtain Mineral Rights:

- 1- High ranking state officials stipulated in Article 151 of the Constitution, members of the parliament, magistrates, attorneys, members of the Ministries of Mines, National Defense, Interior Affairs, Foreign Affairs, and the Security Services above rank three;
- 2- Any individual who does not have legal eligibility;
- 3- Any Person who has been declared bankrupt;
- 4- Any Person charged with involvement in financial, economical and management offences and convicted by a valid conclusive judgment of the authorized court, for a period of more than two years imprisonment ;
- 5- Any Person whose Mineral Right has been prematurely terminated, cancelled or withdrawn, prior to the expiry of the contract period. .



(3) In order to obtain a mineral right and present information to the relevant authorities, any person with a foreign citizenship as cited in paragraph one of this Article shall be obliged to establish and maintain a permanent representative office in Afghanistan or to appoint and maintain an authorized agent resident in Afghanistan.

### **Article 15: Bidding**

(1) The Mineral Right is obtained through bidding process and, as per Article 6 of this law, the bidding procedures, duration, the terms and conditions, and other related issues of bids shall be provided in the approval of the authorized body.

(2) The Inter-Ministerial Committee shall take the following actions to implement the provisions of the paragraphs 1 and 2 of section (1) of Article 7 of this law:

(a) Review the tender documents, including type of proposal, the bidding terms and conditions and type of contract and its approval;

(b) Evaluate the bids and select the winner as per Article 7 of this law;

(3) The Inter-Ministerial Committee shall be required to treat all bidders fairly and without discrimination, and to select the bidder which provides the best value for Afghanistan, taking due consideration of the following:

- 1- Plan of work proposed, manner of implementation and the amount of investment committed thereto;
- 2- Financial and technical capacity of the bidder;
- 3- Previous experience of the bidder (local companies are exempted from this up to five years);
- 4- Having an Afghan partner(s),

(4) In case during the evaluation of the proposals, two or more than two proposals equal, the mineral right would preferably be given to the holder of the Exploration License.

(5) Provided that the Exploration License holder would not win, the winning bidder shall pay all the exploration expenses plus a fair percentage of profit to the Exploration License Holder. Terms and conditions of this shall be explained in the Mining Regulations.

### **Article 16: Mining Contract**

(1) Mining Contracts of large-scale shall be implemented upon the approval of the Inter-Ministerial Council.

(2) Mining Contracts of very large-scale shall be implemented upon the approval of the Council of Ministers and endorsement by the Parliament. If the Parliament delays the endorsement of the contract for more than a month, it shall be deemed endorsed.

(3) The Mining Contract shall be prepared in accordance with this law and shall guarantee the stability, duration of handling the associated and non-associated minerals, the term and conditions related to the party to the Mining Contract. The payment of taxes, custom duties, mineral royalties and other conditions shall be executed as per the Mining Contract

(4) Modifications, Annexes, and Amendments, to Mining Contracts may be made in accordance with the procedures stipulated in the Mining Contract. If no such procedure is provided in a Mining Contract, then the Mining Contract may only be amended, supplemented or modified upon approval of the Authorized Body in accordance with provisions of Article 6 of this law. In such cases, a re-tender shall not be required for amendments, assignments or transfers of such Mining Contracts unless so specified in the relevant approval of the Government.

(5) Unless otherwise specified in a Mining Contract, a Mining Contract shall be construed and interpreted in accordance with the laws of Afghanistan.

(6) Mining Contracts shall be subject to the civil and the commercial codes.

### **Article 17: Evaluation Commission of the Small Contracts**

(1) Evaluation Commission of the Small Contracts consists of the representatives of Ministries mentioned in section (1) of Article 7 and the representatives of the Ministry of Mines. The representatives of the Ministry of Mines are selected by the Minister as per the recommendation of the Cadastre Department or any other successor thereto.

(2) Evaluation Commission of the Small Contracts has the following duties and authority:

1. Opening the bids.
2. Review and Evaluation of the bidders' plans and proposals
3. Announcement of the Winning Bidder

### **Article 18: Area of the Mineral Rights**

(1) Mineral Rights are granted for Mineral Substances situated inside the Perimeter identified in the relevant License or Authorization.

(2) The mining area covers a perimeter with definite or indefinite depth consisting of quadrangles restricted by the boundaries or Protected Areas as set forth in the Mining Regulations.

(3) The National Territory shall be divided into mining cadastral grids in accordance with the appropriate coordinates system set forth in the Mining Regulations. This grid shall define uniform and indivisible quadrangles which sides are oriented North-South and East-West. The Mining Regulations shall set forth the conditions for the cadastral grid, as well as the rules governing the identification of the Mine and Quarry Perimeters.

(4) The location and delimitation of the Perimeter of Mineral Rights may be identified either in Cartesian coordinates or by geographical reference marks or a combination of both, as envisaged by the Mining Regulations.

## **Article 19: Overlapping Areas**

The Areas of Mineral Rights do not overlap each other, except for the following circumstances:.

- 1- The Perimeter of an Exploration License may, with the consent of the Holder of the Exploration License or by Order of the Ministry of Mines , overlap with the Perimeter of an Authorization for Quarry Exploration, an Authorization for Quarry Exploitation, an Authorization for Tailings Exploitation or an Authorization for Artisanal Exploitation;
- 2- The Perimeter of an Exploitation License may, with the consent of the Holder of the Exploitation License or by Order of the Ministry of Mines , overlap with the Perimeter of an Authorization for Quarry Exploration, an Authorization for Quarry Exploitation, an Authorization for Tailings Exploitation or an Authorization for Artisanal Exploitation;
- 3- The Perimeter of a Quarry Authorization may, with the consent of the Holder of the License or the Authorization for Tailings Exploitation or by Order of the Ministry of Mines, overlap with the Perimeter of a License or an Authorization for Tailings Exploitation and may, with the consent of the Holder of the Quarry Authorization, overlap with an Authorization for Artisanal Exploitation;
- 4- An Authorization for Tailings Exploitation may, with the consent of Holder of the relevant License or Authorization for Quarry Exploitation or by Order of the Ministry of Mines , overlap with the Perimeter of a License or an Authorization for Quarry Exploitation and may, with the consent of the Authorization for Tailings Exploitation, overlap with an Authorization for Quarry Exploration or an Authorization for Artisanal Exploitation; and
- 5- An Authorization for Artisanal Exploitation may, with the consent of the Holder of the relevant License, Quarry Authorization or Authorization for Tailings Exploitation, overlap with the Perimeter of a License, Quarry Authorization or Authorization for Tailings Exploitation.

## **Article 20: Extension of Areas**

The extension of the Perimeter of a Mineral Right is authorized, subject to the prior reserved rights, applications for Mineral Rights on competitive basis and under the conditions established in the Mining Regulations.

## **Article 21: Renewal of License**

(1) Upon the application of the Mineral Right Holder who accepts to comply with the relinquishment provisions and subject to provisions of paragraph 3 of this Article, the Minister of Mines may renew the license within the period stipulated under this law for each of Mineral Right

(2) A Mineral Right may be renewed if the Holder has complied with its obligations under the terms of the contract and has timely presented an application for renewal in accordance with the Mining Regulations.

(3) The Mining Regulations shall provide for the mandatory or non mandatory relinquishment of a specified percentage of the original Perimeter covered by an Exploration License or an Authorization for Quarry Exploration upon renewal thereof, in accordance with Article 27 paragraph 2 and Article 40 paragraph 2 of this law.

(4) If the application for renewal of a Mineral Right is not acted upon by the Ministry of Mines before the expiry of its original period of validity, the term of the Mineral Right is automatically extended, until the issuance of a formal decision. Such extension only applies to the portion of the Perimeter of such Mineral Right for which a renewal is applied for.

(5) If the application for renewal is rejected by the Ministry of Mines for all or a part of a Perimeter covered by a Mineral Right, then the portion of the Perimeter which is not renewed is released from the Mineral Right from the date following the date of its written decision.

(6) Any refusal to grant a renewal of a Mineral Right shall be reasoned by the Ministry of Mines, and is subject to appeal by the Holder of the Right in accordance with the provisions of Chapter eleven of this Law.

#### **Article 22: Assignment, Transfer, Lease or Pledge of the License**

(1) Licenses and Quarry Authorizations may be assigned, transferred, leased and pledged by the Holder as security for the financing of the Mineral Activities of the relevant area, subject to the conditions established in the Mining Regulations.

(2) Assignments, transfers, Leases and pledges of Mineral Rights other than the provisions of paragraph one of this Article, and pledges of Mineral Rights for purposes other than security for the financing of Mineral Activities, may only be made with the consent of the Ministry of Mines, subject to the conditions established in the Mining Regulations.

(3) The assignment, transfer, Lease or pledges of a License or a Quarry Authorization shall be as of right if the proposed assignee, transferee, lessee, or pledge receiver is eligible to be the Holder of such Mineral Rights and the assignee, transferee, lessee or pledge receiver offers at least the warranties or guarantees of performance of the his obligations.

(4) The Holder of a Mineral Right must submit a copy of any contract or agreement by which it purports to assign, transfer, Lease or pledge all or any part of its rights and obligations arising out of a Mineral Right to the Mining Cadastre.

(5) If the assignment, transfer, Lease or pledge of a Mineral Right has satisfied the conditions set forth in the Mining Regulations, the Mining Cadastre shall proceed to register such assignment, transfer, Lease or pledge.

