Africa

AMLA Guiding Template

Full Document

June 26, 2017

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AFRICA
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AML A GUIDING TEMPLATE

Full Document

(Part A – E)
I. **What is the AMLA Guiding Template?**

The AMLA Guiding Template **IS** a mining law drafting and reference tool that provides guidance on the elements of a mining law covering all potential issues that could be covered in such mining law based on Africa’s present realities. It presents an enhanced starting point for its users by providing a clear and practical foundation on which they can thoroughly consider topical issues supported by sample drafting language as they develop, modify or simply assess mining legislative frameworks that fit each country's unique context. Each topic is described with some indication of its elements and broadly associated issues, followed generally by two sample provisions, each of which is accompanied by an annotation explaining the context, issues, and useful features of the presented language. Most of the examples are drawn or inspired by current mining laws within Africa and where such examples do not exist are sourced from mining laws outside of Africa or drafted de novo. The Guiding Template aims to be responsive rather prescriptive, in order to provide a resource that is sensitive to the distinct character of each African country, its existing legal framework and the specific context in which each mining sector is situated. Consequently, it is crucial to read Section V below on How to Use the Guiding Template. The primary objective of the Guiding Template is informed and transparent legislative reform and completeness and adequacy of the law.

The AMLA Guiding Template **IS NOT** a model mining law. A model mining law is a proposed set of legislative provisions addressing a specified and cross-referenced set of subjects pre-determined to be both desirable and adequate, and which states who seek uniformity may choose to adopt, in whole or in part. The objective of a model mining law would be to create identical or similar law among a group of sovereign states.

II. **What does the AMLA Guiding Template consist of?**

The Guiding Template consists of 212 topics that can be addressed in a mining law. The topics consist of matters commonly addressed in a mining law as well as matters that are the subject of current and salient discourse in the sector. The topics are divided into 5 parts (A through E) as shown in the table below.

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Introductory Note

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Topics

Each topic is approached in the same format: a brief introduction to the topic, including a definition and key big picture issues for consideration; two conceptually distinct examples; and two accompanying annotations. In few cases, only one example is proffered, largely on the basis of a common approach to the topic. The topic list of the Guiding Template is designed to be exhaustive and therefore cannot be adopted blindly wholesale by any country. Rather it should, primarily serve as a checklist for issues that are applicable to the local context and users must carry out the due diligence necessary to identify the topics that are responsive to the local context. Each of the 5 sub-parts of Part B of the Guiding Template consists of a list of nearly identical topics that apply to the associated mineral right (e.g. eligibility provisions, rights and obligations of the license holder, specific violations and penalties that attach to mineral right). It is noteworthy to mention that the Development Minerals sections (B-5 and B-6) were developed based on field research that was presented at a symposium in October 2016 at the Africa Union Commission (see Section VI on Who Developed the Guiding Template?).
Sample Provisions
Generally, each topic has two distinct examples that are drawn from or inspired by current African mining laws as well as other country mining laws or drafted de novo. Examples are edited for clarity and utility, so as to present the reader with a provision that can be understood and replicated or easily tailored for the local country context. These examples are not proffered as the only possibilities to address any given topic, but are simply a small sample of some ways that legislative drafters have incorporated principles and contemporary issues into current legislation. This point cannot be over-emphasized – similar to each topic, it is crucial that each example is understood as an indicative provision and the necessary due diligence be carried out to confirm its applicability or its adaptability in order to achieve responsiveness to the local context.

Annotations
Each example is accompanied by an annotation, written by an expert member of the Guiding Template Review Committee. Unlike the introduction which discusses the topic broadly, the annotation focuses specifically on explaining its companion example, often highlighting the individual strengths and any potential trade-offs in the approach reflected in the example. The annotation is designed to support readers in assessing each example’s value, helping the reader to determine which factors may be the most salient for a country’s particular mining context.

III. Why was the Guiding Template Developed?
Proper management of natural resources remains one of the most critical development issues for the African continent and a crucial component of natural resource management is the legal framework under which the mining sector is regulated. The core of this framework is the legislation governing the mining sector (often referred to as the mining law or the mining code). Too often, inadequate preparation and obsolete approaches to reform which focus primarily on resources predominantly mined for global exports (PMGEs) has led to legal frameworks that are unresponsive to the realities that are unique to the local context, thus contributing to a climate in which African countries have been unable to reap the benefits of their resources. This concern has led to heightened government focus on devising more appropriate legislation for managing the mining sector. To support the development of context appropriate legislation, it becomes necessary to support the governments and citizens of mineral rich countries with tools to (a) debate and develop legislation as well as reframe the global discourse around their mineral resources and (b) through the passing of informed legislation, derived from broad citizen participation, create the right environment for the sustainable use of mineral resources for shared prosperity.

Additionally, factors including the reframing of the discourse around natural resource exploitation in Africa by African governments and intergovernmental institutions such as the Africa Union, the trend towards transparency and the growing focus of natural resource investors on investing in countries with more stable, clearly defined legal frameworks, have led to increased numbers of African countries adopting new
mining laws since 2000. With more revisions and new enactments expected, particularly in light of the operationalization of continent wide harmonization initiatives such as the Africa Mining Vision, the need for guidelines to assist in addressing gaps in mining legislation continues to be a necessity for African governments seeking to strengthen laws governing their natural resources. The Guiding Template responds to this need.

IV. How is the Guiding Template Different from Other Existing Tools for Africa’s Mining Sector?

Foremost, the Guiding Template is distinct from the African Mining Legislative Framework of the AMLA Platform. The Legislative Framework provides user friendly access to all 53 existing mining codes of the African continent in an easily readable and searchable format with a feature that allows for the comparison of the provisions of the law on a country to country basis. Therefore, it presents the laws as they exist and can support the use of the Guiding Template by serving as a research resource for regional benchmarking exercises and knowledge sharing. The Legislative Framework also includes amendments to the mining codes, mining regulations, other related laws and regulations as well as a cross-linkage to resourcecontracts.org for access to publicly available mining contracts.

Complementing the essential work of the African Mining Vision, its Country Mining Vision and other policy harmonization initiatives across the continent,\(^1\) the focus of the Guiding Template is fairly narrow in that it concentrates on providing a list from which a country can choose applicable topics based on an adopted set of policies, structural elements of a law as well as mechanics of how the provisions of the law are written. It is not a policy preparation tool but a law drafting tool.

The African Mining Vision has already identified, increased intra-regional harmonization of laws, regulations and regimes as critical to strengthening governance within the mining sector across in Africa. The Guiding Template seeks to meet this challenge by concretizing a common template of legislative provisions that countries could adapt to achieve both national and regional objectives.

V. How to Use the Guiding Template?

*Use of Experts*

\(^1\) For example: the ECOWAS Harmonization of Guiding Principles and Policies in the Mining Sector; UEMOA Code Minier; and SADC Protocol on Mining.
The Guiding Template is a guidance tool. Consequently, it is important that a country intending to use the Guiding Template identify the appropriate technical experts who can best employ the tool to achieve the best outcome. These technical experts should include but are not limited to lawyers, technical sector experts, fiscal experts, environmental and social experts, and regional harmonization specialists.

Furthermore, the Guiding Template as an online tool, is a living document. It will be periodically updated to ensure responsiveness to realities on the ground. Therefore, the use of experts ensures the best interaction with the most current version of the tool.

**Essential Cross-Cutting Issues**

While the Guiding Template aims to introduce each topic within an individualized, issue specific context, some crucial issues are cross-cutting in their impact across several topics areas. As a result, it is strongly recommended that the following issues be considered for each topic within the Guiding Template:

- Reference to other controlling pieces of national legislation and best practice regimes (other sector laws, e.g. environmental law, labor law, criminal law, forest law, land law, company law, customary law, health and safety standards).

- Reference to ratified multilateral conventions, executed bilateral treaties or other international best practice regimes (e.g. labor standards from the ILO; WTO; BIT; GATTs; EITI, Kimberly Process, RECs common mining instruments (SADC, ECOWAS, UEMOA etc.).

- The principle of periodic review: the mining law should consider providing for a process of updating and revision of the law at reasonable intervals to ensure that the primary legislation continues to be aligned with the country’s development goals.

- Fines for violations should be set at a level that is appropriately punitive for each country, acknowledging that, depending on currency valuation and other factors, this quantity may substantially differ from country to country. The same principle applies with any prescribed jail time.

- Consider ways of ensuring gender equity especially through the eligibility provisions for mineral rights, labor related provisions, and local content/development provisions.
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• Ensure proper cross-referencing, as necessary within the law. The GT recommends, not only referencing the number for a cross referenced section but also the subject matter of such section. Such approach ensures that each section is clearly and precisely drafted to address a specific subject matter and eliminates sections that address multiple loosely related issues that are not easily captured in a single title (Christmas-tree provisions).

• Develop clearly defined terms and use such terms consistently throughout the law.

• Ensure proper numbering and consistent structure to all parts of the law.

• While the Guiding Template does not provide language for the dissemination of the law and related regulations, providing these documents to the wider public can help governments with the monitoring efforts. Therefore, making the law, its regulations and subsequent amendments and revisions available to the AMLA secretariat for online dissemination as well as providing hard copies to local governments and institutions is recommended.

Quirks of the Guiding Template

• Mineral Rights refer to any rights, licenses, and permits obtainable under the mining law and are used interchangeably.

• Prospecting refers to, what in some countries are also referred to as reconnaissance, which is the preliminary investigation into the existence of mineral deposits in an area, with little to no impact on the physical environment. Exploration refers to what in some countries are also referred to as prospecting, which is the more extensive investigation into the existence, quality and quantity of mineral deposits in an area and is the stage of activity that precedes the development of the mine and mining of the mineral deposits. The Guiding Template has adopted this approach to recommend the standardization of the stages of mining and related mineral rights across Africa.

• [Country] refers to instances when the language should incorporate the formal name of the country or its short forms, for example, “Republic of X” or “the Republic” or “X”.

• Annotations that state “drawn from” or “inspired by” a specific law simply means that elements of the language of the law were taken to draft the sample language to a large or small extent. It does not purport to carry the substantive meaning of the language in the existing law and may sometimes contrast with the language in the law.
In rare instances, The Guiding Template presents a singular sample provision such as the examples for on-site procedures requirement for discovery of minerals not under the license or table of contents as such topics do not prompt substantively distinguishable approaches to drafting.

VI. Who developed the Guiding Template?

The Guiding Template was created out of (a) series of desk research, design and coordination by the AMLA Team; (b) compilation of legislative provisions, language drafting and book sprint style review and revisions by the GTRC and the AMLA team; (c) field research from sector experts from across Africa who provided the knowledge base for the development minerals section of the Guiding Template in a symposium as Symposium Participants and (d) reviews and recommendations by Technical Reviewers. The Guiding Template is the product of the collaboration between the World Bank with funding from Extractive Industries Technical Advisory Facility (EI-TAF), the Extractives Global Programmatic Support Trust Fund (EGPS), the African Legal Support Facility and the African Union Commission. The symposium on development minerals was held in October 2016 at the Africa Union Commission in Addis Ababa and was co-sponsored by the AMLA project, the ACP-EU Development Minerals Program and the Africa Union Commission. The research papers of the Symposium Participants will be published in a volume by the ACP-EU Development Minerals Program. All contributors made of the AMLA Team, The GTRC, the Symposium Participants and the Technical Reviewers are listed below.

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**Development Minerals Symposium Participants**
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VII. Disclaimer

The Guiding Template is a tool that legislative drafters may utilise in developing legislation, or may serve as an educational device for parliamentarians, mining sector regulatory bodies, and civil society to better understand some of the possible legal arrangements or architecture for the mining sector. Using these materials to develop an actual mining law without the necessary level of skill and experience, deep knowledge of the sector and overall legal architecture of the country concerned as well as its international obligations, would create very serious risks for which the contributors to this Guiding Template are not liable.

Users of this Guiding Template should consult with mining, taxation, public revenue management, environmental, land and other relevant expert lawyers in the applicable country to advise on the appropriateness of suggested provisions. Any suggested provision must be adapted to the specific facts and circumstances of the particular country and its mining sector. In the cases where the country chooses to address a specific topic by drafting its own provision (as provided for in the Template), such country should ensure that its own provisions are well harmonized with the rest of the Guiding Template suggested provisions that are incorporated into its legislation.
While use of the Template is encouraged for the purpose of achieving a clear legal framework for the mining sector, nothing in the Template is sanctioned by the authors or the sponsors of this tool. No party associated with the development of this Guiding Template shall be liable for losses or damages that may result from the use of this document or any portion or variation thereof, or any other materials presented in conjunction with the Guiding Template.
1. Preamble

A Preamble or, in francophone countries, Exposition of Motives provides a summary of the primary legislative intent underlying the new law that is useful in interpreting its provisions. The preamble or exposition of motives may or may not be part of the law. In the latter case, it is approved together with the new law and both are printed together in the Official Journal. The length may vary considerably from a very succinct sentence or paragraph immediately following the title of the new act to a very detailed separate exposition of motives espousing the intent behind each chapter or provision of the act. Additionally, a preamble may reference the country’s constitution, treaties, or other significant legal resources from which it draws authority (such as jurisdictional sources in federal states). The preamble can also reference a national policy or charter that has guided the design of the mining law.

Alternatively, a mining law may contain a section on fundamental principles and rules of interpretation of the law. If it contains both, care must be taken to ensure consistency and avoid duplicative pronouncements in different languages that may inadvertently create ambiguity and provoke litigation.

1. Example 1:

Article [__]
The purpose of this Act is to:

(a) repeal and replace the [Old Mining Law], with a new legislation on mining and mineral development, which conforms, and otherwise gives effect, to the relevant provisions of the Constitution;
(b) vest the ownership and control of all minerals in [Country Name] in the State;
(c) provide for the acquisition of mineral rights;
(d) adapt the mining law to the country’s present economic situation and to the recent developments in the mining sector, with a view to ensure competitiveness, transparency, protection of rights, and definition of the obligations of the mining holders, as well as to safeguard the national interest; and
(e) provide for other related matters.

Annotation

Drawn from Uganda’s mining act (2003) and Mozambique’s mining act (2014), the provisions convey in very succinct language that the act should be read as giving effect to the provisions of the Constitution of the country in effect at the time of enactment and confirms that ownership and control of all minerals in the country are vested in the state and therefore the procedure for obtaining mineral rights from the state is as provided in the mining act (paragraphs (a), (b), and (c)). It also provides insight into the legislative intent for making the law that is relevant to the interpretation of the law (paragraphs (d) and (e)). While paragraph (e) is a catch all phrase which may be deemed overbroad and imbued with discretion, paragraph (d) is more clearly articulated with parameters to the legislative intent.