(6) Unless a Mineral Right is re-registered in the name of the assignee or the transferee by the Mining Cadastre, the assignment or transfer does not relieve the original Holder from its responsibility relating to the protection of the environment, rehabilitation of sites or in respect of any other obligations established in the contract.

(7) The lessee and the lessor of a Mineral Right, as the case may be, shall be jointly and severally liable to the State concerning the Mining Right, including the payment of Mineral Royalties.

(8) Any Person who inherits a Mineral Right shall be required within 12 months of the death, personal incapacity, or bankruptcy of the original Holder to apply to the Ministry of Mines for the formal assignment or transfer of the Mineral Right to the inheritor. If such application is not made within such period the Mineral Right can be terminated by the Ministry of Mines.

(9) A Holder shall have the right to freely assign, transfer, pledge or use marketable products extracted pursuant to its Mineral Rights, subject to the provisions of this Law and other applicable laws.

### **Article 23: Relinquishment**

(1) The Holder of a Mineral Right may, by a written declaration, relinquish whole or part of its Mineral Rights to Ministry of Mines. In this case, the holder of the Mineral Right is not entitled to compensation.

(2) The declaration of partial or total relinquishment mentioned in paragraph 1 of this Article shall be addressed to the Ministry of Mines, and shall indicate the coordinates of all or part of the renounced and retained Perimeter.

(3) A part or parts of the relinquished Perimeter must be made up of whole quadrangles and the remaining part of the Perimeter must comply with the Mining Regulations.

(4) The Mining Cadastre shall identify and register the relinquished portion of the Perimeter after the approval date the Ministry of Mines

(5) The total or partial relinquishment of a Mineral Right does not entitle the Holder to reimbursement of any fees paid to the State for the Mineral Right, and does not relieve the Holder from its responsibility relating to the protection of the environment, rehabilitation of sites or in respect of any other obligation established in the contract.

(6) Upon total or partial renouncement of a Perimeter covered by Mineral Rights or the area outside such Perimeter, the following actions shall be taken:

- 1- The buildings, and permanent installations constructed in the relinquished Perimeter covered by the Mining Rights shall not be removed by the Holder and shall automatically become property of the State, without payment of cost;
- 2- The buildings, and permanent installations constructed or installed outside the Perimeter covered by the Mineral Rights, and the ownership thereof, shall, subject to Article 75, be disposed of with the agreement of the Holder of such Mineral Right and the owner of the land upon or under which such property is located. If such an agreement may not be reached, such buildings, and structures shall automatically become property of the State, without payment of cost. The Ministry of Mines shall in both of the above mention cases, be the authority responsible for administering the buildings and structures so disposed.

(7) Upon total relinquishment of a Mineral Right, all geological and geophysical data, samples and other information relating to the relinquished Mineral Right shall automatically be transferred to the Ministry of Mines, free of charge. The Ministry of Mines may require the Holder to provide additional data, information, and reports concerning the relinquished areas, in accordance with the Mining Regulation.

#### **Article 24: Withdrawal and Termination of Mineral Rights**

(1) A Mineral Right expires on the final day of its term of validity, unless it is renewed.

(2) A Mineral Right can be withdrawn or terminated by Order of the Ministry of Mines on the basis of one or more following grounds:

- 1- Persistent or serious violation of the terms and obligations of the Mineral Rights;
- 2- Delay or suspension of Exploration for a period of more than one year without a valid justification unless the period of delay or suspension is provided otherwise in the text of the contract;
- 3- Delay or suspension of Exploitation, without authorization, for a period of more than two years, or, with authorization, for a period of more than six years , unless the period of delay or suspension is provided otherwise in the text of the contract;
- 4- Non-payment of Surface Rights Fees, Mineral Royalties or taxes;
- 5- Bankruptcy or insolvency of the Holder;
- 6- Relinquishment of a Mineral Right as a compensation for damages or penalty by the Holder;
- 7- Persistent violation of laws or violations of obligations of the Holder relating to health and safety of labor, human rights, protection of the environment or protection of affected communities; and
- 8- Need for public interests and order.

(3) Prior to the withdrawal or termination of a Mineral Right on the basis of the grounds set forth in paragraph 2 of this Article, the Holder shall be given not less than 30 days' written notice of the Ministry of Mines 's intention to withdraw or terminate the Mineral Right.

(4) If the withdrawal or termination of a Mineral Right is based solely on the grounds of public order or necessity, compensation shall be paid to the Holder in accordance with the provisions of this law.

(5) A withdrawing or terminating of Mineral Rights shall be based on a written and reasoned Order of the Ministry of Mines, and is subject to appeal by the Holder.

(6) Unless otherwise specified in the Mining Regulations, the withdrawal or termination of the Mineral Right does not relieve the Holder from its responsibilities relating to the protection of the environment, rehabilitation of sites or in respect of any other obligation established in the contract of Mineral Rights.

(7) The Holder of a withdrawn or terminated Mineral Right may within six months from the date of the relevant Order, remove equipment, materials and movable installations of which it is the owner. The State shall have a pre-emptive right to purchase such

equipment, materials or movable installations from the Holder under the conditions established in the Mining Regulations.

(8) During relinquishment, the buildings, and permanent installations constructed pursuant to a Mineral Right that are affixed to the Perimeter shall become property of the State, without payment of cost

(9) Pursuant to the rights set forth in Article 72 of this law, Any building, and permanent installation constructed and affixed to land outside the Perimeter covered by the Mineral Rights shall be disposed of with the agreement of the Owner of the land and Holder of such Mineral Right, If such an agreement may not be reached, such buildings, and structures shall become property of the State, without payment of cost.

(10) Upon withdrawal or termination, all geological and geophysical data, samples and other information relating to the Mineral Right shall be transferred to the Ministry of Mines, free of charge.

### **Article 25: Rights of License Holders for Mineral Exploration**

(1) The Exploration License entitles its Holder to the exclusive right, within the Perimeter on which it is granted and for the term of its validity, to carry out mineral exploration work for Mineral Substances classified as Mines, and other associated substances for which the Exploration License Holder applies for the Exploration License to be extended to include these substances. The granting of an Exploration License does not preclude the granting of an Authorization for Quarry Exploration, an Authorization for Quarry Exploitation, an Authorization for Tailings Exploitation or an Authorization for Artisanal Exploitation on the same Perimeter, provided that the Quarry work, Tailings Exploitation or the Artisanal Exploitation, [as the case may be], does not obstruct the Exploration work of the Holder of the Exploration License and that the agreement of the Holder of the Exploration License has been obtained in advance.

(2) In no event may the Exploration work become Exploitation work unless the Holder of the Mineral Exploration License has obtained an Exploitation License in accordance with the provisions of this Law. The exploration and exploitation of the radioactive material shall be carried out at the proposal by the Minister of Mines and upon endorsement of the president and agreement of the National Assembly.

(3) As long as an Exploration License is effective, no other application for Mineral Rights for all or part of the Perimeter may be accepted in the mentioned period, except when: 1- the application for an Exploitation License from the Holder of the said Exploration License is presented; or 2- the Holder is eligible pursuant to Article 19 of this law.

(4) The Exploration Licence entitles the holder the right to bid for an Exploitation Licence if the holder discovers a Deposit which can be economically exploited, in accordance with Article 15 of this law.

(5) Subject to the provisions of paragraph 8 of Article 28 of this law, , the Holder of an Exploration License is authorized to take samples of the Mineral Substances within the

Perimeter indicated on its Exploration License in order to carry out analyses or industrial assays in the laboratory of their choice.

### **Article 26: Validity**

An Exploration License shall be valid for a period of 3 years from the date of registration thereof by the Mining Cadastre. It shall be renewable for 2 consecutive periods subject to the timely payment of annual surface rents and compliance by the Holder of its obligations under this Law, the Mining Regulations, and under the relevant license.

### **Article 27: Surface Area**

1) The maximum Perimeter for which an Exploration License may be granted shall not exceed 250 square kilometers.

(2) At the time of renewal of an Exploration License, the surface area of the Perimeter that is reduced shall not be less than 25% of the total area. The area released constitutes a contiguous zone whose shape and size shall be defined in the Mining Regulations. The Holder of the Exploration License shall have the right to define the Perimeter retained, in accordance with the Mining Regulations.

(3) A Person or partners may not simultaneously hold more than (10) Small-Scale Explorations Licenses and 3 Licenses for large scale deposits. The State shall be an exception to this rule.

### **Article 28: The Obligations of the License Holders for Mineral Exploration**

(1) The Holder of an Exploration License shall be required to pay Surface Rights Fees for its Perimeter in the amounts and at the times established in the Mining Regulations.

(2) The Holder of an Exploration License shall be required to begin to carry out its work within 6 months of the date on which the Exploration License has been registered with the Mining Cadastre.

(3) The Holder of the Mineral Exploration License is obligated to prepare and submit to the Environmental Protection Department for approval, a Mitigation and Rehabilitation Plan (MRP) in accordance with the provisions of this Law and the Mining Regulations. The Holder cannot commence work on the property without having obtained the approval of the Environmental Protection Department

(4) The Holder of an Exploration License must comply with all applicable laws and regulations regarding health, safety of labor, human rights, use of water, and protection of the environment and protection of affected communities.

(5) The Holder of an Exploration License is required to submit the program for work, budget, minimal annual spending, and protection of the affected communities during the period of the License's validity to the Mining Inspectorate. Any deviations from the work



programs and budgets so submitted shall be reported by him promptly to the Mining Inspectorate. The submission of a precise budget in the initial fiscal year shall be an exception to this rule.