1. Example 2:

Annotation
RECOGNIZING that minerals are non-renewable natural resources; 
ACKNOWLEDGING that [Country]’s mineral resources belong to the nation and that the State is the custodian thereof; 
AFFIRMING the State’s obligation to protect the environment for the benefit of present and future generations, to ensure ecologically sustainable development of mineral resources and to promote economic and social development; 
RECOGNISING the need to promote local and rural development and the social upliftment of communities affected by mining; 
REAFFIRMING the State’s commitment to reform to bring about equitable access to [Country]’s mineral resources; 
BEING COMMITTED to eradicating all forms of discriminatory practices in the mineral industries; 
CONSIDERING the State’s obligation under the Constitution to take legislative and other measures to redress the results of past racial discrimination; 
CONSIDERING the State’s commitment to take legislative and other measures to implement the [Africa Mining Vision]; 
REAFFIRMING the State’s commitment to guaranteeing security of tenure in respect of prospecting and mining operations; and 
EMPHASISING the need to create an internationally competitive and efficient administrative and regulatory regime; 
BE IT THEREFORE ENACTED by the [Legislative Authority], as follows:

Drawn from South Africa’s mining law (2002), this preamble vests the ownership of the minerals in the nation while the state is only a custodian. It also refers to environmental and social goals common to most mining countries, other social goals that are specific to the country, and goals considered important by the mining industry. The law also contains a chapter on fundamental principles which states with greater specificity the key basic concepts underlying the legislation.

This preamble provides a more extensive approach with respect to legislative intent, going beyond the traditional objectives of mining, such as clarity of ownership, processing and investment attractiveness objectives, to include indication of a commitment to a regional mining framework, general environmental and social goals as well as societal aspirations that are specific to the country.

2. Table of Contents

A detailed table of contents, at the beginning or the end of the law, enables readers to quickly identify where in the law to find provisions on specific matters of interest, and is highly valued. It can also be a useful drafting tool by serving as an organizational chart for the law. Alternatively, some laws omit a table of contents but this is not advisable especially where the law contains many sections and runs into several pages.
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PART A: General Topics

2. Example:

Article [...] Arrangement of Act
CHAPTER 1: DEFINITIONS
1. Definitions
CHAPTER 2: FUNDAMENTAL PRINCIPLES
2. Objects of Act
3. Custodianship of nation's mineral resources
4. Interpretation of Act
5. Legal nature of Minerals Rights, and rights of holders thereof
6. Principles of administrative justice
CHAPTER 3: ADMINISTRATION
7. Division of Republic, territorial waters, continental shelf and exclusive economic zone into regions
8. Designation and functions of officer
CHAPTER 4: MINERAL AND ENVIRONMENTAL REGULATION
9. Order of processing of applications
10. Consultation with interested and affected parties
11. Transferability and encumbrance of Mineral Rights (…)

Annotation

Drawn from South Africa’s mining law (2002), this example is common in many mining laws and provides at the beginning of the law a serial arrangement of the sections of the mining law, divided into various parts and sub-parts according to subject matter. While some laws such as is shown in this example number each provision progressively irrespective of what chapter or section the provisions fall under, others restart the numbering of the provisions that fall under distinct parts of the law.

3. Definitions/Interpretations

A key to clear and consistent drafting is the precise definition of terms and the consistent use of those defined terms. Most good mining laws contain in the initial or final chapter, extensive provisions setting out the precise definitions of important words or terms (which are usually capitalized), used in the law and the principles applicable in interpretation of the provisions of the law. Defined terms are particularly important where terms which might be employed in other relevant legislation may be used in the mining law but with a different meaning. For clarity, it is critical that words or terms, once capitalized and defined, be used consistently in their capitalized form throughout the law.

The definitions and interpretation chapter is normally the last part to be drafted as it seeks to explain and provide context for those words or terms as used in the law. Apart from the defined words and terms, the definitions and interpretation section may contain language that serve as guides to interpreting the mining law, especially where a country has no applicable interpretation laws or seeks to apply different rules of interpretation to the mining law.

3. Example 1:

Annotation

NOTE: This Document is part of a multi-part document, Parts A – E
### Article [...] Definitions

- “Development Minerals” means a subset of Minerals mined, beneficiated and consumed principally in domestic and regional markets as identified in the [Directive of the African Union Commission].
- “Mineral” means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth, formed by or subject to a geological process, but excluding petroleum as defined in the [Petroleum Act], and water as defined in the [Water Act].

### 3. Example 2:

Article [...]  
(1) In this Act, unless the context otherwise requires—

(a) If for purposes of any provision of this Act any dispute arises as to the question whether any mineral falls within any group of minerals, the Minister shall have the power to determine in which group of minerals such mineral shall fall for such purposes, and any such determination shall be final.

(b) A word or term that is not defined in this [Law][Act][Code] and which is a word or term that is common in the international mining industry shall have the meaning that is attributed to it by the industry.

(c) When interpreting a provision of this Act, any reasonable interpretation which is consistent with the objects of this Act must be preferred over any other interpretation which is inconsistent with such objects.

### Annotation

Drawn from Botswana’s mining law (1999), Namibia’s mining act (1992), Equatorial Guinea’s mining law (2006), South Africa’s mining act (2002), this is an example of an Interpretations section of the law which means that a word or term used in the law will have the meaning provided in the definitions unless the context in which the word or term is used requires that a different meaning is assumed. E.g. “mine” may be construed as a verb or noun depending on the context. Usually, it is clearer to indicate when the word or term has a defined meaning by capitalizing the word or term.

Paragraph (2) is also an interpretation clause that can provide further clarification on who may serve as an arbiter of right meaning should a dispute arise. Minerals are categorized into various groups according to definitions in the mining law. Defined categories include precious minerals, precious metals, industrial minerals, construction materials, etc. This example provides an arbiter in case a dispute arises regarding the categorization of a mineral and consequently proposes to resolve the issue without requiring an amendment of the law.

Paragraph (3) recognizes mining as an international activity and provides international industry norms as a general source than can serve as the arbiter for undefined terms and paragraph (4) seeks to promote interpretation of the law in
accordance with the objects of the law. Thus, any interpretation of the mining law which is inconsistent with the objects (preamble or purpose in some laws) of the law is to be disregarded in favour of interpretations that are in accord with its objects.

4. Title of the Law

In civil law jurisdictions, the mining law is typically entitled the “Mining Code” and is generally a comprehensive document dealing with substantive and procedural law as well as sanctions for possible offences. It is expected to be continuously updated, without any change in the title, except for the year. Titles of laws in Common Law jurisdictions are based on the particular issues being addressed by the legislature at each point in time and therefore the laws dealing with various subjects may be found in separate enactments, unless or until they are codified or consolidated in one enactment, e.g. a mining act, mines act, minerals act, minerals and mining act, etc. Ideally, the title of the law should be simple and clearly signify that it is the primary mining law of the country.

4. Example 1:
The Mining Act, 2010

Annotation
Drawn from Tanzania’s mining law (2010), this title is clear and straightforward.

4. Example 2:
The Mining and Minerals Act, 2006

Annotation
Drawn from Ghana’s mining act (2006), this example seeks to cover the gamut of issues relating to minerals (i.e. classification, land, geology, ownership, processing, sale, etc.) and their development (exploration, exploitation, etc.) in a succinct manner.

5. Scope of the Law

Scope of law provisions generally specify the types of minerals over which the present mining law is applicable, as well as what activities are allowed in relation to the minerals, and how the activities are to be conducted. Typically, such provisions also clarify whether oil and gas deposits are covered or excluded from the application of the law. Scope provisions are more common in Francophone jurisdictions than Anglophone jurisdictions in Africa.
### 5. Example 1:

**Article [__]**

*This [Law][Act][Code] shall apply to all activities or transactions related to the prospecting, exploration, exploitation, research, processing, transportation and trading of mineral substances; but shall not apply to matters related to oil and gas water, and radioactive materials.*

**Annotation**

Inspired by language from DRC’s mining code (2002), this provision categorically states the subject matter and range of activities to which the code applies as well as the areas not covered by the code.

### 5. Example 2:

**Article [__]**

(1) *This [Law][Act][Code] shall apply to and govern the conduct of all mining operations and related activities within the territory of [Country].*


**Annotation**

Drawn from Eritrea’s mining code (1995) and Burkina Faso’s mining code (2003), this provision defines the parameters of the mining law’s applicability and then limits the application of the mining law in relation to typical issues which intersect with mining and are covered by other primary laws on environment, tax, forests, water, etc. as they are more comprehensively dealt with in those laws.

### 6. Repeal/Amendment of Prior Law & Savings Provisions

This topic may be addressed in the preliminary sections or the concluding sections of the law. Either way, it is critical that a new law is clear on the status of its provisions in relation to the preceding law and the impact of the current law on any obligations undertaken or rights obtained under the preceding law. Any guarantee of stability of provisions included in the prior law must be taken into account in addressing this topic.

When a new law only modifies a few provisions of an existing mining law, care must be taken to preserve the internal consistency of the law as modified, including the numbering of articles. The mining law as modified should be published in the Official Journal. And when a new law modifies an existing mining law extensively, it is advisable to incorporate both the unchanged provisions and the new provisions in the new law so that a single, internally cohesive text with consistently numbered articles replaces the prior law in its entirety, in order to facilitate understanding of the law as modified.
PART A: General Topics

6. Example 1:

Article [...]  
(1) The following enactments are repealed- (a) [Old Mining Law]; and (b) [Specified Related Enactments to Old Mining Law].

(2) Notwithstanding the repeal of the enactments referred to in subsection (1), any regulations made under the repealed enactments shall in so far as they are consistent with this [Law][Act][Code] continue in force as if they were regulations made under this [Law][Act][Code] until such time as they are revoked by the [Regulating Authority].

(3) Subject to subsections (4) of this Article, notwithstanding the repeal of the enactments referred to in subsection (1), any Mineral Right granted under any of those enactments and subsisting immediately before the commencement of this [Law][Act][Code] shall continue in force until expiration by passage of time.

(4) No Mineral Right granted prior to this [Law][Act][Code] shall be extended or renewed but where the prior granted Mineral Right provided a right to apply for a renewal or extension of the right, the holder of that Mineral Right may apply, subject to this [Law][Act][Code], for a similar type of license as provided for under this [Law][Act][Code] on a priority basis.

(5) Any act done, executed or issued under the repealed Law and in force and operative before the commencement of this [Law][Act][Code] shall, so far as it could have been done, executed or issued under this [Law][Act][Code] have effect as if done, executed or issued under this [Law][Act][Code].

(6) Any fund kept under the repealed Law shall be deemed to be part of a fund kept under the corresponding provision of this [Code][Act][Law].

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision provides for the repeal of the old mining law and related enactments, but retains in force, regulations made and other actions executed under the repealed laws provided they are not inconsistent with the new law. This is typically the case until new regulations are made to replace existing ones in order not to create a vacuum in administration of the law and ensure continuity.

Enactments related to the previous law which are not repealed, are preserved to the extent that they are consistent with the new law. Also typically, transitional provisions preserve the rights of existing mineral rights holders under the repealed law until the expiry of the rights or until they opt for similar rights under the new law. Such conversion applications are to be treated as priority cases.

6. Example 2:

Article [...]  
(1) The [Old Mining Law] and all the amendments thereto are hereby

Annotation

Drawn from Liberia’s mining law (2000), this provision repeals the old law in totality. However, to ensure continuity it also requires that a state-designated
repealed, and there is hereby enacted in lieu thereof, a [New Mining Law].

(2) Any regulations made under such repealed or amended laws shall apply only until such a time and to such extent as they are revoked by the [Regulating Authority].

(3) Upon the passage of this [Law][Act][Code] all existing agreements regarding Mineral Rights and related activities pursuant to the periodic review provisions of said agreements shall be subject to review by the [Relevant Authority] within a period of twelve (12) months so as to bring said agreements in compliance with the provisions of this [Law][Act][Code].

7. Reference to other Laws

This topic is often utilized to bring together all other laws that are implicated by the current law even when they are individually referred to, as applicable, in different sections of the law. This is important because it quickly alerts the law users to other laws that should be read in conjunction with the mining law. Examples of possible applicable laws to be referenced include company law, tax law, investment law, environmental law, labour law, land law and water law. Note that there are jurisdictions where court decisions may have binding effect similar to that of a legislative provision. However, such decisions are usually interpretations of existing law.

| 7. Example 1: |
| Article [...] |
| Unless otherwise specified in the applicable provision of this [Law][Act][Code], this [Law][Act][Code] shall be read and applied in conjunction with the following laws: [Investment Law]; [Company Law]; [Regional Directive]; [Environmental Law]; [Land Use Law]; |

| Annotation |
| This example demonstrates a simple and straightforward identification of other relevant laws. It also allows for thoroughness and clarity on what other laws are applicable to mining companies and any persons that are subject to the mining law. Investors find such references to relevant laws useful. |

| 7. Example 2: |
| Article [...] |

| Annotation |
| When this language is added to example 1, it seeks to enforce a stricter... |
8. Ownership of Mineral Resources

A mining law typically states at the outset (a) whether ownership of mineral resources (i.e. the mineral estate) is separate and distinct from ownership of land (i.e. the surface estate), and (b) who owns the mineral estate. The owner of the mineral resources is the entity, person or institution that has the authority to explore for and exploit those resources, or to grant to others the rights to do so. The mining law must be consistent with the Constitution as to ownership of the mineral resources.

In most cases, the Constitution states who owns the mineral resources. Some Constitutions may make a further distinction between different types of minerals. In such cases, ownership of minerals such as platinum, gold, diamonds, copper, etc. is separate from ownership of the land and is typically vested in the State or Republic or a province of the State, or in the President or the Government in trust for or on behalf of the people. By contrast, ownership of the development minerals may or may not be separate from ownership of the land on which they are located. In the latter case, the landowner may have the right to dispose of such minerals located on or under the land. However, there are cases in which all minerals including development minerals such as clay, sand, limestone, etc., may be deemed vested in the State on behalf of the people, especially if such minerals are discovered in large quantities and are expected to be exploited on a commercial basis.

In cases where the Constitution is silent as to the ownership of the mineral resources, the mining law can establish who owns the minerals if the Constitution recognizes or contemplates that matter as within the realm of legislative authority.

In some Common Law jurisdictions, the Constitution is silent as to the ownership of mineral resources. By tradition and jurisprudence in some such jurisdictions, the landowner is the owner of all mineral resources located on, in or under the land. This is however rare and more so non-existent in Africa.

Where applicable, tribal or customary law may include rules as to the ownership of mineral resources. In such cases, an agreement or consensus with the tribal or customary authorities may need to be reached before modifying such rules in the mining law (e.g., Botswana, South Australia), in order to avoid subsequent conflict.
If the Constitutional provisions on mineral ownership are not compatible with national goals of mineral resource development, it may be necessary to amend the Constitution prior to passing a mining law which may be inconsistent with the Constitution.

Some ownership provisions further obligate the President, Government or Minister, as actors of the State, to ensure that the minerals are developed in a sustainable manner and in the public interest.

8. Example 1:

Article [...]  
Ownership of minerals and acquisition of mineral rights.  
(1) Subject to the provision of the mining rights in [Tribal Territories Act], all rights of ownership in minerals are vested in the [Country] and the [Regulating Authority] shall ensure, in the public interest, that the mineral resources of the [Country] are investigated and exploited in the most efficient, beneficial and timely manner.