(6) The Holder of an Exploration License is required to collect and keep duplicate samples of all samples, profile samples and drill cores taken within the Perimeter of its Exploration License, and if necessary make them available to inspection by the Geological Survey, and to submit them to the Geological Survey upon relinquishment, termination or expiration of the Exploration License.

(7) The Holder of an Exploration License shall also be required to maintain written records of its activities, and to submit their reports and to the Geological Survey as required in the Mining Regulations.

(8) The Holder of an Exploration License shall comply with the customs law when it sends the samples abroad for assaying; and submit a description of them, indicating the number, volume and weight, to the Geological Survey.

### **Article 29: Use of Products**

The Holder of an Exploration License may use products extracted at the time of Exploration, subject to the prior declaration of such products to the Mining Inspectorate, provided that such use is necessary for Exploration and does not constitute Exploitation.

### **Article 30: Issuance of Exploitation License**

(1) An Exploitation License shall be granted by the Ministry of Mines to the Holder of an Exploration License for the same Perimeter in accordance with Article 15 of this law and the Mining Regulations.

(2) The requirements and procedures for obtaining for an Exploitation License shall be as follows:

- 1- Evidence of the applicant's financial capability;
- 2- A feasibility study;
- 3- A development plan, including proposed investments and any socio-economic contributions proposed for the communities concerned;
- 4- An Environmental Impact Assessment (EIA), including a social impact assessment;
- 5- An Environmental Management Plan (EMP), including a social mitigation plan, plans for rehabilitation of the sites to be exploited, and Mine closure plan in special conditions.

(3) In the event that an application for the transformation of an Exploration License into an Exploitation License is being processed at the time when the validity of the Exploration License expires, the validity of said rights is deemed to be extended until an Exploitation License is issued.

(4) Subject to any existing Mineral Rights already registered in respect of a given area (including existing Licenses and any conditions placed upon such areas by the Ministry of Mines), other applications for an Exploitation License for that area shall be registered by the Mining Cadastre in the chronological order, unless such applications are rejected.

(5) As long as an application for an Exploitation License is being processed, no other application for Mineral Rights relating in whole or in part to the same Perimeter shall be processed.

(6) Exploitation Licenses shall be issued by the Ministry of Mines and registered by the Mining Cadastre. In such cases, the Holder entitled to receive a Mineral Certificate, shall receive an "Exploitation Certificate" confirming the Exploitation License.

### **Article 31: Determination of the Rights of an Exploitation License**

(1) The Mineral Rights of an Exploitation License shall be granted [only] after a comprehensive investigation of its advantages and disadvantages.

(2) The requirements, procedures, and the time limits for the investigations shall be established in the Mining Regulations.

(3) The recommendations of the relevant public agencies concerning the investigation shall be published in accordance with the Mining Regulations.

(4) The review of the Mineral Rights as stipulated in license shall contain information about advantages and disadvantages of the proposed exploitation to the communities concerned. The Mining Inspectorate and the Environmental Protection Department may establish additional conditions and obligations in the exploitation license, including any obligations relating to the socio-economic development of the affected communities. The conditions and obligations shall constitute an integral part of the License terms.

### **Article 32: Rights of License Holders for Exploitation**

(1) The Holder of an Exploitation License shall be entitled to the exclusive right to carry out, within the Perimeter over which it has been granted, and during its term of validity, exploration, development, construction and exploitation works in connection with Mineral Substances classified as Mines, and other substances and any associated substances for which the Exploitation License has been granted provided that they are contained in the contract.

(2) The Holder of the Exploitation License described in paragraph 1 of this Article may carry out the following in accordance with the Mining Regulations:

- 1- To build installations and infrastructure required for exploitation;
- 2- To use the water and wood available within the Perimeter of Exploitation area in compliance with the requirements set forth in the Environmental Management Plan, and law;

- 3- To freely keep, transport, sell and use the Mineral Substances, and to concentrate, and hold other substances extracted from within the relevant Perimeter provided that they are contained in the contract.
  - 4- To establish processing plants or Transformation of the Mineral Substances
  - 5- To initiate the development activities of the mine authorized by the Ministry of Mines
  - 6- To proceed with Processing or Transformation of the Mineral Substances extracted from Deposits within the exploitation Perimeter;
- (3) As long as there are Mining activities in a Perimeter covered by an Exploitation License, no other application for a Mineral Right for all or part of the same Perimeter can be processed, except in the circumstances contemplated by Article 20 of this Law.

### **Article 33: Area included in the Exploitation License**

- (1) The Holder of an Exploitation License shall be authorized to extract the Mineral Substances which are mentioned in the License and which can be economically exploited.
- (2) The Exploitation License may be extended to include associated substances, in accordance with the rules established in the Mining Regulations.

### **Article 34: Validity of the Exploitation License**

- (1) The maximum term of the validity of Exploitation Licenses is thirty years from the date of registration thereof by the Mining Cadastre. Exploitation Licenses are renewable as of right for consecutive periods of five years until exhaustion of the Deposits being exploited, subject to the timely payment of annual surface rents and compliance with the obligations under this Law and the Mining Regulations. Small-scale Exploitation Licenses shall be an exception to this rule.
- (2) The term of the validity of Small-scale Exploitation Licenses shall be established in the Mining Regulations, but shall not exceed a maximum of ten years from the date of registration thereof by the Mining Cadastre, including renewal period.

### **Article 35: Surface Area**

- (1) The surface area of the Perimeter covered by the Exploitation License shall correspond to that defined in the feasibility study submitted by the applicant for the Exploitation License, but shall not exceed 50 square kilometers.
- (2) In the case of an Exploitation License applied for as of right by the Holder of an Exploration License, the surface area of the Perimeter covered by the Exploitation License shall not exceed that of the Exploration License from which it originates. In case only a part of the Perimeter of the Exploration License is included in the application, only that part shall be included in the Exploitation License.

(3) The area and demarcations of the Perimeter of an Exploitation License shall be established and demarcated in accordance with the Mining Regulations and Procedures of the Mining Cadastre.

(4) The Ministry of Mines may not issue more than 3 Exploitation Licenses for large scale and (5) Exploitation Licenses for small-scale deposits simultaneously to a Person and its Affiliates. The State shall be an exception to this rule.

### **Article 36: Duties of the License Holders for Exploitation**

(1) The Holder of an Exploitation License shall be required to pay Surface Rights Fees for its Perimeter in the amounts and at the times established in the Mining Regulations.

(2) Subject to receipt of an exemption, the Holder of an Exploitation License shall be required to commence Exploitation, on an continual basis, within a maximum of eighteen (18) months from the date of registration of the Exploitation License by the Mining Cadastre.

(3) The Holder of an Exploitation License may apply for an exemption to the Ministry of Mines concerning the payment of Surface Rights Fees for its perimeter. The Ministry of Mines shall propose the approval of the application to council of Ministers. The council of Ministers shall have the authority to grant up to three consecutive or non-consecutive exemptions (due to unfavorable economic conditions, no market for the products,), each for a period of not more than (1) year in duration. If after a total of three (3) years of exemption, the Holder fails to pay the Surface Rights Fees, the Ministry of Mines shall withdraw the Exploitation License in accordance with Article 24 of this law.

(4) The Holder of an Exploitation License shall exploit the Deposits within the Perimeter in accordance with the feasibility study, the development plan, and the Environmental Management Plan. Any deviation of the work from such studies and plans shall require the approval of the Ministry of Mines, in accordance with the Mining Regulations. The Holder of an Exploitation License must comply with all applicable laws and regulations regarding health, safety of work, human rights, use of water, protection of the environment and protection of affected communities.

(5) The Holder of an Exploitation License shall be required to maintain written records of its documents and activities, and to, not less than annually, submit periodic progress reports to the Ministry of Mines, including a description of its activities, investments, production, sales, revenue, estimated reserves data and such other information as may be required in the Mining Regulations.

### **Article 37: Small and Medium size Minerals Deposits**

(1) If a Deposit of Mineral Substances given the technical conditions is not considered appropriate for large-scale Exploitation, the Ministry of Mines may, on the basis of semi-industrial procedures, designate such Deposits as Small-Scale Mining Deposits and economically exploit them on the basis of Small-scale Exploitation Licenses.

(2) The conditions for defining Small-scale Mining Deposits shall be established in the Mining Regulations, based upon one or more factors including the method of exploitation, volume of reserves, level of investment, production capacity, the number of employees, the value-added and the degree of mechanization.

(3) The procedural requirements of applications for Small-scale Exploitation Licenses, including the time limits for processing such applications, and the rights and obligations of the Holders of such Licenses, shall be established in the Mining Regulations.

(4) If the conditions of a Deposit for exploitation on the basis of a Small-scale Exploitation License have changed and it is industrially and economically counted as a mining deposit, the Holder of such a Small-scale Exploitation License shall have the right to apply for a transformation of the Small-scale Exploitation License into a medium-scale or an ordinary Exploitation License. The conditions for transformation of a Small-scale Exploitation License into a medium-scale or an ordinary Exploitation License shall be established in the Mining Regulations.

### **Article 38: Issuance of Authorization for Quarry Exploration**

(1) Authorizations for Quarry Exploration shall be issued by the Ministry of Mines to any eligible Person having presented an application in accordance with this Law and the Mining Regulations.