(2) Nothing in this [Act][Code][Law] shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, minerals from any land from which it has been the custom of members of that tribe to take minerals and to the extent that this is permissible under the customary law of that tribe.

Annotation

Drawn from Botswana’s mining act (1999), this provision vests ownership of minerals in the Republic and mandates the Minister to act in the public interest in the management of the minerals. An exception is however made for tribal mineral rights which are guaranteed under a separate enactment as well as under a provision of the mining act (section 5(2)), which recognizes the right of tribes under customary law to take minerals from their land.

8. Example 2:

Article [...]  
Subject to any right conferred under any provision of this [Act][Law][Code], any right in relation to the reconnaissance or prospecting for, and the mining and sale or disposal of, and the exercise of control over, any mineral or group of minerals vests, notwithstanding any right of ownership of any person in relation to any land in, on or under which any such mineral or group of minerals is found, in the State as custodian on behalf of the people of [Country].

Annotation

Drawn from Namibia’s mining law (1992), this provisions vests ownership of all minerals in the State as custodian on behalf of the people of the country.

9. Ownership of Geological Data

NOTE: This Document is part of a multi-part document, Parts A – E
Ownership of minerals is deemed to be distinct from ownership of mineral geological information. While mining laws generally allow mining licence holders to collect geological data under the terms of their license, they generally do not explicitly detail who owns the generated geological data. Liberia specifies that when the Minister of Mines authorizes a scientific or geological investigation, all ensuing data will be provided to the Ministry who will keep the data confidential for up to 3 years at the request of the entity who conducted the research. Congo-Brazzaville also specifically obliges exploration license holders to turn over all geological data to the State upon the termination of the license. While these instances can be deemed to infer government ownership of the data, it is not clear. Generally, the discussion of geological data revolves around the obligation of licence holders to maintain geological data records (Namibia, Sierra Leone, Ghana, Zambia, Zimbabwe, Rwanda, Botswana, and Nigeria), the right to obtain data from government agencies (Mozambique, Tanzania) and in some cases the reciprocal responsibility of licence holders to provide geological data to government entities (Ghana). To promote clarity in the law, it is helpful for the mining law to explicitly address the ownership of geological data collected by companies and mineral rights holders given that it is valued and monetizable information. Some laws (petroleum or mining) provide for government ownership of geological data collected by companies but may include rights for companies to use the data in relation to a specific project.

9. Example:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject to any right conferred under any provision of this [Act][Law][Code]:</td>
<td>This suggested example vests ownership of geological data in the State and provides for procedures that support ownership of the data by the State, including clear requirements on data transfer to the State. The example also applies strict confidentiality to geological data, only available on a need to know basis for advisers of the State, Mineral Right holders and their related third parties. The issue of level of confidentiality applicable to geological data continues to be a debated area and each locality may need to grapple with the issue in the wider context of transparency and its relationship to marketable information.</td>
</tr>
<tr>
<td>(1) All geological data and its supports belongs to the [State]. The mining rights holder shall submit, every year during the first 90 days of the year, all data generated during its (exploration/exploitation) activity and the required supports (stones, samples, etc.).</td>
<td></td>
</tr>
<tr>
<td>(2) The [Regulating Authority] shall issue regulations specifying the format of the information delivered. In any case, such information shall be delivered in technological support and in a format internationally accepted by the mining industry.</td>
<td></td>
</tr>
<tr>
<td>(3) Geological information shall remain confidential. Neither the [State] nor the mining rights holder shall share this information with third parties, except when they require technical advice. In such case, the third party shall commit to keep the confidentiality.</td>
<td></td>
</tr>
<tr>
<td>(4) The mining rights holder shall take appropriate legal, technical and security measures to prevent its directors, agents and employees to share the</td>
<td></td>
</tr>
</tbody>
</table>
information with third parties.

(5) At the issuance of the mining right, the [State] shall provide the mining rights holder all the geological data available referred to the area of the mining right. The mining rights holder may use such information as well as any other information generated during the (exploration/exploitation) phase.

10. Prohibited Areas

Prohibited Areas or Protected Zones refers to provisions that prohibit exploration and/or mining activities in certain areas or outline special procedures that apply to certain areas. Often, these provisions safeguard environmentally, culturally or historically significant sites, particular buildings, burial sites, coastal areas, flora, fauna, or other nature reserves. The mining law should either specify those areas or state how such areas are determined and notified to interested parties. For example, some mining laws specify that mineral development activities are prohibited within a certain distance from buildings, cemeteries, railroad tracks, airports, roads, power stations, military facilities or restricted zones, national parks or natural reserves, and certain other sites. Some mining laws provide for such prohibited areas to be specified by an executive or regulatory authority. Since prohibited areas may be designated in the future, the question of whether and how existing operations in areas so designated will be grandfathered or compensated should be addressed in the law.

This could be included as a separate provision of the mining law and titled “decision to open an area for mining activities” or “designation of mining areas”. The provisions under this title should require that a decision to open an area up for mining related activity should be preceded by an analysis conducted by the government of the social, environmental, and economic costs and benefits of mining projects. These assessments are typically known as Strategic Impact Assessments and provide for public consultation to ensure that potentially affected communities are involved in the process for determining mining areas.

It is important that provisions also clearly address whether the prohibition extends to reference exploration as well as mining activities in the designated area. Lastly, to prevent potential disputes, provisions should also highlight where prohibitions exist under other laws that specify prohibited areas, if they exist and ensure consistency with such laws. relevant legislation.

10. Example 1:

Article [...]
(1) (Subject to possible special circumstances) no prospecting or mining work may be conducted within 80m of:

<table>
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<tr>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from Madagascar’s mining law (1999), this provision contains specific rules designating prohibited areas that require the consent of specified authorities before mineral exploration or exploitation activities may take place there. The</td>
</tr>
</tbody>
</table>

NOTE: This Document is part of a multi-part document, Parts A – E
(a) walled properties, or properties enclosed in a similar manner or by any demarcation which is in common use in the region concerned, any village, collection of dwellings, water sources, religious buildings, burial sites and places considered sacred or forbidden, without the prior written consent from the owner or the authorities for the Provinces concerned, as the case may be;

(b) on either side of transportation routes, watercourses, and generally around any work sites which are beneficial to the public at large including archaeological sites, cultural sites, listed cultural and tourist sites and works of art, without authorisation from the [regulatory authority] after the relevant authorities have given their approval.

Article [___]
(1) Additional protected areas may be declared, by order of [the regulatory authority], to protect buildings and towns, water sources, transportation routes, works of art and work sites which are beneficial to the public at large, at any point where it may be deemed necessary in the general interest, at the request of interested parties and after an investigation has been carried out. Within these areas, prospecting and mining may be subject to certain conditions.

(2) Mining licence holders who can prove loss with regard to their prospecting or operating rights being reduced due to an additional protection area being declared, have the right to compensation, and the value of said compensation shall be the fair value of the rights which were lost. The onus of proving the loss and the value of such loss lies with the holder. Compensation shall be payable by the [the regulatory authority], within six (6) months of a decision in favour of the holder.

Article [___]
In the event that the regulations do not adequately provide for protected areas or sensitive areas, the demarcation of additional safety areas to be added shall be set by sectoral regulations on environmental protection, in accordance with the opinion of [the regulatory authority].

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Code also authorizes the regulating entity responsible for mines to designate additional protected areas, after an investigation, where minerals exploration and mining may be subjected to certain conditions. Article 106 provides for the indemnification of miners whose rights are impaired by such designations.

Finally, the Code assumes that the environmental legislation makes certain protected areas off limits to mining; and authorizes the creation of buffer zones around such areas in environmental regulations for the mining sector, subject to prior advice of the regulating entity.
10. Example 2:

Article [...] Restrictions on exercise of rights by holders of mineral licences
(1) The holder of a mineral licence shall not exercise any rights conferred upon such holder by this [Act][Code][Law] or under any terms and conditions of such mineral licence:

(a) in, on or under any private land until such time as such holder-
   (i) has entered into an agreement in writing with the owner of such land containing terms and conditions relating to the payment of compensation, or the owner of such land has in writing waived any right to such compensation and has submitted a copy of such agreement or waiver to the [Regulating Authority]; or
   (ii) has been granted an ancillary right as provided in [relevant section] to exercise such rights on such land;

(b) in, on or under any-
   (i) town or village;
   (ii) land comprising a proclaimed road, including such parts adjoining such road as may in terms of any law governing such road be regarded as the road reserve, aerodrome, harbour, railway or cemetery; or
   (iii) land used or reserved for any governmental or public purpose, and otherwise in conflict with any law, if any, in terms of which such town, village, road, aerodrome, harbour, railway, cemetery or land has been established, erected, constructed or is otherwise regulated, without the prior permission of the [Regulating Authority] granted, upon an application to the [Regulating Authority] in such form as may be determined in writing by the [Regulating Authority], by notice in writing and subject to such conditions as may be specified in such notice;

(c) in, on or under any land in respect of which no person other than the holder of a reconnaissance licence is, by virtue of a notice issued in terms of [relevant section] entitled to carry on any prospecting operations or mining operations;

(d) in, on or under any private or State land-

Annotation

Drawn from Namibia’s mining law (1992), this language is protective of the typical public places such as roads, railways, ports, aerodromes, cemeteries, townships, water bodies, etc. It does not specifically refer to national parks or nature reserves as off limits to mining, but it includes, less typically, land which is being cultivated or used as a garden, orchard, vineyard, nursery or plantation and land under a petroleum exploration or production. Rights are also restricted on private lands unless the landowner agrees in writing that compensation and other terms have been satisfied or waived. In contrast, other mining laws authorize entry onto private lands but subject to negotiation and payment of compensation to the landowner.
(i) used as a garden, orchard, vineyard, nursery, plantation or which is otherwise under cultivation;
(ii) within a horizontal distance of [100] meters of any spring, well, borehole, reservoir, dam, dipping-tank, waterworks, perennial stream or pan, artificially constructed watercourse, kraal, building or any structure of whatever nature;
(iii) within a horizontal distance of 300 meters from any point on the nearest boundary of any land, as defined in [Relevant Related Legislation] if such land has been surveyed for the purpose of inclusion in a township as defined in that section; or
(iv) on which accessory works were erected or constructed under this Act and which existed at the time of the issue of the mineral licence in question, without the prior permission in writing of the owner of such land, and, in the case of land referred to in subparagraph (iv), of the holder of a mineral licence who has erected or constructed such accessory works on which it is proposed to exercise such right;
(e) in, on or under any land subject to a production licence, as defined in [relevant section] of the [Petroleum Legislation], which existed at the time of the issue of the licence in question, without the prior permission in writing of the holder of the production licence concerned; and
(f) which in any way will interfere with fishing or marine navigation, without prior permission of the [Regulating Authority] granted, upon an application to the [Regulating Authority] in such form as may be determined in writing by the [Regulating Authority], by notice in writing and subject to such conditions as may be specified in such notice.

11. Resource Research/Non-Commercial Activities

A mining law, due to public interest or other reason, may allow an individual, a university, or a research institute to study the geological structure and mineral resources of a defined area as long as no deposits are used for financial gain. Research/non-commercial activities typically are not treated as a separate form of license, but may require authorization from the regulating body or government official who oversees the country’s mining sector. If not provided elsewhere in the national legislation, the responsibility for or the creation of a government agency or department for collection and management of geological data should be included.
It is desirable to provide in the mining law terms for non-commercial geological and related research activities by the national geological service or department, domestic and foreign universities and/or technical schools, often in collaboration with bilateral, regional or international institutions, for the purposes of increasing knowledge of and data on the country’s geology, seismology, hydrology, etc. The issues to be addressed in this regard include:

- Establishing the authority to reserve or assign areas for such purposes;
- The procedures for reserving areas for such purposes;
- The terms and conditions for maintaining such reserves or assignments and for their eventual release; and
- Whether and under what conditions non-commercial research may be conducted within areas subject to prospecting, exploration or mining licences.

11. Example 1:

Article [...]  
The prospecting and reconnaissance activities as well as the discovery or retrieval of fossils, for scientific purposes, from the second-order fossiliferous beds referred to in [the relevant article] of the present [Code] [Act] [Law], shall be carried out in accordance with the relevant permit issued in accordance with the provisions of the present [Code] [Act] [Law].

Article [...]  
Authorisation to remove fossils, for scientific purposes, from second-order fossiliferous beds, shall be granted, on an individual basis, to scientific organisations which may appoint natural persons as their representatives.

Article [...]  
The Government may declare that certain areas are restricted and reconnaissance, prospecting and archaeology are prohibited for the reasons, and following the procedures, set out in the present chapter and may be, subject either to the availability of the relevant area, or to written agreement from the rights holder for the area. Areas may be declared temporarily restricted in the cases provided for in Articles [...] below.

Annotation

Drawn from Madagascar’s mining codes (1999 and 2005), these provisions address non-commercial research in the following detail:

- A special authorization for the extraction of a certain class of fossils by scientific organizations;
- Government authority to reserve certain areas for specified purposes, including areas subject to mining licence provided that the holder gives written consent;
- Authority of the regulating entity to reserve areas for up to 18 months (extendable for an additional 6 months) for geological studies;
- The release of the reserved areas once the reservation is no longer justified;
- Requirements for the delivery and publication of reports on the scientific studies undertaken in the reserved areas.
(1) For geological studies, [the regulatory authority] may, on request from the department in charge of geological studies, issue an order declaring that the area relating to the studies is reserved, subject to the reservations provided for in [the relevant article] above.

(2) Said declaration must include: an identification square meters and cadastral markers which constitute the reserved area; details of the programme for the studies to be carried out inside the reserved area, and the period of time required for said studies.

(3) The initial period of the area reservation may not exceed eighteen (18) months, which may be extended only once, for a maximum period of six (6) months.

(4) The report on the geological studies carried out must be provided to [the regulatory authority] to be published and made available to the public, at least fifteen (15) days before the reservation of the area lapses.

Article [ ]
(1) Where it has been found that the reasons for which an area was classified as reserved are no longer valid, the relevant authorities may at any time issue a decree cancelling the reservation.

(2) Areas which are released once work, studies or training have been completed shall be returned to the initial rights holders of the formerly reserved areas.

Article [ ]
(1) Where second-order fossil beds containing rare species are found in various geological strata, such fossil beds may be the subject of permits for scientific studies and sampling.