(2) The Mining Regulations shall establish the procedural requirements for the applications for Authorizations for Quarry Exploration, including the time limits for processing such applications and essential issues

(3) Subject to any existing Mineral Rights already registered in respect of an area and any prior reservations or restrictions placed upon such areas by the Ministry of Mines, applications for an Authorization for Quarry Exploration for a given Perimeter shall be registered by the Mining Cadastre in the chronological order of their issuance.

(4) The prior existence of a Exploration License or an Exploitation License does not preclude the granting of an Authorization for Quarry Exploration on the same Perimeter, provided that, Authorization for the Quarry work does not obstruct the work of the prior License Holder, and that the agreement of the Holder of the License has been obtained in advance.

### **Article 39: Rights of License Holders for Quarry Exploration**

(1) The Authorization for Quarry Exploration confers upon its Holder the exclusive right, within the Perimeter on which it is granted and for the term of its validity, to carry out exploration work for Quarry Materials.

(2) In no event may the Exploration work become Exploitation work unless the Holder of the Mineral Authorization for Quarry Exploration has also obtained an Authorization for Quarry Exploitation in accordance with the provisions of this Law.

(3) As long as a Perimeter is subject to a Authorization for Quarry Exploration, no other application for Quarry Authorizations for all or part of this Perimeter may be processed, except: 1- When the application for an Authorization for Quarry Exploitation is submitted by the Holder of the said Authorization for Quarry Exploration; 2- In circumstances contemplated by Article 19 of this Law.

(4) The Authorization for Quarry Exploration also entitles its Holder the right to obtain an Authorization for Quarry Exploitation in all or part of the relevant Perimeter in accordance with the provisions of this law and Mining Regulations, so that the Holder may extract the discovered material if it can be economically exploited.

(5) Subject to the provisions of paragraph 6 of Article 42, the Holder of an Authorization for Quarry Exploration is authorized to take samples of the Mineral Substances within the Perimeter indicated on its Authorization for Quarry Exploration in order to carry out analyses or industrial assays in the laboratory or plant of [its] choice.

#### **Article 40: Validity**

(1) An Authorization for Quarry Exploration shall be valid for a period of six (6) months from the date of registration thereof by the Mining Cadastre. It shall be renewable for two additional periods of six (6) months subject to the timely payment of annual surface rents and compliance by the Holder of its obligations under this Law and the Mining Regulations.

(2) At the time of the renewal of an Authorization for Quarry Exploration, the surface area of the Perimeter shall be reduced by 25%. The area released shall constitute a contiguous zone whose shape and size may be defined in the Mining Regulations. The Holder of the Authorization for Quarry Exploration shall have the right to define the Perimeter retained, in accordance with the Mining Regulations.

#### **Article 41: Surface Area**

(1) The maximum Perimeter for which an Authorization for Quarry Exploration may be granted, shall be fixed through blocking as per the standards of the mining Regulation.

(2) A Person or its partners and Affiliates may not hold more than (10) Authorizations for Quarry Exploration simultaneously. The State shall be an exception to this rule.

#### **Article 42: Duties of the License Holders for Quarry Exploration**

(1) The Holder of an Authorization for Quarry Exploration shall be required to pay Surface Rights Fees for its Perimeter in the amounts and at the times established in the Mining Regulations.

(2) The Holder of an Authorization for Quarry Exploration shall be required to begin to carry out the work program written in its Authorization for Quarry Exploration within

three (3) months of the date on which the Authorization for Quarry Exploration has been registered.

(3) The Holder of an Authorization for Quarry Exploration is obligated to prepare and submit to the Environmental Protection Department for approval Mitigation and Rehabilitation Plan (MRP) in accordance with the provisions of this Law and the Mining Regulations. The Holder cannot commence Exploration work unless he has acquired the certification of the Environmental Protection Department.

(4) The Holder of an Authorization for Quarry Exploration must comply with all applicable laws and regulations regarding health, safety of labor, human rights, use of water, protection of the environment and protection of communities affected due to the Exploration work.

(5) The Holder of an Authorization for Quarry Exploration is required to collect and keep duplicate samples of all samples, sample batches and drill cores taken within the Perimeter of its Authorization for Quarry Exploration, to make them available to the Geological Survey Department for inspection, and to submit such duplicate samples to the Geological Survey upon relinquishment, termination or expiration of the Authorization for Quarry Exploration. The Holder of an Authorization for Quarry Exploration shall also be required to maintain written records of its activities, and to submit periodic progress reports and Exploration data to the Geological Survey as required in the Mining Regulations.

(6) Taking into consideration the provisions of the customs law, the Holder may send the samples abroad for assaying, and prior to that he must submit a description of said samples, indicating the number, volume and weight, to the Geological Survey.

#### **Article 43: Use of Products**

The Holder of an Authorization for Quarry Exploration has the right to use products extracted at the time of Exploration, provided that such use is necessary for Exploration and does not constitute Exploitation and subject to notifying the Mining Inspectorate of the extraction of such products.

#### **Article 44: Issuance of Quarry Exploitation Authorization**

(1) An Authorization for Quarry Exploitation shall be granted by the Ministry of Mines through bidding process and in accordance with the Article 15 of this law to the Holder of an Authorization for Quarry Exploration for the same Perimeter, provided that the Holder of the Authorization for Quarry Exploration has satisfied the following conditions:

- 1- Complying with the obligations of the relevant Authorization for Quarry Exploration.
- 2- Satisfying the requirements for the issuance of an Authorization for Quarry Exploitation set forth in this Law and the Mining Regulations at least three months prior to the expiration of validity of the relevant Authorization for Quarry Exploration.

(2) An Authorization for Quarry Exploitation shall be granted by the Ministry of Mines to any Person who has presented an application for such an Authorization and who has met the requirements set forth in Article 15 of this law and the Mining Regulations.

(3) A landowner or occupant of land shall be required to obtain an Authorization for Quarry Exploitation if it wishes to exploit a Quarry on its land for commercial use. Exploitation of Quarry for its personal needs shall be an exception to this rule. In such cases, the user shall be subject to all applicable laws and regulations regarding the protection of the environment and health and safety of work.

(4) The requirements and method of applying for an Authorization for Quarry Exploitation, including the time limits for processing such applications, shall be established in the Mining Regulations, which shall include:

- 1- Evidence of the applicant's financial capability;
- 2- A development plan, including proposed investments and socio-economic contributions of any type for the communities concerned;
- 3- An Environmental Impact Assessment (EIA), including a social impact assessment;
- 4- An Environmental Management Plan (EMP), including social mitigation, rehabilitation of the sites to be exploited and Quarry closure plan.

(5) Subject to Mineral Rights already registered, applications for Authorizations for Quarry Exploitation for a given Perimeter shall be registered by the Mining Cadastre in chronological order, taking into consideration any reservations or restrictions placed upon such areas by the Ministry of Mines, unless an application is not acceptable.

(6) As long as an application for an Authorization for Quarry Exploitation is being processed, no other application for Authorizations for Quarry Exploitation relating in whole or in part to the same Perimeter shall be processed.

(7) In the event that an application for the transformation of an Authorization for Quarry Exploration into an Authorization for Quarry Exploitation is being processed at the time when the validity of the Authorization for Quarry Exploration expires, the validity of said rights shall be deemed to be extended, as long as no decision is rendered in connection with said application.

#### **Article 45: Rights of License Holders for Quarry Exploitation**

(1) The Authorization for Quarry Exploitation (whether temporary or permanent) entitles its Holder to the exclusive right to carry out, within the Perimeter over which it has been granted, and during its term of validity, exploration, development, and exploitation works in connection with the Quarry Materials.

(2) In addition, the Holder, subject to the Mining Regulations and other legislation, may:

- 1- Build installations and plants required for exploitation and processing;
- 2- Have, maintain, use, transport and sell the Quarry Materials extracted from within the exploitation Perimeter, and the concentrates;
- 3- proceed with Processing or Transformation of the Quarry Materials extracted from Deposits within the exploitation Perimeter; and



(3) As long as a Perimeter is covered by an Authorization for Permanent or temporary Quarry Exploitation, no other application for a Quarry Authorization or an Authorization for Tailings Exploitation for all or part of the same Perimeter can be processed, except in the circumstances contemplated by Articles 19 of this Law.

#### **Article 46: Validity of Quarry Exploitation License**

(1) The term of the validity of the Authorization for Permanent Quarry Exploitation is ten years from the date of registration thereof by the Mining Cadastre. It is renewable for consecutive periods of five years until exhaustion of the Deposits being exploited, subject to the timely payment of annual surface rents and compliance by the Holder of its obligations under this Law, the Mining Regulations and the Authorization.

(2) The term of validity of the Authorization for Temporary Quarry Exploitation shall be established in the terms of the Authorization, but shall not exceed a maximum of two years from the date of registration thereof by the Mining Cadastre. An Authorization for Temporary Quarry Exploitation may not be renewed. The Holder of an Authorization for Temporary Quarry Exploitation is entitled to apply for a new Authorization for Temporary Exploitation of the same Perimeter.

#### **Article 47: Surface Area and Demarcation**

(1) The surface area of the Perimeter covered by the Authorization for Quarry Exploitation is defined in the Authorization, but the maximum amount shall be as follows:

- 1- The Perimeter for which an Authorization for Permanent Quarry Exploitation may be granted is two square kilometers
- 2- The Perimeter for which an Authorization for Temporary Quarry Exploitation may be granted is one hectare (10,000 square meters).

(2) The Holder of an Authorization for Quarry Exploitation shall be required to survey and demarcate the Perimeter in accordance with the Mining Regulations and the experience gained. Otherwise, the Mining Inspectorate shall execute the task of survey and/or demarcation at the expense of the Holder.

(3) A Person, its partners and Affiliates may not hold more than ten (10) Authorizations for Permanent Quarry Exploitation or twenty (20) Authorizations for Temporary Quarry Exploitation simultaneously. The state shall be an exception to this rule.

#### **Article 48: Obligations of License Holders for Quarry Exploitation**

(1) The Holder of an Authorization for Quarry Exploitation shall be required to pay Surface Rights Fees for its Perimeter in the amounts and for the period established in the Mining Regulations.

(2) The Holder of an Authorization for Quarry Exploitation shall be required to commence Exploitation within six (6) months from the date of registration.

(3) The Holder of an Authorization for Quarry Exploitation may extract and exploit the Deposits within the Perimeter in accordance with the development plan and the Environmental Management Plan. Any deviation from plans and feasibility studies shall require the prior approval of the Ministry of Mines, as provided for in the Mining Regulations.

The Holder of an Authorization for Quarry Exploitation must comply with all applicable laws and regulations regarding health, safety of labor, human rights, use of water, and protection of the environment and protection of affected communities.

(4) The Holder of an Authorization for Quarry Exploitation shall be required to maintain written records of its activities, and to, not less than annually, submit periodic progress reports to the Ministry of Mines , including a description of its activities, investments, production, sales, revenue, assessed reserves data and such other information as may be required in the Mining Regulations.

#### **Article 49: Exploitation from Tailings and Artificial Deposits**

(1) An Exploitation License includes the right to exploit Tailings and Artificial Deposits of Mineral Substances located within its Perimeter, unless the Exploitation License expressly excludes the exploitation of Tailings and Artificial Deposits.

(2) The Holder of an Authorization for Quarry Exploitation shall have the right to exploit Mineral materials located within its Perimeter as per the provisions of Article 15 of this law and the Mining Regulations, unless the Authorization expressly excludes the exploitation of Tailings and Artificial Deposits.

(3) The Holder of an Exploitation License or an Authorization for Quarry Exploitation may transfer the right to exploit Tailings and Artificial Deposits of Minerals located within its Perimeter to a third party. In such a case, the other rights under its Exploitation License or Authorization for Quarry Exploitation shall remain with the Holder. The Holder of the Exploitation License or Authorization for Quarry Exploitation may take action for the partial transfer of its License or Authorization for exploitation or its transformation to a third party in accordance with the Mining Regulations.

(4) The mineral right to exploit Tailings or Artificial Deposits of Quarry materials that are not subject to an existing Exploitation License or Authorization may be obtained by applying for an Exploitation License or Authorization for the Perimeter where such Tailings or Artificial Deposits are located.

#### **Article 50 : Artisanal Exploitation**

(1) If the technical and economic factors characterize certain Deposits of Mineral Substances as not permitting industrial or semi-industrial exploitation, such Deposits may be extracted by artisanal [exploitation] on the basis of an Authorization for Artisanal Exploitation.

(2) An Authorization for Artisanal Exploitation shall be granted by the Ministry of Mines to any eligible Person who has presented an application for such an Authorization, in accordance with this law and the Mining Regulations. The procedural requirement of the application for an Authorization for Artisanal Exploitation, including the time limits for processing such applications and relevant other actions, shall be established in the Mining Regulations.

(3) Subject to any existing Mineral Rights already registered in respect of a given area including existing Authorizations, Licenses and any reservations or restrictions placed upon such areas by the Ministry of Mines), applications for Authorizations for Artisanal Exploitation for a given Perimeter shall be registered by the Mining Cadastre in chronological order, unless an application is rejected.

(4) An Authorization for Artisanal Exploitation over a Perimeter that is covered by one or more existing Mineral Rights shall not be granted without the prior consent of the existing Holders of Mineral Rights over such Perimeter.

The Ministry of Mines may, reject an application for Authorization for Artisanal Exploitation if such Authorization for Artisanal Exploitation would impede or conflict with existing Artisanal Exploitation operations.

(5) An annual fee for the issuance or renewal of an Authorization for Artisanal Exploitation shall be fixed in accordance with the Mining Regulations.

(6) The term of validity of the Authorizations for Artisanal Exploitation is two years, and is renewable subject to the timely payment of applicable annual fees , Mineral Royalties, permission of other Holders of Mineral Rights over the same Perimeter, if any, and compliance by the Holder of the Authorization for Artisanal Exploitation of its obligations under this Law and the Mining Regulations.

#### **Article 51 : Rights of License Holders for Artisanal Exploitation**

(1) The Authorization for Artisanal Exploitation entitles its Holder to conduct Artisanal Exploitation of the Mineral Substances within the Perimeter covered by the Authorization, subject to the conditions and obligations set forth in this Law, the Mining Regulations and in the Authorization,.

(2) In addition, the Holder may carry out the following activities:

- 1- To conduct operations [related to] production in the Perimeter covered by the authorization;
- 2- To have, hold, use, transport and freely sell the products of Artisanal Exploitation extracted from within the relevant Perimeter, or to concentrate such materials, or other substances derived there from.

(3) An Authorization for Artisanal Exploitation is not an exclusive right and, does not confer upon its Holder any priority right to receive Mineral Rights with respect to its Perimeter. Paragraph 4, Article 53 of this law shall be an exception to this rule.

## **Article 52 : Surface Area of Artisanal Exploitation**

(1) The surface area of the Perimeter covered by the Authorization for Artisanal Exploitation is defined in the Authorization, but the maximum Perimeter for which an Authorization for Artisanal Exploitation may be granted is two thousand (2,000) square meters.

(2) The Holder of an Authorization for Artisanal Exploitation shall be required to survey and demarcate the Perimeter in accordance with the Mining Regulations. In the event that the survey and demarcation is not carried out, the Mining Inspectorate shall execute the survey and demarcation at the expense of the Holder.

(3) A Person cannot hold more than two Authorizations for Artisanal Exploitation.

## **Article 53 : Duties of License Holders for Artisanal Exploitation**

(1) The Holder of an Authorization for Artisanal Exploitation must comply with all applicable laws and regulations regarding health, safety of labor, human rights, use of water, and protection of the environment and protection of affected communities.

(2) The Holder of an Authorization for Artisanal Exploitation must compensate the farmers, landowners and Holders of other Mineral Rights over the same Perimeter for any damage caused by its activity.

(3) In the event that the Holder of an Authorization for Artisanal Exploitation discovers a Deposit of Mineral Substances within its Perimeter that is or may be capable of industrial or semi-industrial exploitation, such Holder shall be required to report the discovery of the Deposit to the Mining Inspectorate within thirty days. After confirmation of the existence of the Deposit, the Ministry of Mines shall establish conditions under which the Deposit may be exploited, and shall withdraw the Authorization for Artisanal Exploitation in accordance with Article 54, paragraph one.

(4) If the discovered Deposit mentioned in paragraph 3 of this Article, does not lie within the Perimeter of another existing Mineral Right, the Holder of the Authorization for Artisanal Exploitation shall have priority right to apply for an Exploitation License covering the Deposit

(5) If the discovered Deposit mentioned in paragraph 3 of this Article, lies within the Perimeter of another existing Mineral Right, the Holder of the Authorization for Artisanal Exploitation shall not have any priority right to apply for the Mineral Rights for Exploitation of such Deposit, but shall be entitled to compensation for the costs incurred in making the discovery from the Holder of the Mineral Right that becomes entitled to exploit the Deposit. The method of calculating such compensation shall be established in the Mining Regulations.

#### **Article 54: Withdrawal of Artisanal Exploitation License**

(1) The Ministry of Mines shall withdraw an Authorization for Artisanal Exploitation in the following circumstances:

- 1- If the factors which justifies the issuance of an Authorization for Artisanal Exploitation have ceased to exist;
- 2- Discovery of a new deposit within its Perimeter which may be industrially or semi-industrially exploited

In such circumstances, the Mining Cadastre shall inform the Holder about the withdrawal of an Authorization for Artisanal Exploitation.

The Holder shall be obliged to vacate the Perimeter covered by its Authorization within sixty days of the date the notification issued about withdrawal of the Authorization

(2) The Authorization for Artisanal Exploitation shall be withdrawn by the Ministry of Mines if the Holder of the Authorization does not remedy a breach of its obligations under this Law and the Mining Regulations within a period of thirty days. A Person from whom an Authorization for Artisanal Exploitation has been withdrawn for breach of its obligations is not eligible to obtain a new Authorizations for Artisanal Exploitation for three years, unless such Holder completes a training course in appropriate techniques for Artisanal Exploitation, organized by the Ministry of Mines .

(3) Withdrawals of Authorizations for Artisanal Exploitation are subject to the right of objection provided for in chapter 11 of this Law.

#### **Article 55: Establishing Training Courses for Artisanal Exploitation Techniques**

The Ministry of Mines shall organize training courses about Artisanal Exploitation techniques, in accordance with separate Procedures.

## **Chapter Five**

### **Other Mineral Activities**

#### **Article 56: License for Construction of Infrastructure**

(1) Holders of Mineral Rights shall be entitled to build and maintain the infrastructure [required] for its activities.