(2) Once the studies have been completed, the permit holders are required to send technical reports on the work carried out to the Authority which granted the permit.
# AMLA GUIDING TEMPLATE
## PART A: General Topics

### 11. Example 2:

<table>
<thead>
<tr>
<th>Article</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notwithstanding the provisions of this Act, the Regulating Authority may, in the public interest and subject to such conditions as he may determine, authorize any person to undertake non-commercial investigations into the geological resources of [Country].</td>
<td>Drawn from Botswana’s mining law (1999), this provision in contrast with Example 1 contains a general mandate for the regulating entity to authorize “any person” to conduct non-commercial geological research. As the law does not provide any further detail this provides for broad discretion on the part of the regulating entity which may lead to inconsistent use of the authority or at worst, imposition of inappropriate terms and conditions.</td>
</tr>
</tbody>
</table>

### 12. Transparency/Confidentiality

#### 12.1 General

There is growing international consensus on the importance of transparency in promoting good governance of the mining sector and the efficient management of natural resource revenues. The fundamental idea behind transparency is that the more information the public has about the sector in terms of the legal framework, the mining activities and the revenues such activities generate, the more the public can hold governments and companies accountable for their respective actions related to the sector. From another perspective, transparency also plays an important role in ensuring fair and non-arbitrary processes by the sector regulating authorities ensures a level playing field which in turn instils, which is essential to instil confidence among investors. In other words, in that a level playing field exists. In broad terms, transparency is necessary for accountability, which in turn is necessary for good governance of the sector. Narrowly defined however, transparency provisions focus on information to be disclosed in a relevant, widely accessible, timely and accurate manner, and where possible, in open data format.

Transparency provisions in mining laws may explicitly list the categories of information and various documents that will be made available to the public; or may broadly provide for adherence to global transparency norms and standards such as the Extractive Industries Transparency Initiative (EITI), which requires implementing countries to annually disclose information on tax payments, licenses, contracts, beneficial ownership, production and other key elements around resource extraction (some countries such as the Central African Republic and Liberia have separate legislation implementing the EITI standard).

Transparency is a cross-cutting topic, relevant for all segments of the EI value chain. It is essential for a mining law to provide for robust transparency provisions in the context of (a) the decision to extract; (b) competitive procedures for issuing licenses and allocating mineral exploration or production rights; (c) deciding the mandate of the institutions to regulate and monitor the operations; (d) the status of non-payment obligations surrounding mining activities (e.g., health and safety, environment, and local content; (e) the fiscal regime, reporting of payments and collection of taxes, and publication of deals; (f) revenue management.

A mining law should also provide for disclosures related to information required to assist communities and other stakeholders in monitoring...
companies’ environmental and social obligations so as to supplement its own monitoring capacity through public engagement (a democratic approach to monitoring activities). Document where such information may be explicitly required include bidding materials and bid evaluation reports, mineral development agreements, environmental and social impact assessments and management plans, local content plans and community development agreements.

Confidentiality provisions may provide for limits on transparency, for example, to protect company commercially sensitive information. It is important, however, that these limitations are used on an exceptional basis, only where there is a valid justification for sensitivity. When allowed, confidentiality should be provided for a period of years with respect to geological, engineering, and other process related information acquired by mineral right holders in the course of exploration, development or exploitation. However, even in this case, exceptions to exception are necessary in order to permit the publication of statistics in the aggregate and to safeguard against potential frauds on the market by mineral right holders.

While some companies have resisted contract transparency on the grounds of commercial sensitivity, executives of some leading mining companies have spoken out in favour of contract disclosure principle. The International Council on Minerals and Metals, whose members are 17 of the largest global mining companies, requires that its members engage constructively in appropriate forums to improve the transparency of contractual provisions on a level-playing field basis.

The mining industry, civil society and mining administration staff favour provisions that require transparency in the application of mining law, as a safeguard against manipulation, corruption and abuse of discretion. Terms that promote transparency in the application of the mining law include:

- Public access to current information as to the availability of areas for mineral rights, the existence of mineral rights and pending applications for mineral rights and transactions, and the status of processing of applications for mineral rights and transactions;
- Objective, nondiscretionary criteria as to eligibility and conditions for the grant of mineral rights;
- Objective, nondiscretionary procedures for the submission and processing of applications for mineral rights and transactions;
- Clear, objective criteria for maintaining the validity of mineral rights;
- Clear, objective grounds for the denial of mineral rights or transactions and the cancellation or extinction of mineral rights, together with procedures requiring notice and publication of a written statement of the grounds for the decision, and an appropriate opportunity for challenge of the decision or cure of the failure;
- Clear, objective grounds for the imposition of sanctions and penalties, together with procedures requiring notice and publication of a written statement of the grounds for the sanctions or penalties, together with an appropriate opportunity for challenge of the decision or cure of the infraction;
- Clear, updated information on the ‘beneficial ownership’ of the companies that have obtained rights to extract minerals;
- Clear reporting requirements on mining activities, such as reports on exploited minerals quantity and mineral valuation, accident reports and other relevant information including audit reports.
## AMLA GUIDING TEMPLATE

### PART A: General Topics

- Clear annual reporting requirements on local development obligations.
- In contract regimes, the use of standard model agreements as the basis for limited negotiation of terms, subject to an objective review and approval procedure prior to signature, and published on the Mining Administration’s website. Ultimately, applying the rule of contracts, mineral development agreements negotiated under the mining law should be consistent with the provisions of the mining law.
- Clear publication requirements for payments made to governments and allowances provided to companies.

#### 12.1 Example 1:

**Article [_]**

(1) All holders of mining titles shall be required to respect the principles and requirements of the EITI Standard. In particular, the mining right holder must, as part of the EITI reports which they compile, make proper declarations based on audited data by the relevant bodies with the relevant expertise.

(2) The mining right holder must declare all information relating to payments it makes to the State, including social investment which is carried out, to the national EITI bodies.

**Annotation**

Drawn from Ivory Coast’s mining code (2014), this provision focuses on EITI requirements and requires compliance with the EITI standards and procedures by both mining companies and public authorities. While the provision best serves the legal frameworks of EITI member states, non-EITI member states may still use a similar provision by referring to the EITI principles and standards as the objective yardstick for evaluating obligations (South Sudan).

**Article [_]**

Any mining revenue due to the State and collected by the State, including social investment which is carried out by mining companies, is to be declared to the national EITI bodies.

#### 12.1 Example 2:

**Article [_]**

(1) All information and contracts required, submitted or signed under this [Law][Act][Code] shall be considered non-confidential. Confidentiality clauses or other clauses in a mining contract that prevent disclosure of information shall be void.

(2) The information shall be made available to the public in a timely, widely accessible and accurate manner, including on a public website or newspaper of wide circulation.

**Annotation**

This suggested provision establishes an expansive approach to transparency, requiring non-confidentiality in all information, data and reports related to the mining activity. Emphasis is placed on the quality of the information, namely, that it should be updated and widely accessible to the public. In cases where confidentiality is deemed necessary, the motivation behind should be clear, justified and limited in time.
### 12. Transparency/Confidentiality

#### 12.2 Beneficial Ownership

The momentum for enacting beneficial ownership legislation is gathering pace around the world, with a growing number of countries adopting principles on disclosure of beneficial ownership. The objective of such initiatives is to shed light on secret ownership structures that enable some extractive companies to evade tax payments or hide inappropriate relationships with relevant public officials. Mineral development benefits depend to a great extent on effective tax collection and extractives companies can evade by using complex ownership structures. While a complex and opaque ownership structure does not automatically mean that an extractives company is engaging in wrongdoing, the disclosure of beneficial ownership information helps to deter improper practices or facilitates their detection.

A mining law should define the meaning of “beneficial ownership” in detail, or include explicit reference to the definition provided in related laws. Defining the concept to cover all cases is challenging, but in most cases “beneficial ownership” means ownership which is enjoyed by any natural person who, directly or indirectly, has any significant control or economic interest in a given legal entity or receives significant economic benefit from such a legal entity, even where formal ownership (title) may be in the name of another entity. Preferably, each country’s choice of definition would be based on a clear understanding of what problems it most wants to address through the disclosure of beneficial ownership information, how companies operating in the country tend to structure their ownership, and whom the country anticipates to use the information.

Under the 2016 EITI standard, countries are required to adopt legislation that prompts the disclosure of beneficial ownership of entities that bid for, operate or invest in extractive assets. Such disclosure should include the identity of the owner, i.e. the name, nationality and country of residence; best practices indicate that the information should be made available through public registers.

With regards to a specific threshold of ownership at which beneficial owners must be declared, a ceiling of five percent or lower is recommended by international best practice. It is critical that countries pick thresholds with care, given that for large extractive projects even a 1 or 5 percent interest can generate substantial rents. Finally, legislation should provide for penalty for false, incomplete or misleading disclosures, such as revoking a company’s license or contract, or barring it from competing for contracts.

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### (3) Subject to Section (1) above, if any information is deemed sensitive on the basis of national interest or commercial purposes, a request may be made for confidentiality on an exceptional basis and the Minister shall determine the scope of such exception and provide a duration after which such information will be made available to the general public.
### 12.2 Example 1:

Article [...]

(1) All companies applying or bidding for a license are required to provide accurate information on their Beneficial Ownership as part of their application or bid documents and throughout the duration of a license, license holders will inform the [Regulating Authority] of any changes to this information, within one month of the change occurring.

(2) The [Regulating Authority] will promptly publish and maintain all Beneficial Ownership information in a publicly accessible format on its website.

(3) Failure to provide the information required in subsection (1) above, in good faith and in conformity with the regulations to this [Law]/[Act]/[Code] shall invalidate a license application, and be grounds for revocation where a license has been granted.

(4) For the purposes of this Article [...], “Beneficial Ownership” means the control, possession, custody or enjoyment by any natural person, directly or indirectly, of a reasonably significant economic interest in a given legal entity or receives significant economic benefit from such a legal entity, even where formal ownership (title) may be in the name of another person or entity. In addition to any other qualifying criteria, a person is automatically considered to be a beneficial owner if such person owns 5% or more of the legal entity in question.

### Annotation

- This suggested example requires that companies provide beneficial ownership information to the State and inform the regulating authority of any changes to beneficial ownership structures throughout the duration of a license, for purpose of maintaining current and accurate information. It obligates the regulating authority to make such information public. It also sanctions the lack of compliance by extractives companies for failure to provide relevant information.

- The example also provides a definition of the “beneficial ownership”, setting the threshold of ownership at 5%, the minimum required by international best practice. It is recommended that the definition of beneficial ownership, while useful at the site of the applicable provision, is best defined in the Definitions section of the mining law in order to allow for the definition to apply to the term no matter the site of occurrence in the law.

### 12.2 Example 2:

Article [...]

(1) All companies applying or bidding for a license are required to provide accurate information on their Beneficial Ownership as part of their application or bid documents and throughout the duration of a Mineral Right and all Mineral Rights holders will inform the [Regulating Authority] of any...

### Annotation

- While the first subsection is similar to the first example, this example goes further with the disclosure requirements, by soliciting the disclosure of beneficial ownership of subcontractors of the mineral rights holder.
changes to this information, within one month of the change occurring.

(2) The [Regulating Authority] will promptly publish and maintain all Beneficial Ownership information in a publicly accessible format on its website.

(3) Failure to provide the information required in subsection (1) above, in good faith and in conformity with the regulations to this [Law][Act][Code] shall invalidate a mining right application, and be grounds for revocation where a mining right has been granted.

(4) The holder of a mining right shall provide to the [Regulating Authority] a trimestral report on the beneficial ownership of subcontractors hired for a value higher than [Minimum Contract Amount Allowed].

(5) For the purposes of this Article [ ] (Beneficial Ownership), “Beneficial Ownership” means the control, possession, custody or enjoyment by any natural person, directly or indirectly, of a reasonably significant economic interest in a given legal entity or receives significant economic benefit from such a legal entity, even where formal ownership (title) may be in the name of another person or entity. In addition to any other qualifying criteria, a person is automatically considered to be a beneficial owner if such person owns 5% or more of the legal entity in question.

13. Anti-Bribery/Anti-Corruption/Conflict of Interest

Anti-bribery/Anti-corruption/conflict of interest often refer to provisions that prohibit license holders and government officials from engaging in fraud and corruption as it applies specifically to all activities related to mining operations. The inclusion of anti-bribery and anti-corruption provisions in mining laws, focusing on both the demand side (officials) and the supply side (companies or individual intermediaries), is a recent innovation that reflects a strong commitment to deter corruption in the administration of the sector. These provisions may also lay out processes that further discourage both license holders and government officials from engaging in corrupt and fraudulent activities such as language prohibiting government officials from individually owning a stake in mining operations. To the extent that economic penalties and sanctions are provided for in the mining code the sanctions should be meaningful for deterrence.
Although anti-corruption and anti-bribery provisions usually belong to the realm of criminal law, international best practice promotes the reinforcement of such prohibitions in mining laws, given high corruption risks in the sector. To the extent that economic penalties and other sanctions are provided for in the mining code, these should be meaningful for deterrence.

The inclusion of anti-bribery and anti-corruption provisions in mining laws is a recent innovation that reflects a strong commitment to deter corruption in the administration of the law. The more traditional provisions (see Example 3) focus on conflict of interest. This subject may be sufficiently treated in general laws sanctioning bribery and corruption and not necessitate specific sectoral measures in the mining law.

13. Example 1:

Article [...] (1) It is a prosecutable offence for any company which is active in the mining sector or has any interest in it, including any director, shareholder, employee, representative or subcontractor of such a company to make offers or promises, or offer donations, gifts or benefits of any kind whatsoever:

(a) a government official or an elected representative so as to influence a decision or an action taken as part of the carrying out of their public functions, including those which relate to the mining sector;

(b) any other individual, association, company, natural person or legal entity so as to use their imputed or actual influence over any action or decision by any government official or an elected representative as part of the carrying out of their public function, including those which relate to the mining sector.

Article [...] Should a mining rights holder or one of their officials, directors, employees, representatives, subcontractors or shareholders, duly acting in the name of said mining right holder, violate the provisions of the present [Code][Act][Law] relating to the prohibition of corrupt activities, this may lead to penalties including, without limitation, revoking the relevant mining right. The penalty shall be applied once there has been an investigation into the severity of the offence, the time which has lapsed since the offence was committed, the actions implemented by the rights holder in order to report the offence and inform the government, the level of investment which the rights holder has made in the mining sector, and any other factors that the court considers relevant.

Annotation

Drawn from Guinea’s mining law (2011), this provision seeks to establish a balanced framework for dealing with bribery and corruption. Supply side measures include prohibition of mining companies from inducement of public officials in relation to decisions on mineral rights, requirement of mineral right holders to sign a code of conduct to respect anti-bribery laws, to submit to anti-bribery investigations where necessary, and to uphold the EITI principles. Additionally, mineral right holders must prepare and submit an anti-corruption monitoring plan to be published annually setting out among other things the holder’s compliance with anti-corruption provisions, control measures instituted to prevent corruption and how bribery allegations have been dealt with. Demand side measures include prohibition against solicitation and acceptance of bribes by public officials in relation to any decision making concerning mineral rights.
### 13. Example 2:

Article [__]

(1) No public officer shall directly or indirectly, acquire any right or interest in any mineral right and any document or transaction purporting to confer any right or interest in any such officer shall be null and void.

(2) Subject to subsection (3), no public officer shall own or retain any shares in a company carrying on reconnaissance, exploration or mining operations, or the import, export or marketing of minerals in the country.

(3) Where an officer is at the assumption of the functions of his office, the holder of shares in such company as is mentioned in subsection (2), the officer shall divest himself from such right or interest or dispose of the shares within ninety calendar days after assumption of office.

(4) An officer who contravenes this section commits an offence and shall be liable on conviction to a fine not less than [insert appropriate amount that would be sufficient for deterrence] United States Dollars or its equivalent in [national currency] or to a term of imprisonment not exceeding twelve months or to both such fine and imprisonment.