(2) Construction of infrastructure by the Holder is subject to the following conditions:

1- The prior approval by the Mining Inspectorate, after consultation if necessary with the local authorities which have territorial jurisdiction over the Perimeter of the infrastructure;

2- Compliance with laws and regulations relating to public health and safety of labor, human rights, protection of the environment and protection of affected communities.

#### **Article 57: Processing or Transformation of Minerals**

(1) Processing or Transformation of Mineral Substances may be performed by Holder of an Authorization for Processing or Transformation.

(2) Persons who wish to transform or process Mineral Substances must apply for and obtain an Authorization for Processing or Transformation in accordance with this law and the Mining Regulations.

(3) Exploitation Licenses and Authorizations for Quarry Exploitation shall be separately obtained. The License and Authorization for Processing and Transformation of the Minerals and Mineral Substances obtained from the relevant Perimeters is also separately granted.

(4) The installation and operation of plants for the Processing or Transformation of Mineral Substances are subject to the requirements of this Law and other applicable laws regarding public health, safety of work, human rights, protection of the environment and protection of affected communities.

#### **Article 58: Transportation and Storage of Products obtained from Mineral Activities**

(1) A Holder of an Exploitation License or an Authorization for Quarry Exploitation has the right to transport the Mineral Substances extracted or produced from its exploitation Perimeter or have them transported.

(2) A Holder of Mineral Rights has the right to store its products on specific sites or locations from where they are to be transported, subject to compliance with the requirements of this Law and other applicable laws relating to public health, safety of work,

human rights, protection of the environment and protection of affected communities.

### **Article 59: Sale of Minerals**

(1) Subject to the provisions of paragraph 2 of this Article, a Holder of an Exploitation License, an Authorization for Quarry Exploitation or an Authorization for Artisanal Exploitation may freely sell its products or export its products abroad in accordance with the customs law.

(2) Given the Mining Regulations, The Ministry of Mines shall grant a prior authorization to export Metals, Coal, Gemstones, Ornamental Stones as well as Processing and Transformation, in accordance with the following conditions: .

1- If requirements for domestic assaying or evaluation of them as established in the Mining Regulations are complied with;

2- If it is proved that the use of unprocessed or semi-processed Metals or uncut or semi-processed Gemstones, or Ornamental Stones is not possible in the National Territory at a cost which is economically viable.

### **Article 60: Competencies for Mining Activities**

A Holder of a Mineral Right shall have the capacity and adequate experience, and conduct its Mineral Activities in timely manner in accordance with the provisions of this Law, the Mining Regulations and all other applicable laws.

### **Article 61: Payment of Surface Rent**

(1) The Holder of a Mineral Right shall be required to pay Surface Rights Fees with respect to its relevant surface area. The conditions, amounts and the times of payment shall be established in the Mining Regulations according to the type of Mineral Substances and Mineral Rights in question.

(2) Surface Rights Fees referenced in paragraph (1) of this Article shall be collected by the Mining Cadastre and paid to the State Treasury.

### **Article 62: Reporting**

Holders of Mineral Rights are required to accurately maintain the relevant books and records, and to prepare and submit periodic reports of their Mineral Activities, in accordance with provisions of the Mining Regulations.

### **Article 63: Inspection**

The Holder of Mineral Right is required to cooperate and comply with the inspections carried out by authorized officers and representatives of the Ministry of Mines.

## **Article 64: Occupation of Land**

(1) A Mineral Right authorizes its Holder to occupy land within its Perimeter to the extent required to conduct the Mineral Activities according to the conditions established in the Mining Regulations.

(2) At the request of a landowner, occupant of land or the Holder of a Mineral Right, or due to the public interest, the Ministry of Mines may intervene in cases of disputes, in accordance with the provisions of this law.

(3) Except with the authorization of the Ministry of Mines, no Person may conduct Mineral Activities on areas:

- 1- Reserved for cemeteries;
- 2- Containing archaeological and cultural relics or a national monument;
- 3- Situated on or less than one hundred (100) meters from a dam or a state building;
- 4- Used for national defense or owned by the national defense institutions;
- 5- Located within an airport;
- 6- Reserved for railway or pipeline projects;
- 7- Reserved for the planting of siblings or forestry;
- 8- Situated less than one hundred (100) meters from the boundary of a village, town, municipality or a city;
- 9- In which streets, roads, towns, bridges and other public infrastructure are lying;
- 10- within a national park;
- 11- Designated by the Ministry of Mines as areas subject to unresolved claims; or
- 12- Designated by a Decree of the State as a protected and off-limit areas

(4) Unless there is permit from the landowner or other legal occupant of the land, no Person may conduct Mineral Activities on following lands:

- 1- Situated less than two hundred (200) meters from houses and buildings;
- 2- Located less than fifty (50) meters from agricultural farms;
- 3- Situated less than one hundred (100) meters from a cattle breeding farm, a reservoir, a dam or a private water reserve.

(5) The Ministry of Mines may order the construction of structures or zones for the protection of buildings and built-up areas, water sources, roads, civil engineering and public utility works, or for the general public interest within a Perimeter of a Mineral Right subject to conditions or restrictions, . In such a case, the Holder of the Mineral Right shall not be entitled to claim any compensation whatsoever.

## **Article 65: Expropriation for Public use**

The Ministry of Mines may expropriate private land needed for the conduct of Mineral Activities, in accordance with law.



## **Article 66: Obligations of the Mineral Rights Holder regarding the Landowner**

A Holder of a Mineral Right is liable to pay compensation for the damages caused by its Mineral Activities. The type and method of calculating such compensation shall be established in the Mining Regulations.

# **Chapter Six**

## **Relations among the Mineral Rights Holders**

### **Article 67: Neighboring or Adjacent Mines and Rock Deposits**

(1) In cases where it is necessary to carry out collective work of common interest for two or more adjacent or neighboring Mines or Quarries, the Holders of the relevant Mineral Rights may not have right of objection. The Holders each shall be obligated to participate in execution of the joint work in proportion to the benefits they will receive. The procedures for execution of the joint work and the proportion of the benefits shall be determined by the Mining Regulations.

(2) The Ministry of Mines may arbitrate in any disputes arising among Holders of Mineral Rights upon their request. The Ministry of Mines may on its own initiative intervene to resolve the disputes if such intervention is in the public interest.

### **Article 68: Barriers**

The Ministry of Mines may, when needed, require the Holders of Licenses or Authorizations of Mines or Quarry materials [located] in adjacent or neighboring Perimeters to construct protective walls or other structures [separating their relevant areas] .

### **Article 69: Compensation of Neighboring or Connected Mines**

A Holder of a Mineral Right shall pay compensation for the damages caused by its Mineral Activities to the adjacent and neighboring Mines or Quarries of another Holder of Mineral Rights

### **Article 70: Right of Way**

The Holder of Mineral Right shall have the right of way over the Perimeters covered by adjacent or neighboring Mineral Rights to carry out its mineral activities. Such holder shall be liable to compensate the Holder of the adjacent or neighboring Perimeter if the right of way causes substantial damage and decline in productions of the Holder of the latter Mineral Rights. The Mining Regulations establish the terms and conditions for the rights of way.

## **Chapter Seven**

### **Infrastructures**

#### **Article 71: Use of Infrastructure**

(1) If roads and other infrastructure is built by a Holder inside or outside the Perimeter of its Mineral Right, it may be used by the neighboring mining, industrial and commercial establishments, subject to the condition that fair compensation for such use is paid to the Holder. Public administrations and the residents of the area shall be an exception to this rule.

(2) At the request of a Mineral Right Holder, or the Opposite Party, or when deemed warranted for public interest, the Ministry of Mines may intervene to resolve any disputes relating to the matters provided for in paragraph one of this Article.

#### **Article 72: Handover of Infrastructure to the State**

All the infrastructure built by the Holder of a Mineral Right for public use shall become property of the State upon expiration, withdrawal or termination of the Mineral Right.

#### **Article 73: Compliance with the Instructions from the Inspection Department**

(1) The Holders of the Mineral Rights must comply with the measures which are ordered by the Mining Inspectorate with a view to preventing or removing the causes of the dangers which Mineral Activities inflict on the public health, safety of work, protection of water reservoir , , and public utility infrastructure.

(2) If the holder of the Mineral Rights do not comply with the measures stipulated in paragraph (1) and to take urgent corrective action, the corrections shall be made and implemented by the relevant public authorities without consultation with the Holder, and its expenses shall be collected from the holder.

(3) In the event of imminent danger, the authorities of the Mining Inspectorate are empowered to immediately take the measures required to remove the danger and may; if needed, draw the attention of the relevant local authorities, the Holders of Mineral Rights and any laborers.

(4) The authorities of the Mining Inspectorate may investigate any breach of the provisions of this Law, the Mining Regulations, and Mineral Activities in relation to properties.

#### **Article 74: Health and Safety Plan**

(1) Holders of Mineral Rights shall make a Health and Safety Plan in relation to their activities. The Health and Safety Plan shall be made known to the employees and other individuals who enter the mine site after it is approved by the Mining Inspectorate.

(2) The specific requirements of Health and Safety Plans, as referred to paragraph (1) of this Article, shall be established in the Mining Regulations.

#### **Article 75: Use of Explosives**

The Holder of Mineral Rights may use explosive substances in mining operation. The use of explosives shall be in accordance with the provisions and conditions established by the relevant legislative documents and the Mining Regulations.