(5) For the purposes of this section, “officer” means a public officer for the holder has already expended to develop the project.

Article [__]

It is a prosecutable offence for any civil servant in the judiciary or administration, or any other representative of the Civil Service of [Country], or any elected representative responsible for deciding on an administrative action in the mining sector to solicit or accept offers, promises, donations, gifts or benefits of any kind whatsoever, to perform, refrain from performing, or to abuse their influence in the carrying out of their functions, in particular in the context of allocating mining rights, overseeing activities and payments, and approving applications, or decisions relating to the extension, subleasing, assignment, transfer or cancellation of a mining right.

### Annotation

Adapted from Sierra Leone’s mining law (2009), this provision, in contrast with Example 1, is focused on conflict of interest and abuse of office situations. It requires public officials responsible for administering the mining law not to hold any interest in any mineral operations. This provision will affect persons who own a direct interest in mineral operations.
# AMLA GUIDING TEMPLATE

## PART A: General Topics

| time being engaged in the administration of this [Act][Code][Law]. |

## 14. Use of Security Forces

License holders are often required under mining laws to secure the people and goods within and around mining sites, which may be provided by private security, local police forces, national/army police forces or a combination of all three. Historically, the securing of mine sites has sometimes led to human rights abuses and other violations of the law in Africa, which have interrupted site production, endangered workers and local community residents, and in the extreme, generated civil conflict. There are also assessments on the correlation between poor regulation of private security forces and the increase in illegal arms trafficking further contributing to perennial conflict in resource rich countries.

While security is necessary to ensure the safety of people, goods and other features of mine sites, it is critical that the use of security is governed by a detailed legislative framework and is carefully monitored by relevant agencies within a State government. Over 20 African countries have legislation addressing the use and management of private security. At minimum a mining law should make reference to existing, topic-specific legislation as well as additional related legislation.

Overall, provisions addressing the use of security should seek to address the following points either in the mining law and/or in comprehensive related legislation:

- Process for approval as a private security firms
- Process of continuous evaluation for approved firms
- A code of conduct for all security forces including duties compliant with international law (for example prohibitions against sexual exploitation, child labour, inhuman or degrading treatment etc.)
- Regulations regarding the use of force, the scope, purchase, possession, storage and use of firearms/discharge of weapons and apprehension and detention of persons
- Clearly elaborated grievance procedures
- Requirement of incorporation of the code of conduct into company policies
- Requirement for training (initial and continuous) for all security forces
- Requirement for clear demarcation of the secured area around the mining site

In addition to the above issues, where private security legislation does not address security of mining sites specifically, provisions in the mining

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**NOTE:** This Document is part of a multi-part document, Parts A – E
NOTE: This Document is part of a multi-part document, Parts A – E
Article [__] People and assets control bodies
(1) Security and control of people and assets in restricted zones and protection zones, as well as the security of the respective deposits and mining production activity, are carried out by the respective mining rights title holders, using their own means and personnel contracted by the same, in a self-defence system, or by means of contracting specialized security companies, within the terms permitted by the law.

(2) Security and control of people and assets in the areas demarcated for handicraft production are carried out by the State. Whenever the areas are included in the proximity of industrial production zones, security shall be carried out in co-operation with the respective mining rights title holders.

(3) The people and assets security and control powers assigned to the entities mentioned in the previous numbers do not prejudice the generic competency attributed by law to the National Police and security bodies.

Article [__] Duties of the mining rights title holders regarding security
(1) In the exercise of the surveillance, security, and people and assets circulation control duties assigned to them by this Code, the mining rights title holders and security companies must:

a) keep under constant surveillance all zones under their control and monitor the movement of people and assets;
b) prevent unauthorised residence, movement, exercise of economic activities and access by people within the mining activity areas;
c) prevent the performance of any and all unauthorised mineral prospecting, search, recognisance and exploration activities;
d) ensure the protection of deposits and events, opposing any and all activities that infringe their security;
e) ensure the security of people, facilities, assets and services associated with the exercise of mining activities.

(2) In the performance of their duties, the entities and persons in charge of security and the control of people and assets movements may carry out the

Adapted from Angola’s mining code (2011), this provision addresses the use of security forces in more detail in two key areas: the scope of activities permitted as part of securing mining sites; and the relationship between the licence holder, private security companies, and relevant government agencies.

Some of the key distinctive features of the provision include:
- The right of the State to demarcate restricted zones for goods and persons around artisanal mining sites.
- The right of the State, in collaboration with the licence holder, to demarcate security zones where zones are near industrial production areas.
- The powers given to security forces do not prejudice the competency of the national police and/or other state security agencies with the responsibility for managing national security.
- The scope of activities licence holders/private security firms may engage in under the context of securing persons and goods around the mining site (for example defining what weapons, materials and other paraphernalia can be considered “instruments of a crime” and which security forces may legally confiscate).
- The duty of licence holders/private security firms to immediately hand over detained persons and goods to the national police and/or the public prosecutor.
- The duty of licence holders to publish internal regulations governing surveillance and safety protocol for employees and any other persons authorized to secure restricted areas.
- The barring of licence holders/private security firms from conducting criminal investigations.
- The requirement of licence holders/private security firms to collaborate with the police, public prosecutor and judiciary, particularly in combatting illegal trafficking of minerals.

Finally, this provision addresses issues of registration, evaluation, training and code of conduct for security forces by referencing the related legislation, in this
following acts:

a) identify and perform routine searches of the workers and, in a general manner, all people that enter or exit the restricted areas or circulate or are present in further areas under their control, as well as the objects and goods which they carry or are under their responsibility;
b) demand the presentation of access permits, credentials or goods or assets waybills, whenever access to the area legally requires those authorisations;
c) preventively hold the perpetrators of crimes as prescribed in the present Code, whenever caught committing an offence, and immediately deliver them to the competent police authorities, and apprehend the crime instruments carried by them.

3) For the purposes of the provisions of paragraph c) of the previous number, any means of transport, weapons and materials and camping accessories found in the possession of the perpetrators are deemed to constitute crime instruments.

4) Any persons held and the goods apprehended must be immediately delivered to the magistrate of the Public Ministry or the National Police station situated nearest to the detention or apprehension site, in terms of the law.

5) The mining rights title holders must publish internal regulations regarding surveillance, security and control, applicable to the restricted zones, aimed at their workers and all persons authorised by the law or invited to enter those zones.

6) The regulations mentioned in the previous number must be previously submitted to the competent ministry who, following favourable opinion, will submit them for approval by the National Police.

Article [...] Responsibilities of the bodies
The provisions of the previous article do not prejudice the exercise of the duties which, regarding surveillance, security, and control of persons and assets, are assigned to the public security bodies and private security specialist companies in the restricted zones, protection zones and areas demarcated for handicraft exploration, within the terms of the present Code.
### Article [ ] Prohibition of prosecution
The mining rights title holders or private security agents mentioned in the previous articles may not carry out criminal prosecution proceedings.

### Article [ ] Obligation to co-operate with authorities
The personnel from the concession companies or private security specialist companies in charge of the control of persons and assets within the strategic minerals production areas must, in the prevention of, and fight against, illegal trafficking of strategic minerals and further illegal activities as prescribed in the present Code, act in close co-operation with the police, prosecution and judiciary authorities.

### Article [ ] Further considerations
All further provisions regarding licensing and use of security forces may be found in [related legislation].

## 15. Implementing Regulations

In most jurisdictions, the mining law is not fully self-executing and requires the adoption and publication of implementing regulations. In cases where the law establishes principles to be fleshed out in the regulations, the latter may be quite extensive. In cases where the law itself is very detailed and largely self-executing, the scope of the implementing regulations may be limited to establishing forms for applications, reports, etc.

The Constitution may specify which matters can be established by regulation and which matters must be established by law. For example, usually taxes must be established by law rather than by regulation. Such restrictions must be respected.

As a general matter, it is desirable to set by regulation rules that may need to be changed in the foreseeable future, so that it is not necessary to seek an amendment of the law itself for that purpose. Laws that delegate extensive authority to the executive to establish the rules for mineral rights by regulation are often indicative of a lack of stability of the law. Mining investors have a strong preference for stable laws because of the long gestation period before mining investments become profitable, and the immobility of the assets. Furthermore, monitoring of the mining activities requires a stable regime as it takes time for the law to be comprehensively understood by the impacted communities and other stakeholders.

If regulations to implement the law will be necessary (as is the usual case), then the law should so state and authorize the executive power to enact
those regulations, while limiting their scope. Regulations cannot legally contradict the provisions of the law or regulate matters outside the scope of the authority delegated in the law.

Ideally, regulations should be passed together with the law to ensure effective implementation of the law. Otherwise, a reasonable timeframe may be provided for issuing regulations to prevent significant delays that could affect effective implementation of the law.

15. Example 1:

Article [...]
Related matters which are not expressly provided for, defined or regulated by the provisions of the present [Code][Act][Law] shall be deemed to fall under the Mining Regulations.

Annotation
Drawn from DRC’s mining law (2002), this provision provides the scope of the regulation. The provision sets the scope of the regulation by stating in numerous articles of the law what additional details are to be established by regulation. The mining code of DRC defines the mining regulation as the group of measures for the execution of the provisions of the mining code, established by decree of the President of the Republic.

15. Example 2:

Article [...]
(1) The [Regulating Authority] may, by notice in the [Gazette], make regulations regarding –

(a) the conservation of the environment at or in the vicinity of any mine or works;
(ii) the management of the impact of any mining operations on the environment at or in the vicinity of any mine or works;
(iii) the rehabilitation of disturbances of the surface of land where such disturbances are connected to prospecting or mining operations;
(iv) the prevention, control and combating of pollution of the air, land, sea or other water, including ground water, where such pollution is connected to prospecting or mining operations;
(v) pecuniary provision by the holder of any right, permit or permission for the carrying out of an environmental management programme;
(vi) the establishment of accounts in connection with the carrying out of an environmental management programme and the control of such accounts by

Annotation
Drawn from South Africa’s mining law (2002), this example specifies the scope of regulations that the regulating authority is authorized to adopt. Significant aspects of this authorizing provision include:
1) The authority to make regulations is delegated to the regulating entity – not to the Government as a whole, or the Prime Minister or the President, which assures the predominance of sectoral considerations;
2) The primary focus of the regulations is to be environmental protection;
3) General catchall provisions in subsections (k) and (l) expand the authority of the regulating entity considerably; and
4) Any regulation relating to State revenues or expenses requires the concurrence of the finance regulating authority.
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>(vii)</td>
<td>The assumption by the State of responsibility or co-responsibility for obligations originating from regulations made under subparagraphs (i), (ii), (iii) and (iv) of this paragraph; and (viii) the monitoring and auditing of environmental management programs;</td>
</tr>
<tr>
<td>(b)</td>
<td>The exploitation, processing, utilization or use of or the disposal of any mineral;</td>
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<tr>
<td>(c)</td>
<td>Procedures in respect of appeals lodged under this Act;</td>
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<tr>
<td>(d)</td>
<td>Fees payable in relation to any right, permit or permission issued or granted in terms of this Act;</td>
</tr>
<tr>
<td>(e)</td>
<td>Fees payable in relation to any appeal contemplated in this Act;</td>
</tr>
<tr>
<td>(f)</td>
<td>The form of any application which may or have to be done in terms of this Act and of any consent or document required to be submitted with such application, and the information or details which must accompany any such application;</td>
</tr>
<tr>
<td>(g)</td>
<td>The form, conditions, issuing, renewal, abandonment, suspension or cancellation of any environmental management programme, permit, licence, certificate, permission, receipt or other document which may or have to be issued, granted, approved, required or renewed in terms of this Act;</td>
</tr>
<tr>
<td>(h)</td>
<td>The form of any register, record, notice, sketch plan or information which may or shall be kept, given, published or submitted in terms of or for the purposes of this Act;</td>
</tr>
<tr>
<td>(i)</td>
<td>The prohibition on the disposal of any mineral or the use thereof for any specified purpose or in any specified manner or for any other purpose or in any other manner than a specified purpose or manner;</td>
</tr>
</tbody>
</table>
(j) the restriction or regulation in respect of the disposal or use of any mineral in general;

(k) any matter which may or must be prescribed for in terms of this [Act][Code][Law]; and

(l) any other matter the regulation of which may be necessary or expedient in order to achieve the objects of this [Act][Code][Law].

(2) No regulation relating to State revenue or expenditure may be made by the [Regulating Authority] except with the concurrence of the [Finance Regulating Authority].

(3) Any regulation made under this section may provide that any person contravening such regulation or failing to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [six] months.

16. Regulating Bodies

Provisions which address what government agencies will issue licences, manage the license application process, provide oversight of issued licenses, and ensure license holders exploit minerals in ways that are consistent with a country’s laws, oversee the utilization of the mineral development-generated resources and other benefits or conduct research and manage knowledge and information on the sector are collectively referred to as ‘regulating bodies’ provisions. Mining codes may spell out the composition, function, and responsibility of each relevant bodies, including how they coordinate with one another to manage a country’s mining sector. The respective authority at the national, provincial and local bodies should also be made clear.

Also important to consider is provisions that allow for inter-ministerial or inter-agency coordination by all the bodies implicated in management of the sector to avoid inconsistencies, information silos and conflicts among the government bodies and agencies.

A key trend/consideration is separation of regulatory scope, i.e. those that grant the rights, those that monitor or enforce the obligations attached to licenses or rights granted, and those responsible for collection of revenues. The role of state-owned entities should be clearly defined. Good
practice dictates against blending of regulatory, enforcement and commercial responsibilities in one entity to avoid any conflict of interest that may result. Good practice would be to restrict the role of state-owned companies to commercial responsibilities.

### 16. Example 1:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
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</thead>
<tbody>
<tr>
<td>Chapter II of the First Title of the [Code][Act][Law] sets forth the respective authority of the regulating bodies in articles [ ], covering the following:</td>
<td>Drawn from DRC’s mining law (2002), this provision sets forth the respective duties of the regulatory authorities in 8 articles and then states in Article 16 that no other public or state institution has authority to administer the provisions of the Mining Code and the related Regulations.</td>
</tr>
<tr>
<td>Article 8: Of the Role of the State and its organs</td>
<td>Within this framework, the Mining Cadastre is established as a semi-autonomous, self-financing entity under the supervisory authority of the regulating entity, responsible for administering the cadastral maps and registries and the intake and processing of all applications concerning mineral rights and related transactions.</td>
</tr>
<tr>
<td>Article 9: Of the President of the Republic</td>
<td></td>
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<tr>
<td>Article 10: Of the [Regulating Authority]</td>
<td></td>
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<tr>
<td>Article 11: Of the Provincial Governor and the Provincial Division Chief of Mines</td>
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<tr>
<td>Article 12: Of the Mining Cadastre</td>
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<td>Article 13: Of the Directorate of Geology</td>
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<td>Article 14: Of the Directorate of Mines</td>
<td></td>
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<tr>
<td>Article 15: Of the Service Responsible for Protection of the Mining Environment</td>
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<td>Article 16: Of the Restriction of Authority</td>
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</tbody>
</table>

### 16. Example 2:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part [relevant section] of the [Act][Code][Law] of [Country], sets forth the duties and functions of the authorities responsible for administering the mining law of [Country] in the following 18 articles:</td>
<td>Drawn from Sierra Leone’s mining law (2009), this provision, though too lengthy to be reproduced here, provides a good example of a chapter that sets forth the responsibilities of an Advisory Board and the key departments of the regulating body. However, the status and functions of the Mining Cadastre Office are set forth in another part of the Act.</td>
</tr>
<tr>
<td>3. [Regulating Authority] to be responsible for administration of [Act][Code][Law]</td>
<td></td>
</tr>
<tr>
<td>4. Director to be responsible for implementation of [Act][Code][Law]</td>
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<tr>
<td>5. Duties of the Director</td>
<td></td>
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<tr>
<td>6. Powers of Director and authorised officers</td>
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<td>7. Execution and delegation of functions of the Director</td>
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<tr>
<td>8. The Duties of the Director of Geological Survey</td>
<td></td>
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<tr>
<td>9. Execution and delegation of functions of the Director of Geological Survey</td>
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</tbody>
</table>
### 17. Cadastral System/Registration

A well-conceived and established cadastral system can maximize transparency, clarity and efficiency in the management of mineral rights, and minimize disputes among licence holders, thereby enhancing the security of mineral licence.

The cadastral system provides the framework of basic rules for the identification of mineral licence area boundaries on maps and in the field. At a minimum, a cadastral system requires that all mineral licence areas be polygonal in shape with all borders aligned north-south or east-west based on the most accurate official geographical/topographical maps available for the jurisdiction. At best, a cadastral system requires that all mineral licence areas be composed of contiguous square area units identified on official maps maintained and made available by the mining cadastre. The size of those units is a technical issue that depends on the quality of the jurisdiction’s maps and geodesic network.

A well-functioning cadastral system provides for the maintenance and updating of cadastral maps to show all areas that are either off limits to mineral activity, or subject to restrictions, or occupied by existing mineral rights, or subject to pending applications - in as close to real time as possible.

In best practice, the cadastral system for mineral licences is linked with the function of maintaining a current and accurate registry of mineral licences and transactions, as well as a registry of applications for mineral licences.

The cadastral system and registry may be maintained in hard copy or electronic versions available on a closed network or online.
In best practice, the cadastral system for mineral licences is linked with the function of maintaining a current and accurate registry of mineral licences and transactions, as well as a registry of applications for mineral licences.

The cadastral system and registry may be maintained in hard copy or electronic versions available on a closed network or online.

Technical details may be specified in regulations, provided that the basic principles of the cadastral system and registry are stated in the mining law.

The cadastral system for mineral rights is often separate and apart from the cadastral systems for surface land rights, forest rights, water rights, petroleum rights, etc., but may be integrated into a generalized cadastral system showing all such rights.

<table>
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<tr>
<th>17. Example 1:</th>
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<tbody>
<tr>
<td>Article [...]</td>
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<tr>
<td>(1) The Ministry of Mines (Cadastre Minier) is a public office with juristic personality and financial autonomy. It shall fall under [the regulatory authority]. Its articles of association, organisational structure and mandate shall be determined by a Decree of the [President] of [Country]. To cover its operating costs, the Ministry of Mines shall be authorised to collect and manage fees for the filing of applications and annual surface area fees per square meter.</td>
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<tr>
<td>(2) The Ministry of Mines shall be responsible for registering: a) applications for mining and/or quarrying rights to be granted; b) the mining and/or quarrying rights accordingly granted as well as decisions to refuse applications; c) the revocation, cancellation or withdrawal of mining rights; d) the transfer and subleasing of mining rights; e) mining financial guarantees.</td>
</tr>
<tr>
<td>(3) In addition, it shall be responsible for cadastral surveys for applications for mining and/or quarrying rights, extensions of mining or quarrying rights to other minerals, coordinating technical and environmental assessments for applications for mining or quarrying rights as well as issuing Prospecting rights.</td>
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<table>
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<tr>
<th>Annotation</th>
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<tr>
<td>Drawn from DRC’s mining law (2002), this example contains extensive and comprehensive provisions establishing a cadastral system and registry for mineral rights and applications.</td>
</tr>
<tr>
<td>Article 12 of the law establishes the Mining Cadastre as an institution, defines its functions, and provides a financing mechanism for its services.</td>
</tr>
<tr>
<td>The functions of the Mining Cadastre include the registration of: applications for mineral rights, issued mineral rights, withdrawals and cancellation of mineral rights, transfers and sub-leases of mineral rights, and security interests in mineral rights.</td>
</tr>
<tr>
<td>Article 12 also assigns to the Mining Cadastre the functions of performing the cadastral (or spatial) evaluation of applications regarding mineral licences and coordinating the technical and environmental evaluations by the responsible authorities.</td>
</tr>
<tr>
<td>The article lists in full all functions assigned to the Mining Cadastre, which include the conservation of all mining and quarrying licences and maintaining on a regular basis the registries and cadastral maps in accordance with a specific national cadastral system. Such registries and maps are available for public</td>
</tr>
</tbody>
</table>
(4) The Ministry of Mines shall certify the minimum financial requirements of those applying for mining, quarrying and prospecting rights.

(5) In addition, the Mining Cadastre shall:

(a) Keep a register of mining and quarrying titles.
(b) Regularly maintain its registers and mining rights maps in accordance with a specific national cadastral system which is open for public inspection.
(c) Record renewals of mining and/or quarrying rights in accordance with the provisions of the present [Code][Act][Law].
(d) Give the applicants concerned written reasons for the findings of the relevant mining appraisals and issue them with mining and quarrying rights according to the scope of authority of the relevant authority.
(e) Record in writing views with regard to the classification, declassification or reclassification of a prohibited area.
(f) Be the decision-making authority in all matters relating to the transfer and subleasing of mining and quarrying rights and thereafter registering the said decisions.
(g) Remove the registration of the Mining or Quarrying Area on the cadastral map.
(h) Have the powers of a notary public with regard to certifying the authenticity of legal instruments relating to mortgaging, subleasing, and transferring of mining and quarrying rights.

(6) The Mining Regulations shall lay down detailed conditions for registering the legal instruments provided for in the present [Code][Act][Law], for the coordination of and the technical and environmental assessments relating to applications, for notifying interested parties of the findings from mining appraisals, and models for mining or quarrying titles.

Article 12 provides that the Mining Regulation will set the details for the maintenance of the registries, the coordination of processing of applications, etc.

Articles 28 and 29 of the same code specify the principle rules for the shape and location of mineral licence areas. They are based on the concept of a national grid system using mapping coordinates and a basic geographical square unit to be defined in the Mining Regulation and oriented North-South and East-West. All mining licence areas must be composed of available, contiguous square units as defined. They are identified and plotted on the cadastral map by the coordinates of the centre of each such square unit on maps of 1:200,000 accuracy. The Mining Regulation provides the technical details.

Other articles from the law specify the role of the Mining Cadastre in connection with the processing of applications for, and administrative or judicial decisions affecting, mineral rights.

Article [__] The shape of Mining and Quarrying Areas

(1) Mining or quarrying rights shall be granted for mineral substances within a specific Area.

(2) An Area shall be in the shape of a polygon made up of whole, adjoining areas, subject to the limitations imposed by the borders of the National consultation.
### AMLA GUIDING TEMPLATE

**PART A: General Topics**

<table>
<thead>
<tr>
<th>Territory and those relating to reserved prohibited and protected areas as specified in the Mining Regulations.</th>
</tr>
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<tbody>
<tr>
<td>(3) The National Territory has been divided into cadastral mining areas according to the system specified in the Mining Regulations for the appropriate coordinates. These divisions define uniform and indivisible areas, the sides of which are oriented north-south and east-west.</td>
</tr>
<tr>
<td>(4) An Area shall not include squares which do not form part of the internal area which is the subject of a mining or quarrying right.</td>
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</tbody>
</table>

**Article [__] The location of Mining and Quarrying Areas**

<table>
<thead>
<tr>
<th>(1) The geographical location of an Area shall be identified by the coordinates for the centre of each of the squares which make up the Area.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Areas shall be indicated on maps using a scale of 1/200,000, held by the Ministry of Mines.</td>
</tr>
<tr>
<td>(3) The Mining Regulations shall lay down the terms for the division of the national territory into cadastral mining areas, as well as the rules governing the identification of Mining and Quarrying Areas.</td>
</tr>
</tbody>
</table>

**17. Example 2:**

**Article 1. Establishment of the Mining Cadastre Office**

<table>
<thead>
<tr>
<th>(1) There shall be established within six (6) months of the coming into effect of this [Act][Code][Law] a Mining Cadastre Office with the responsibility for the administration of mining rights and the maintenance of the cadastral registers.</th>
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<tbody>
<tr>
<td>(2) The Mining Cadastre Office-</td>
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<tr>
<td>(a) shall be a body corporate with perpetual succession and a common seal;</td>
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<tr>
<td>(b) may sue and be sued in its corporate name; and</td>
</tr>
<tr>
<td>(c) may acquire, hold and dispose of property, whether movable or immovable.</td>
</tr>
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</table>

**Annotation**

Drawn from Nigeria’s mining law (2007), this provision provides for the creation of the Mining Cadastre as an agency with sole responsibility for administration of mining rights. The provision specifies the functions of the cadastre and, in particular, the registries of mining rights that the agency is to maintain. The Act does not, however, establish principles for the shape, and alignment of mining right areas, providing only in section 145 that their boundaries will be planes extending downward into the earth to unlimited depth. Presumably, such issues may be clarified in regulations made by the Minister under section 21 to [give] full effect to the provisions of [the] Act”.

**NOTE: This Document is part of a multi-part document, Parts A – E**
(3) The Mining Cadastre Office shall be administered by a [Regulating Authority] who shall be assisted by such officers as shall be required for the efficient functioning of the cadastre system.

(4) In order to fulfil its functions under this [Act][Code][Law] the Mining Cadastre Office shall operate as the sole agency responsible for the administration of mining rights.

(5) The Mining Cadastre Office shall in addition to any other functions prescribed by or under this [Act][Code][Law] perform the following:

(a) consider applications for mining rights and permits, issue, suspend and upon the written approval of the [Regulating Authority], revoke any mining right;

(b) receive and dispose of applications for the transfer, renewal, modification, relinquishment of mining rights or extension of areas;

(c) maintain a chronological record of all applications for mining rights in-
   (i) a priority book which is to be specifically used to ascertain the priority and registration of applications for exclusive rights on vacant areas;
   (ii) a general registry book which is to be used for all other types of applications where registration of the priority is not required;

(d) undertake such other activities reasonably necessary for the purpose of carrying out its duties and responsibilities under the provisions of this [Act][Code][Law].

Article [__] Central and Zonal Offices of the Mining Cadastre Office
A Central Mining Cadastre Office with exclusive authority and jurisdiction over the whole of the country shall be established in [city] as the headquarters of the Mining Cadastre Office. The Mining Cadastre Office shall, according to administrative convenience, maintain an appropriate number of Zonal offices.
Article [__] Mining Cadastre Registers
(1) The Mining Cadastre Office shall open a series of files to be known as Mining Cadastre Office Registers for the purposes of this [Act][Code][Law], comprising of-

(a) a register of Reconnaissance Permits;
(b) a register of Exploration Licences;
(c) a register of Mining Leases;
(d) a register of Small-scale Mining Leases;
(e) a register of the Water Use Permits; and
(f) a register of Quarry Leases.

Article [__] Boundary
Every mining right, temporary right or mining lease shall be bounded by vertical planes from the surface boundary lines drawn downwards to an unlimited depth from surface.

18. License Acquisition Procedures and Timelines

By setting forth in the mining law the procedures by which mining rights are acquired, the legislature establishes a basis for holding the issuing authority accountable for the process of issuing mining rights. This avoids the use of unchecked discretion and the related opportunities for corruption in the issuance of mineral rights.

The inclusion of timelines for compliance with license acquisition procedures is similarly important in holding the administrative authority accountable and in ensuring that efficient processing procedures are adopted in order to comply with the timelines. While the examples below indicate a “first come first served” rule, a “tender system” rule is equally valid for license issuance. See Part B for a more detailed discussion on mineral licensing regime.

18. Example 1:

Article [__]
In general, mining licences shall be granted according to a principle of “1st come, 1st served”.

Annotation
Drawn from Madagascar’s mining law (1999), this example provides clarity as to the procedures and timeline for the issuance of mineral rights by establishing:
● The general rule for issuance of mining rights: “first come, first served”;

NOTE: This Document is part of a multi-part document, Parts A – E
PART A: General Topics

Article [__]
(1) Prospecting and operating licences shall be granted by [the regulatory authority], which may delegate these powers.

(2) Small-scale mining licences shall be granted by the relevant authority for the Province concerned, which may delegate this power.

Article [__]
(1) All applications for mining licences are to be made using the prescribed form available from the Ministry of Mines, a template of which shall be set out in the decree implementing the present [Code][Act][Law].

(2) After correctly completing the form, the applicant is to file their application at the relevant office, and retain the acknowledgement of receipt which indicates the date and time, to the hour and minute, that the application was filed, and is evidence of filing.

Article [__]
(1) Prospecting licences relating to a defined area shall be granted by a decision either of [the regulatory authority] or its representative, within no more than thirty (30) working days, to the first eligible person who filed an application which meets the conditions specified in [the relevant article] above.

(2) In cases where the applicant is applying pursuant to an exclusive permit to reserve an area, they are to attach said permit, duly endorsed by the authorities for the Provinces concerned, to their application.

Article [__]
(1) An operating licence for a defined area shall be granted, by a decision of [the regulatory authority] or its representative, to the holder of a prospecting licence or a small-scale mining licence for said area, as the case may be, who filed an application which meets the conditions provided for in [the relevant article] above during the period in which their licence was valid.

(2) All operating licence applications are to be filed together with an

• The authority who issues each type of mining right;
• The availability of application forms from the Office of the Mining Cadastre;
• Where the completed application is to be filed (the Office of the Mining Cadastre);
• The timeline for processing and decisions by the issuing authority;
• The criteria for the decision to issue each type of mining right; and
• The requirement to pay the first year’s administrative fees for the mining right area as a condition for delivery of the mining right.
environmental impact assessment drawn up in accordance with the environmental protection regulations which are in force, and said report is to be sent by the Ministry of Mines to the department responsible for the mining environment, for assessment and approval from the relevant Authority.

(3) Operating licences shall be issued within no more than thirty (30) working days.

Article [...]  
(1) A small-scale mining licence for a defined area shall be granted, by a decision of the relevant Authority for the Province concerned, or its representative, to the first eligible person who filed an application which meets the conditions provided for in [the relevant article] above.

(2) Where the applicant is applying pursuant to an exclusive permit to reserve an area, they are to attach said permit, duly endorsed by the relevant authorities concerned, to their application.