#### **Article 76: Prohibition of Forced Employment**

The Mineral Activities are carried out in accordance with the applicable laws and international standards established in relation to labor, protection of communities and human rights. Forced employment of labor and recruitment of children in Mineral Activities is prohibited.

#### **Article 77: Compilation of Environmental Protection Plan during Exploration**

(1) Before commencing work, the Holder of an Exploration License or an Authorization for Quarry Exploration shall prepare and obtain approval of its Mitigation and Rehabilitation Plan (MRP) from the Environmental Protection Department for the proposed activity.

(2) Development and implementation of the Mitigation and Rehabilitation Plan shall be a condition in Exploration License or the Authorization for Quarry Exploration, which shall be described in the Mining Regulations.

#### **Article 78: Environmental Protection during Exploitation**

(1) An applicant for an Exploitation License or an Authorization for Quarry Exploitation must submit an Environmental Impact Statement along with an Environmental Management Plan for the proposed activity, and implement it upon the approval of the Environmental Protection Department.

(2) The Environmental Impact Statement shall contain the following before commencement of Mineral Activities:

- 1- A description of the ecosystem including the flora and fauna, topography of the area, air quality, underground and surface water, a description of the social

conditions in the area, and the direct and indirect impact of the proposed Mineral Activities on them.

- 2- An analysis of the direct and indirect cumulative environmental and social impacts and risks of the proposed Mineral Activities, the natural aspects of the ecosystem which are affected qualitatively and quantitatively by the Mineral Activity
- 3- The impacts of the Mineral Activity on local populations, affected communities and existing social conditions.

(3) The Environmental Management Plan shall include the measures and methods planned for the protection of the environment and local populations, mitigation of social impacts, an emergency response plan, the elimination or mitigation of pollution, Mine or Quarry closure plan, the rehabilitation and restoration of the sites upon cessation or suspension of Mineral Activities, and the protection, resettlement and/or compensation of affected local populations and affected communities, and a description of the effectiveness of said measures.

(4) Other details and conditions of Environmental Impact Statements and Environmental Management Plans shall be set out in the Mining Regulations.

(5) Implementation of the Environmental Management Plan shall be the main condition for the Exploitation License or the Authorization for Quarry Exploitation.

#### **Article 79: Financial Bonds for Environmental Protection**

The financial security provided by the Holder of Mineral Rights to guarantee its compliance with the environmental and social obligations shall include site rehabilitation, resettlement, or compensation of affected communities. The implementation conditions shall be set out in the Mining Regulations.

#### **Article 80: Reporting of Accidents and Hazards**

The Holder of a Mineral Right shall report to the Mineral Inspectorate, Environmental Protection Department, and the relevant administrative and judicial authorities any serious, or fatal accident that occurs as well as any imminent hazard that arises in connection with its Mineral Activities.

## **Chapter Eight**

### **Protection of Historical and Cultural Relics**

#### **Article 81: Reporting the Discovery of Historical and Cultural Relics**

(1) The Holder of a Mineral Right shall immediately inform the Mining Inspectorate and the Department for Archeological and cultural Heritage of the Ministry of Information, Culture and tourism, about the discovering the signs of archaeological and cultural relics or items if the Mineral Activities of the Holder reveal the existence thereof.

(2) Fossils, rare minerals and any items contained in the Archeological and cultural Heritage list shall also be regarded as the elements of historical or cultural relics.

(3) Holder of Mineral Rights cannot move the items referenced in paragraphs (1) and (2) of this Article. However, they may safeguard such items on behalf of the State until they are removed by the State.

(4) If the items of paragraph 3 are not removed by the relevant public authority within a period of sixty days following notification of the discovery, then the direct costs incurred after such period for safeguarding the item shall be paid by the relevant administration of the State.

## **Chapter Nine**

### **Payment of Taxes, Custom Duties and Royalties on Minerals**

#### **Article 82: Payment of Taxes**

Holders of Mineral Rights and their Sub-contractors shall be obliged to pay taxes, customs duties, mineral royalties and other taxes in accordance with the provisions of this law and other relevant applicable laws.

#### **Article 83: Mineral Activities subject to Taxation and Custom Duties**

(1) Holders of Mineral Rights and their Sub-contractors conducting Mineral Activities in Afghanistan shall be subject to the generally applicable tax and customs laws of Afghanistan, unless provided for otherwise in this law.

(2) Holders of Mineral Rights shall present their balance sheets based on the income tax law and other applicable laws and in accordance with International Accounting Standards (IAS) that is from time to time promulgated by the International Accounting Standards Board, unless provided for otherwise in this law.

## **Article 84: Collection of Taxes**

(1) The Ministry of Finance is the sole public authority with jurisdiction to collect taxes and customs duty in accordance with the provisions of the laws on income tax, customs and the relevant regulations.

(2) The Ministry of Mines is the authority with jurisdiction to collect Mineral Royalties in accordance with the provisions of this law and transfer it to the credit account of the State.

## **Article 85: Powers of Ministry of Finance**

For the purpose of promoting private investment in the Minerals sector and taking the special circumstances of the holder of the Mineral Rights into account, the Ministry of Finance may propose to the Government to adopt one or more of the following forms of relief in relation to taxes and customs duties applicable to Holders of Mineral Rights and Mineral Activities:

- 1- Deferral of tax payment, to be carried forward over subsequent fiscal [tax] years;
- 2- Deferral of deductions for depreciation of assets, to be carried forward over subsequent fiscal [tax] years;
- 3- Deferral of deduction of accelerated depreciation of fixed assets, to be carried forward over subsequent fiscal [tax] years;
- 4- Deferral of payment of Mineral Rights, Exploration and Exploitation depreciation expenditures;
- 5- To lessen the taxes of additional value or similar taxes and customs duties on equipment, machinery and other goods used in the Exploration of Mineral Substances or specific categories thereof;
- 6- To deduct all or a portion of Mineral Royalties payable, and the deferral of such deductions over subsequent fiscal years;
- 7- To maintain the stability of taxes and customs duties and charges in accordance with Article 82 of this law;
- 8- To lessen the taxes and customs duties that are inconsistent with those contained in a Mining Contract;
- 9- Partial or complete exemption from business tax payable on Mineral Substances.

## **Article 86: Duration of Fixed Taxes**

With the agreement of Ministry of Finance, the Ministry of Mines may propose the following to the government to attract further interest and confidence of private investment in the sector of Minerals:

- 1- Stability of taxes and Mineral Royalties and customs charges for the Holder of an Authorization pursuant to this law for a period not exceeding five years.
- 2- Stability of taxes and Mineral Royalties for the Holder of a License pursuant to this law for a period not exceeding eight years.

## **Article 87: Mineral Royalties**

(1) Holders of Exploitation Licenses, Authorizations for Quarry and Tailings Exploitation, and Artisanal Exploitation shall pay Mineral Royalties on all extracted or other exploited Mineral Substances. The Royalty rate shall be fixed and approved by the Inter-ministerial-committee as per the recommendations of the Ministry of Mines, considering the technical characteristics of the deposits, infrastructure, economical conditions and other circumstances . Holders of Exploration Licenses or Authorizations for Quarry Exploration, or any other Person engaging in the Exploitation of Mineral Substances shall pay the specified Mineral Royalties in respect of any Mineral Substances extracted, sold, shipped for sale, or otherwise used by them.

(2) Mineral Right Holders shall be liable for payment of Mineral Royalties on Mineral Substances extracted and exploited, as of the start of commercial production, unless provided otherwise in the Contract.

(3) Mineral Royalties shall be paid to the State Treasury. The specific particulars for assessment and calculation of Mineral Royalties, and the times and places of payment therefore, shall be established in the Mining Regulations, unless provided otherwise in the Contract.

(4) The Ministry of Mines and the Ministry of Finance shall each have the power to audit and inspect the operations, books and records of Holders of Mineral Rights.

(5) Holders of Mineral Rights shall submit quarterly reports to the Mining Inspectorate, including production, revenue and other financial data specified in the Mining Regulations.

## **Chapter Ten**

### **Investment Support**

#### **Article 88: Currencies**

Holders of Mineral Rights and their Sub-contractors shall comply with the legislation of the State bank and carry out the following when fulfilling their financial obligations and paying other State charges:

- 1- Import foreign currencies into the country to to perform Mineral Activities;
- 2- Transfer foreign currencies abroad in order to repay loans to finance its Mineral Activities and to pay foreign suppliers for goods and services necessary for the conduct of Mineral Activities;
- 3- Transfer foreign currencies abroad for the payment of dividends, profits or other amounts arising out of its Mineral Activities to non-resident shareholders
- 4- Transfer foreign currencies abroad for the repatriation or export of foreign capital invested in its Mineral Activities,
- 5- Transfer foreign currencies obtained from the sale of contractual assets or of compensation of damages related to foreign investment;

- 6- Freely purchase of Afghanis and foreign currencies at the market rate of exchange;
- 7- Maintain Afghanis or foreign currency bank accounts in Afghanistan
- 8- Maintain bank accounts abroad denominated in foreign currencies, subject to compliance with the legislation of Da Afghanistan Bank.