(3) All applications are to be filed together with an environmental impact assessment drawn up in accordance with the environmental protection regulations which are in force, and said plan is to be sent by the Ministry of Mines to the department responsible for the Mining Environment, and approved by the relevant Authority.

(4) Small-scale mining licences shall be issued within no more than thirty (30) working days.

Article [...]  
The Ministry of Mines shall assess all mining licence application files and, within twenty (20) days, shall send the ones which meet the required conditions for granting the requested licence to [the regulatory authority] or the relevant Authority for the Province concerned.

Article [...]  
The initial mining right shall be issued by the Ministry of Mines once the holder has paid the annual mining administration fees per square metre relating to the first year.
### 18. Example 2:

**Article [__]**

(1) Any person who wishes to apply to the [Regulating Authority] for a prospecting right must lodge the application –

(a) at the office of the [Regulating Authority] in whose region the land is situated; (b) in the prescribed manner; and (c) together with the prescribed non-refundable application fee.

(2) The [Regulating Authority] must accept an application for a prospecting right if

(a) the requirements contemplated in subsection (1) are met; and (b) no other person holds a prospecting right, mining right, mining permit or retention permit for the same mineral and land.

(3) If the application does not comply with the requirements of this section, the [Regulating Authority] must notify the applicant in writing of that fact within [14] days of receipt of the application and return to the applicant.

(4) If the [Regulating Authority] accepts the application, the [Regulating Authority] must, within 14 days from the date of acceptance, notify the applicant in writing –

(a) to submit an environmental management plan; and (b) to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the result of the consultation within 30 days from the date of the notice.

(5) Upon receipt of the information referred to in subsection (4)(a) and (b), the [Regulating Authority] must begin consideration of the application.

**Annotation**

Drawn from South Africa’s mining law (2002), this provision clearly sets forth guidelines for prospecting rights:

- The Authority with whom an application must be lodged;
- The criteria for acceptance of the application;
- The obligation of the Regional Manager to accept the application if it complies with the criteria;
- The timeframe within which the Regional Manager is required to notify the applicant of the acceptance or rejection of the application;
- The subsequent steps required of the applicant in order to complete the application process;
- The obligation of the Regional Manager to forward the completed application to the [regulating entity];
- The criteria based on which the [regulating entity] must accept or refuse an application; and
- The timeframe within which the [regulating entity] must notify the applicant of the basis for her decision to refuse the application, if applicable.

Similar provisions apply to the acquisition of reconnaissance licenses and mining leases under other sections of the law.

These provisions allow the exercise of greater discretion by the granting authority than do those of Madagascar, but nevertheless provide a basis for holding the processing and issuing authorities accountable for the issuance or refusal of mineral rights in accordance with the law.
### AMLA GUIDING TEMPLATE

#### PART A: General Topics

(6) The [Regulating Authority] may by notice in the [Gazette] invite applications for prospecting rights in respect of any land, and may specify in such notice the period within which any application may be lodged and the terms and conditions subject to which such rights may be granted.

(7) Subject to subsection (4), the [Regulating Authority] must grant a prospecting right if—

(a) the applicant has access to financial resources and has the technical ability to conduct the proposed prospecting operation optimally in accordance with the prospecting work programme;

(b) the estimated expenditure is compatible with the proposed prospecting operation and duration of the prospecting work programme;

(c) the prospecting will not result in unacceptable pollution, ecological degradation or damage to the environment;

(d) the applicant has the ability to comply with the relevant provisions of the [Relevant Health Legislation]; and

(e) the applicant is not in contravention of any relevant provision of this [Act][Code][Law].

(8) The [Regulating Authority] must refuse to grant a prospecting right if—

(a) the application does not meet all the requirements referred to in subsection (1);

(b) the granting of such right will—
   (i) result in an exclusionary act;
   (ii) prevent fair competition; or
   (ii) result in the concentration of the mineral resources in question under the control of the applicant.

(9) If the [Regulating Authority] refuses to grant a prospecting right, the [Regulating Authority] must, within 30 days of the decision, in writing notify the applicant of the decision with reasons.
19. Records and Reporting Requirements

Mining laws generally impose recordkeeping and reporting requirements on mining rights holders. However, many mining laws are either silent or lax with respect to recordkeeping and reporting requirements of the regulating authority.

Recordkeeping and reporting requirements imposed on the regulating authority by legislation can serve a variety of important purposes, such as:

- ensuring public access to information about the existence, nature, location and ownership of mineral rights;
- ensuring appropriate use and protection of confidentiality of competitive information provided by mineral right holders;
- providing a record for administrative or judicial review of decisions affecting mineral rights or applications for such rights;
- providing a record of inspection results for follow-up and enforcement purposes;
- providing increasingly detailed geological, environmental, production, trade and fiscal revenue information about the country’s natural resource endowment and industries, for purposes of investment promotion, policy-making and policy evaluation;
- promoting transparency and accountability; and
- enabling legislative oversight of the administration of natural resources.

If such requirements are left to the regulations, there is little basis for legislative oversight of the implementation of the mining law. In some mining laws of the Africa region, recordkeeping requirements are found in articles setting forth the duties of certain officials or institutions or in articles describing application and mining right registration procedures. Confidentiality requirements for reports submitted by mining rights holders are also usually set forth in separate articles, as noted in topic 11.

Reporting requirements with respect to geological information and production statistics are sometimes found in articles stating the duties and responsibilities of key departments of the regulating authority. Consideration ought to be given to inclusion in the mining law of a more comprehensive statement of the recordkeeping and reporting requirements applicable to the regulating authority, in order to promote transparency, knowledge base enhancement, accountability and better public understanding of the contributions and challenges of the sector.

19. Example 1:

| Article [ ] Public access and archiving: |
| (1) The registries of mining rights applications, issuances, transactions and |

| Annotation |
| This is an example of a record keeping and reporting requirement that seeks to accomplish the following objectives: |
PART A: General Topics

1. Free public access to information as to the location, nature and ownership of all mining rights;
2. Responsibility of officials for the accuracy and truth of information recorded in all mining rights and transaction registries, with safeguards against manipulation;
3. Indefinite archiving of all internal reports such that they are available for review in formal legislative and judicial or arbitral proceedings (for easy implementation, such archiving should probably better be maintained electronically);
4. Annual legislative oversight of the performance of the minerals sector; and
5. Transparency and public awareness of mineral sector performance and contracts.

These requirements could be either expanded or made more general in nature.
**AMLA GUIDING TEMPLATE**  
**PART A: General Topics**

| Description of significant geological information developed (subject to confidentiality requirements); statistics of production, sales and royalty receipts for each mineral commodity, by type of mining right or authorization; statistics of employment by type of mining right and position, including average wages or salaries; statistics on health, safety and the efficacy of environmental protection measures in the sector; administrative fee income per type; and allocation or disposition of royalty and fee income. |
| (2) This report shall be delivered to the commissions of each chamber of the [National Legislative Authority] no later than [date] of each year and shall be posted on the website of the [Regulating Authority] for public review. |

**Article [_] Publication**  
The [Regulating Authority] shall publish on its website: all mineral exploration and/or mining contracts entered into by the [State] or state-owned enterprises; summaries of all preliminary and final environmental impact assessments or studies for mineral projects; the [Regulating Authority]'s annual report on the sector; and annual statistical summaries of exploration and mining results, royalties and fees charged and received.

19. **Example 2:**

| Article [_] |
| (1) The [Regulating Authority] shall maintain records of all mineral concessions issued under this [Act][Code][Law] in sufficient detail [including the following]: — |
| (a) the name of the holder of the mineral concession; |
| (b) the area subject to the mineral concession; |
| (c) the date of issue and duration of the mineral concession; and |
| (d) the mineral for which the concession is granted. |
| (2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal Government office hours, and members of the public shall be permitted to take copies thereof. |

**Annotation**  
Drawn from Botswana’s mining law (1999), this example requires the regulating authority to collect and make available to the public information on mineral rights granted under the law. It is also drafted to enable the regulating authority to collect other relevant data such as records of transactions involving mineral rights. Unlike example 1 which provides significant detail of record keeping requirements, this example allows for a concise provision which may be interpreted to require any information concerning a mineral concession when needed. Also unlike example 1, the access to information element is stronger as there seems to be no costs associated with public inspection of records and obtaining of copies of materials of interest.
# AMLA GUIDING TEMPLATE
## PART A: General Topics
### 20. Dispute Resolution

Generally, dispute resolution provisions lay out processes for resolving disputes related to mining activities within and outside the court system between companies, the government, impacted communities, and others with legal standing. It is good international practice to provide in a mining law what will happen if there is a dispute between the rights holders in the mining sector. This creates trust that any dispute that arises will be dealt with in a clear foreseeable manner. When provided for, the provisions are often limited in scope in order to accommodate issues that may arise in contract negotiations with investors and/or obligations undertaken by countries who are party to Bilateral Investment Treaties ("BIT"). These provisions may include reference to arbitration or mediation for disputing parties, and will frequently designate which authorities possess the jurisdiction to adjudicate disputes and the scope of disputes to be adjudicated. It is important to ensure consistency with other laws that may also address this topic such as investment laws.

Jurisdiction provisions are different from governing law provisions which provide for the law which should apply to the dispute when the courts, arbitral tribunals or other alternative dispute resolution entities have jurisdiction.

Where the mining law provides for jurisdiction (such as national courts), it should explicitly establish whether such jurisdiction is exclusive or not. This is because when the jurisdiction provision is not exclusive, the result will be that each mining permit and concession and other contractual documentation could have different dispute jurisdictional mechanisms, such as courts and arbitral tribunals, which could give rise to forum shopping as well as different types of decisions in the same type of dispute. This gives flexibility to the parties but not necessarily foreseeable results which can be relied on in future disputes, thus defeating the objective of a consistent legal regime. An exclusive jurisdiction clause could have multiple layers such as the obligation to mediate prior to filing a claim before an arbitral body or a court.

Best international practices suggest that whatever mechanism is chosen that it be clear as to which types of disputes will be covered by the jurisdictional provision disputes. For example, will the provision (courts or arbitrators or dispute boards or mediators etc.) cover administrative disputes such as license and permit granting and revocation of such license and permits; third party complaints such as human rights and environmental issues; expropriation of land; disputes between the parties to a permit or concession over taxes, revenue, royalties, mine safety etc.

For a clear and stable regime, it is also best to have a simple rule where the scope of subject-matter jurisdiction is universal, meaning it applies to all disputes arising out of the sector. The reason for this is that parties will often waste precious time disputing which matters fall within the jurisdiction of the body (courts, arbitration, administrative tribunals, dispute boards, mediators etc.) as a litigation strategy to avoid a decision on the underlying dispute.
Mining laws generally encourage alternative dispute resolution mechanisms such as amicable resolution amongst the parties followed by mediation, a process of negotiation with the support of a neutral third party. While very similar to arbitration, mediation differs in that there is no need to submit evidence or testimony, as is typically expected in an arbitration process. It also differs in the sense that, mediation is usually not binding on the parties. While mediation is not binding, it does provide a mechanism for the parties to address many of the matters at issue, and in some cases, resolve some of the matters at issue, prior to resorting to arbitration or the national courts.

Due to the instability of certain judicial systems at least as perceived by investors, many investors prefer international arbitration. Some of the perceived advantages of arbitration are: it is private, the parties choose the arbitrators, the arbitral forum is deemed more neutral and it usually involves sector-specialized arbitrators, arbitration may be more efficient because the deadlines are fixed by the parties with the arbitrators, the decision is final and can only be appealed in limited circumstances. In addition, for countries who are signatory to the New York Convention, arbitral decisions are automatically enforceable (subject to exceptions detailed under Article 5 of the Convention) making it relatively easy to get an arbitral award executed.

It is essential for a mining law to properly outline the dispute resolution process as a key piece in building a transparent legal framework for the country’s mining sector. Given that mineral development agreements in Africa often establish dispute resolutions forums outside the resource country, it may be beneficial to consider requiring the utilization or exhaustion of local dispute resolution processes (judicial and non-judicial) prior to seeking out international forums in order to further the local development and/or consolidation of rule of law culture for the sector. However, this also requires that any dispute resolution structure created locally be independent, above reproach and fully equipped with the resources and expertise necessary to effectively resolve disputes. When the national courts are neutral, fair and efficient and investors can be convinced of their reliability, then national courts are a good choice because they promote the rule of law in the country.

Ultimately, drafters of contracts and agreements entered into in the context of the mining law are advised to be vigilant to ensure coherence between the dispute resolution clauses in the contract and those in the mining law.

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<th>20. Dispute Resolution</th>
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<tr>
<td>20.1 Jurisdiction</td>
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A mining law may choose to address jurisdiction as a topic on its own or as part of provisions addressing the function and collaboration among regulating bodies.
As noted above, jurisdiction provisions detail what forum(s) will resolve disputes arising out of activities in the sector and what matters may come before such forums. For a clear stable regime, the mining law should seek to streamline dispute resolution processes to eliminate forum shopping and promote consistent resolution of disputes.

20.1. Example 1:

Article [\_]

(1) Where a dispute arises between a holder of a mineral right and [Country] in respect of a matter expressly stated under this [Act][Code][Law] as a matter which shall be referred for resolution, good faith efforts shall be made through mutual discussion and alternative dispute resolution procedures, to reach an amicable settlement.

(2) Where a dispute arises between a holder who is a citizen and [Country] in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution, which is not amicably resolved as provided in subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may be submitted by a party to the dispute, to arbitration for settlement in accordance with the [Domestic Arbitration Law] or any other enactment in force for resolution of disputes.

(3) Where a dispute arises between a holder who is not a citizen and the [Country] in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution under this section, which is not amicably resolved as provided under subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may, by a party to the dispute giving notice to all other parties, be submitted to arbitration:

(a) in accordance with a(n) international machinery for the resolution of investment disputes, as agreed to by the parties, or

(b) if the parties do not reach an agreement under paragraph (a) within thirty days, or a longer period agreed between the parties, of the matter

**Annotation**

Inspired by Ghana’s mining law (2006), this provision first indicates the scope of disputes justiciable under the provision, namely all disputes arising from a matter expressly covered by the law. It then creates a dual step that requires the use of alternative dispute resolution as the primary forum before the use of an arbitral forum. The provision also distinguishes between disputes between the Government and nationals and disputes between the Government and foreign nationals. However, it does not clarify the definition of a national. It would be important to clarify if a mining operating company which is established subject to the national laws of the country but is wholly owned by a foreign company is deemed a national or a foreign national.

This bifurcation of forums between nationals and non-nationals is attractive to foreign investors, who generally prefer for forum to be determined by contract.

Paragraph 4 is a good clarifying/streamlining element for a provision that provides for several different forms of dispute resolution because it requires parties to specify in the contract the specific method of dispute resolution, selected from the options offered by the mining law.
being submitted to arbitration, in accordance with

(i) firstly, the framework of a bilateral or multilateral agreement on investment protection to which the [Country] and the country of which the holder is a national, are parties, or

(ii) secondly, if no agreement contemplated by subparagraph (i) exists, the rules of procedure for arbitration UNCITRAL Rules.