### **Article 89: State Guarantees**

Subject to compliance with this Law, the Mining Regulations and other applicable laws and regulations of Afghanistan, the State guarantees to the Holders of Mineral Rights the following:

- 1- The right to organize their assets and their businesses as they deem fit;
- 2- The right to employ Sub-contractors and to recruit personnel needed to carry out Mineral Activities, provided that priority shall be given to employing Afghan Persons with equal qualification in terms of education and experience;
- 3- Access to raw materials and water within the perimeter of the Mineral Rights, subject to compliance with the Law;
- 4- Free movement of personnel of Mineral Right Holder and those of their Sub-contractors within the National Territory in compliance with the law
- 5- The freedom to import goods and services necessary for their Mineral Activities (Afghan Persons are given priority for any contract to procure such goods and services provided that they are equivalent to foreign goods in terms of quantity, quality, price and delivery dates;
- 6- The freedom to sell the products in the internal markets and to export and sell the products on the external market, in compliance with this law and customs law; [and]
- 7- To facilitate acquisition of all documents required for foreign personnel of Mineral Rights holder and those of their Sub-contractors to access the places of Mineral Activity, in compliance with the provisions of the relevant laws.

### **Article 90: Compensation**

The Mineral Substances extracted or the assets used by the Holder of a Mineral Right in conducting Mineral Activities may not be compulsorily expropriated by the State except for circumstances of public necessity, in which payment of fair compensation to the Holder shall be made in accordance with the applicable laws of the country and international norms.

## **Chapter Eleven**

### **Dispute Resolution of Mineral Operations**

#### **Article 91: Dispute Resolution Authorities**

Disputes arising in connection with Mineral Activities shall be resolved through administrative authorities or arbitration stipulated in this law, or judicial authorities in



accordance with the applicable laws of Afghanistan. The parties to a dispute, including Persons and the State shall have the right to object [such resolution].

### **Article 92: Submission of the Dispute to Authorities**

The procedures for referring the dispute to the administrative authorities and the manner of dispute resolution shall be set out in the Mining Regulations. The Mining Regulations shall specify the procedures by which disputes between landowner and Holder of Mineral Right or between Holders of Mineral Rights, may be resolved.

### **Article 93: Submission of the Dispute to Arbitration**

(1) A dispute arising between a Holder of Mineral Right and the State or between a Holder of a Mineral Right and a third party relating to Mineral Rights, shall be resolved in the following manner:

- 1- Any dispute between the parties may be settled by administrative authorities or arbitration, as agreed between the parties;
- 2- Pursuant to the agreement of the parties, through compliance with judicial of another country other than Afghanistan
- 3- If the parties agree, it may be resolved outside of Afghanistan, by the International Centre for Settlement of Investment Disputes ("ICSID") or in case of rejection by ICSID, the dispute shall be resolved in accordance with Arbitration Rules of the United Nations Commission on International Trade Law (the "UNCITRAL Rules").

### **Article 94: Submission of the Dispute to Courts**

If any one of the parties is not satisfied with the executions of Article ninety, and ninety two of this law, that party may submit their dispute to judicial authorities. The judicial authorities shall take action to resolve it considering the provisions of the civil law, penal codes and the applicable laws.

### **Article 95: Representation of the State**

Where the State is a party of the dispute involving Mineral Rights, The Ministry of Mines is empowered to represent the State in the efforts to settle the dispute through administrative, arbitative or judicial proceedings, both within the country and abroad. Any paper or documentation related to the case in such a proceeding shall be presented to the Ministry of Mines.

## **Chapter Twelve**

### **Miscellaneous**

#### **Article 96: Transparency in Mineral Activities**

(1) No Person shall, directly or indirectly, during the execution or award of any Mineral Right or for a related activity, provide any gratuity, gift or any other favor to any public official, employee or agent of the State or any other public agency or to any member of their families.

(2) The Ministry of Mines and its relevant departments shall comprehensively review the decisions taken in accordance with this law and Mining Regulation with regard to the rejection of applications for renewal, withdrawal, suspension, and termination of Mineral Rights and shall present their decisions in writing . This decision shall be subject to appeal..

(3) The Ministry of Mines shall collect, not less than annually, and publish reports concerning State revenues and other direct or indirect economic benefits received by the State from Mineral Activities in accordance with international best practices based on Extractive Industries Transparency Initiative

(4) The Ministry of Mines shall be authorized to, for the purposes of preparing such reports, require Holders of Mineral Rights and all State or public agencies and public officers to, not less than annually, submit data, including production, financial data, and other direct or indirect economic benefits received by them and all amounts paid by them in connection with Mineral Activities.

#### **Article 97: Violations, Fines and their Execution**

(1) Without prejudice to the provisions of the civil, commercial and criminal laws, Holders of Mineral Rights shall be obliged to compensate damages and pay liquidated penalties as provided for in the Mining Regulations for offenses for infractions and violations of this Law and the Mining Regulations.

(2) Compensation of damages or payment of liquidated penalties referenced in paragraph (1) of this Article, as the case may be, shall be enforced by the Mines Inspectorate which may be applied singly or together.

(3) Criminal penalties may include imprisonment, prohibition from Mineral Activities, withdrawal, rescission or termination of Mineral Rights and the seizure and confiscation of property, which shall be applied by the Authorities in accordance with law.

### **Article 98: Keeping Cadastre Maps**

(1) The records relating to Mineral Rights, including the registers relating to Mineral Rights and the Cadastral Survey Map, created by the Mining Inspectorate, the Geological Survey or the Environmental Protection Department shall be made available for information to the public at those administrations in accordance with this law and Mining Regulations.

(2) The information referred to in paragraph one of this Article and its collection shall be subject to payment of the charges set forth in the Mining Regulations.

### **Article 99: Confidentiality**

(1) Applicants for Mineral Rights and Holders thereof may request the confidential treatment of technical, geological and mining information submitted to the Ministry of Mines. Such information may be treated as confidential by the Ministry of Mines until expiration or termination of the relevant Mineral Right. After this period, such information may be made available to the public.

(2) Prior to the expiry of the period of confidential treatment, such information may be used by the Ministry of Mines for purposes of compiling public records, data and statistics, which may be published without disclosing the specific [confidential] parts of the information.

### **Article 100: Promulgation of Mining Regulations**

The Ministry of Mines shall draft and process Mining Regulations in order to better implement the provisions of this law. Provisions and matters not expressly stipulated by the provisions of this Law shall be governed by Mining Regulations, which shall not contradict the provisions of this Law.

### **Article 101: Complying with International Conventions**

(1) If Afghanistan signs an international treaty which has any relation to Mineral Activities and is inconsistent with the provisions of this law, the provision of such international treaty shall prevail.

(2) If there shall be any discrepancy between the provisions of this law and other laws concerning the standards, the obligations to protect the environment, and the social conditions, the provisions of the specific laws shall prevail.

## **Article 102: Cadastre Survey Maps and Delineation of Prohibited Areas**

The Ministry of Mines shall, within eighteen months of the date this Law comes into force, complete an inventory of its geological data and mineral title records, and acquire the technical capabilities to implement the Cadastral Survey Map and the registry system to be maintained by the Mining Cadastre, and to delineate on maps of appropriate scale, the Prohibited Areas. The government may, if required for public interest, extend such period up to three years.

## **Article 103: Existing Mineral Activities**

The Ministry of Mines shall, within one year of the date this Law comes into force, complete an inventory of Mineral Activities currently conducted by the State or agencies of the State and the Mineral Rights currently held by the State or agencies of the State.

## **Article 104: Existing Mineral Rights**

(1) Persons conducting Mineral Activities under the laws in effect prior to the date this Law comes into force shall have a period of eighteen (18) months from the date this Law comes into force to submit applications to the Mining Cadastre for re-registration under this Law. If such an application has been duly submitted to the Mining Cadastre within the applicable time period therefore, no other Person may apply for Mineral Rights covering such pre-existing claims until such application has been disposed of by the Claims Commission constituted under paragraph (2) of this Article. At the end of such eighteen (18) month period, the Mining Cadastre shall not accept any such applications, and any prior claims for which a pending application has not been duly submitted, shall expire automatically and shall be of no force and effect, without any right of compensation to the holder thereof.

(2) A commission shall be created for the confirmation of existence and validation of pre-existing claims and for the resolution of claims or disputes relating to the existence of rights to conduct Mineral Activities prior to the date this Law comes into force. The composition of the Claims Commission is as following:

1. The Minister of Mines, as Chair of the commission;
2. The authorized representative of the Ministry of Finance, as a member;
3. The authorized representative of the Ministry of Economy, as member,
4. The authorized representative of the Ministry of Commerce and Industries as member,
5. The authorized representative of the Ministry of Energy and water, as member,
6. The Head of the National Environmental Protection Agency as member,
7. Non-voting representation from the Head of the Mining Department,

(3) A Person whose pre-existing claim to conduct Mineral Activities is validated by the Claims Commission shall be entitled to a priority right to apply for a Mineral Right in respect of such claims, provided that such Person shall be required to comply with all other applicable requirements of this Law and the Mining Regulations, and to submit an

application for such Mineral Rights in accordance with the provisions of this Law within ninety (90) days from the date its pre-existing claim has been validated by the commission. If a new Mineral Right issued in accordance with this Law conflicts with a pre-existing claim that has been validated by the commission constituted, then such new Mineral Right shall remain valid and unencumbered by such pre-existing claim, but the Holder of such new Mineral Right shall be required to compensate the holder of such validated pre-existing claim.

#### **Article 105: Effective Date**

This Law shall enter into force as of the date of promulgation and shall be published in the Official Gazette. Upon its enforcement, the Minerals Law dated 20/05/1384 published in Official Gazette number (859) and other provisions inconsistent with this Law shall be void.