(4) Each agreement granting a mineral right shall contain provisions on the method of resolution of disputes that may arise under the agreement.

20.1. Example 2:

Article [__]

(1) Any dispute arising between the holder of a mining right and [Country] in respect of the interpretation and application of this Act, its Regulations and the terms and conditions of mining rights shall be resolved, in the first instance, on an amicable basis.

(2) Where the dispute is in the nature of a bona fide investment dispute, and such dispute is not amicably settled as provided under subsection (1) of this section, it shall be resolved in accordance with the provisions of the [Domestic Arbitration Law] [or any other enactment in force for resolution of disputes].

(3) Any other dispute between the holder of a mining right and the [Country] shall be resolved in the Federal High Court, if not settled in accordance with the provisions of subsection (1) or (2) of this section.

Annotation

Drawn from Nigeria’s mining law (2007), this provision also provides for the scope of disputes justiciable under the provision (albeit more detailed to include terms and conditions deriving from the mining right, i.e. the contract). It also provides for a multiple step forum though in this case, a three step forum, incorporating the courts as the third and final forum. Unlike in Example 1, it does not provide for a duration for the progression of disputes from one forum to the next.

As noted above, to the extent that national courts are neutral and efficient, foreign investors may be persuaded to use the national courts in lieu of international arbitration. The use of national courts is also likely to contribute to building capacity within the respective national judiciary in handling mining disputes. The exhaustiveness of the scope which eliminates the use of contracts to multiply potential forums and the non-discriminatory approach to all mining rights holders also promotes consistent resolution of disputes.

20. Dispute Resolution 

20.2 Guarantee of Due Process

NOTE: This Document is part of a multi-part document, Parts A – E
Due process, often referenced in more detail in other national laws of a country, outlines certain procedural guarantees that will protect the parties’ interests. It is valuable for a mining law to address or restate (where applicable) due process guarantees as part of ensuring a consistent, stable legal framework for the country’s mining sector. Due process guarantees are also particularly important as a concept as it applies to the creation and management of review boards, experts, and similar institutions or roles.

### 20.2. Example 1:

**Article [_]**

(1) Subject to the [Domestic Administrative Justice Law], any administrative process conducted or decision taken in terms of this Act must be conducted or taken, as the case may be, within a reasonable time and in accordance with the principles of lawfulness, reasonableness and procedural fairness.

(2) Any decision contemplated in subsection (1) must be in writing and accompanied by written reasons for such decision.

**Annotation**

Drawn from South Africa’s mining law (2006), this provision references a relevant national law that regulates administrative procedures. While it does not mention “due process” explicitly, the substance of the provision ensures procedural due process.

### 20.2. Example 2:

**Article [_]**

The rights provided under this [Law][Act][Code] with respect to all activities related to the obtaining, possession, exploitation and commercialization of minerals are guaranteed in accordance with the due process provisions of the Constitution.

**Annotation**

Unlike example 1, this suggested provision references a constitutional guarantee which can be interpreted to incorporate both procedural and substantive elements of due process.

### 20. Dispute Resolution

### 20.3 Awards and Settlements

In cases where the mining law provides for alternative dispute resolution mechanisms that do not carry enforceability powers, resolutions arrived at in such forums are generally only enforceable if incorporated into an official court judgement. As such, where a mining law allows for such

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**NOTE:** This Document is part of a multi-part document, Parts A – E
mechanisms, it should also clarify whether such decisions are enforceable by virtue of the law or whether such decisions should seek the imprimatur of the courts in order to be enforceable.

<table>
<thead>
<tr>
<th>20.3. Example 1:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>Article [...]</td>
<td>Drawn from Tanzania’s mining law (2010), this provision explicitly provides for the procedural steps to be taken in order to enforce decisions made by bodies other than the courts possess inherent authority. In this case, such orders or decisions are filed with the court with subject matter jurisdiction to render them enforceable.</td>
</tr>
<tr>
<td>(1) The [Authorized Jurisdictional Forum] other than a court, may file for execution, any order made under [relevant section] (Dispute Settlement Jurisdiction Provisions) to a court presided over by a [Judicial Reviewer] within the local limits of whose jurisdiction the subject matter of the order is situated.</td>
<td>(2) On receiving the order under subsection (1), the court shall cause the order to be enforced as if that order was made by the court.</td>
</tr>
<tr>
<td>(3) The fees payable upon the enforcement of an order shall be those which would be payable upon the enforcement of the like order made by the court concerned.</td>
<td>(3) The fees payable upon the enforcement of an order shall be those which would be payable upon the enforcement of the like order made by the court concerned.</td>
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<tr>
<th>20.3. Example 2:</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [...]</td>
<td>Drawn from DRC’s mining law (2002), this provision makes the decision of an arbitral body enforceable and goes further to waive any sovereign immunity defence against such awards.</td>
</tr>
<tr>
<td>(1) Decisions made by the arbitrator shall be binding and an application regarding enforcement said decisions may be brought before any court with jurisdiction in the National Territory according to the procedures provided for in the [Code of Civil Procedure for the Country] or in the mining right holder's country.</td>
<td>(2) Should the provisions of the above paragraph be applied; the State shall waive any immunity relating to jurisdiction or enforcement.</td>
</tr>
</tbody>
</table>

20. Dispute Resolution

20.4 Governing Law
Governing law is a principle that is often stipulated in contracts rather than in laws. When contracts choosing which law should govern disputes, the national law should apply. However, there are exceptions to this general principle which include instances where there is no applicable national law or the applicable national law is insufficient.

While some investors prefer the application of foreign governing law (e.g. Chinese Law, French Law, English Law), it should be a rare case where foreign law is chosen to govern mining disputes. Some mining laws provide for the parties to decide on the governing law in the mining contracts.

It should also be noted that choosing a foreign law to apply to investment mining disputes will have the result of nullifying any national mining law and all national laws which generally is not a good idea if a country wants to reinforce the rule of law in its country. Consequently, a mining law may choose to preclude choice of law provisions from contracts that derive from it and instead mandate the application of national laws.

<table>
<thead>
<tr>
<th>20.4. Example 1:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>Article [__]</td>
<td>Drawn from Liberia’s mining code, this provision allows for the contracting parties to decide what law applies. As noted above, this language can effectively nullify aspects of the Liberian mining law with respect to mineral contracts that derive from it.</td>
</tr>
<tr>
<td>The resolution of any dispute arising under any of the provisions of this [Law][Act][Code] between holders of minerals rights and between another holder of such rights and the [Country] shall be governed by the respective provisions provided for in such agreements.</td>
<td></td>
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</tbody>
</table>

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<tr>
<th>20.4. Example 2:</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [__]</td>
<td>Unlike in example 1, this suggested language creates a default application of national laws in mining disputes unless the application of the law is waived through an open and democratic process. While this approach may not be attractive to foreign investors, it promotes the evolution and strengthening of rule of law locally.</td>
</tr>
<tr>
<td>The laws of [Country] shall govern all contracts between the holders of mineral rights and the [Country], unless otherwise waived by the [Country] with the consent of the [National Legislative Authority].</td>
<td></td>
</tr>
</tbody>
</table>

21. Miscellaneous Topics

21.1 Expropriation

NOTE: This Document is part of a multi-part document, Parts A – E
Generally, legislation authorizes expropriation when it is the public interest. Fair compensation is critical to the proper functioning of the concept of expropriation. (For discussions on land-related expropriation and the concept of eminent domain, see Part D of the Guiding Template). When a country’s constitution provides articles concerning expropriation, the mining law should reference the Constitution.

21.1 Example 1:

Expropriation is prohibited except as provided in [relevant article] of the Constitution.

Annotation

Drafted to reference a constitutional provision and in this case, a provision drawn from Liberia’s Constitution, Article 24, this provision simply refers to the relevant article of the constitution. In this case, the constitutional provision focuses on the right to expropriation by the government, in the event of armed conflict or where public health and safety are endangered, or for any other public purpose.

It provides for prompt payment of just compensation and offers the right to the owner of the property to freely challenge the decision before a court of law. It also offers to the former owner of the property the right of first refusal to reacquire the property in the case the property ceases to be used for public use.

The constitutional provision is replicated below:

a) While the inviolability of private property shall be guaranteed by the Republic, expropriation may be authorized for the security of the nation in the event of armed conflict or where the public health and safety are endangered or for any other public purposes, provided:

   (a) that reasons for such expropriation are given;

   (b) that there is prompt payment of just compensation;

   (c) that such expropriation or the compensation offered may be challenged freely by the owner of the property in a court of law with no penalty for having brought such action; and

   (d) that when property taken for public use ceases to be so used, the Republic shall accord the former owner or those entitled to the property through such owner, the right of first refusal to reacquire the property.
### 21.1 Example 2:

Article […]

(1) The [Country] assures the safety and legal protection of the ownership of goods and rights, including industrial property rights covered by the authorised and carried out investments under the mining permit issued in accordance with this [Law][Act][Code] and other applicable legislation.

(2) When the public interest so requires and in exceptional circumstances, the holder of the mining right may undertake to expropriate buildings and land necessary for the mining work and the facilities essential for the mining operation, in accordance with the conditions set forth in the legislation in force.

(3) The holder of the mining right must pay any lawful occupant of land required for its activities, compensation for the disturbance of enjoyment suffered by such occupants.

(4) In order to calculate the compensation value, the evaluation of expropriated goods and rights as well as financial losses caused to the investors by the State is made within [90] days, by mutual agreement, and undertaken by a committee constituted for that purpose or by a recognized audit company.

(5) The compensation mentioned in the preceding paragraphs shall be paid within [190] days, or another time period mutually agreed, from the date of the committee’s decision or of the presentation of the report by the audit firm, based on the evaluation made in the terms of the previous paragraph.

(6) The appreciation time for a decision on the evaluation made and submitted to the competent State authority shall not exceed [90] days from the date of delivery and receipt of the file.

(7) The compensation due for expropriation for public utility under this Article shall not, under any circumstance be less than the full amount provided for compensation relating to rights of owners set out in other

### Annotation

Drawn from the mining laws of Guinea (2011) and Mozambique (2014), this provision allows for expropriation only if it is in the public interest, which permits expropriation if required in the public interest and in exceptional circumstances. The provisions suggest that even if the public interest so requires, there must also be a showing of exceptional circumstances. This is important for promoting an investment friendly environment as the rights actions of the state is generally in the public interest.

It also provides for the payment of compensation for expropriation in accordance with national applicable laws, in particular by providing fair, adequate and timely payment of compensation through an independent valuation. The law also seeks to strike a balance between the mineral right holder and the owner of the expropriated property in order to ensure that the viability of the mineral project is not affected and the expropriated person receives fair compensation.
areas of the [Code][Act][Law].

(8) The amount of the compensation must be reasonable enough in order not to compromise the viability of the project, and proportional to the disturbance caused by Mining Activities, in accordance with the procedures set out in the [Code][Act][Law].

21. Miscellaneous Topics

21.2 Force Majeure

As a general matter, force majeure concerns unforeseeable and unavoidable conditions such as war whether declared or not, civil disturbances, riots, blockades, sabotage, embargo, natural disasters, earthquakes, fire, floods, volcanic eruptions and the like. It does not include preventable conditions such as but not limited to labour strikes or a building collapsing due to poor construction.

In civil law jurisdictions, the Civil Code usually has an Article which defines the concept of Force Majeure and which would normally apply to mining activities. In Common Law countries, force majeure is typically dealt with in mining contracts. However, countries may consider providing for force majeure in a mining law.

21.2 Example 1:

Article [__]

(1) Any events, acts or circumstances which are unforeseeable, compelling, beyond the control or the wishes of a Party and which prevent said Party from performing their obligations, or which make it impossible for said Party to perform their obligations, constitute force majeure.

(2) The following events may constitute force majeure:

(a) war (whether declared or not), armed insurrection, civil unrest, blockades, riots, sabotage, embargos, and general strikes;

(b) any natural disaster, including epidemics, earthquakes, storms, floods,

Annotation

Drawn from Guinea’s mining law (2011), the provision defines force majeure as an unforeseeable event beyond a party’s control which makes the performance of its obligation impossible under the circumstances. The provision enumerates events which can constitute Force Majeure, including wars, natural disasters and more generally, any event beyond the party’s control with the exception of economic hardships and fluctuation in the market price.

The provision excludes events that could have been avoided, had it been for the lack of due diligence of the party. It also excludes the events which only make performance more onerous.

The provision provides for the procedure in case of force majeure and states that
A MLA GUIDING TEMPLATE
PART A: General Topics

volcanic eruptions, tsunamis or other types of extreme weather, explosions and fires; and

(c) any other cause which is not within the control of the Party involved, as defined in the present article, but excluding economic hardship resulting from adverse market price fluctuations.

(3) Accordingly, the following does not constitute force majeure within the meaning of the present [Code][Act][Law]: any reasonably foreseeable act or event that could be guarded against by exercising reasonable diligence. Similarly, any act or event that would make it more difficult or onerous for the person liable to perform an obligation to do so does not constitute force majeure.

(4) As soon as possible after an event of force majeure has occurred or has been discovered, and by no later than fifteen (15) days of its commencement, the Party who invokes force majeure must notify the other Party, by registered letter with acknowledgement of receipt, setting out the elements of the force majeure and its probable consequences for carrying out the obligations contained in the legal instrument which establishes the obligations.

(5) The Party concerned must at all times take any measures necessary to minimise the impact of the force majeure occurrence on the performance of their obligations and to ensure that normal performance of the obligations affected by the force majeure occurrence is resumed within the shortest possible time.

(6) If, following the occurrence of force majeure, the performance of the obligations is suspended for longer than one (1) month, the Parties must, at the request of either party, meet as soon as possible to consider the implications of said events as regards the performance of the Agreement and, in particular, as regards any kind of financial obligation imposed on each Party, their affiliates and their subcontractors. In this last case, the Parties should try to find a suitable financial solution to adapt the Project to the new situation, in particular, taking any measures which shall ensure

NOTE: This Document is part of a multi-part document, Parts A – E
that the Parties' economic situation stabilises in such a way that they may continue with the Project.

(7) In the event that there is disagreement regarding the measures to be taken three months after the event force majeure has been declared, either Party may immediately start conciliation proceedings failing which, arbitration proceedings.

21.2 Example 2:

**Article [__]**

The...contract may provide special schemes for force majeure and stability of economic and fiscal conditions, especially in case of worsening conditions for its implementation of the intervention in the [Country], to legislation or regulation after the date of entry into force.

**Annotation**

Drawn from Cameroon’s previous oil and gas law (2002), the provision leaves the implementation of force majeure to the choice of the parties to a contract and thus remains vague on its conditions of application.

21. Miscellaneous Topics

21.3 Treatment of Minerals/Materials Not Under License

21.3(a) On-Site Procedure Requirements

This topic relates to the immediate measures which must be taken on-site in case of discovery or appearance of other materials or minerals not under license during the execution of the mining right. It is important to address this topic in the mining law to ensure the existence of regulation that allows countries to decide on a case by case basis if they directly want to exercise their rights on the minerals or confer rights to the licensees.

On-site procedure requirements are focused on physically securing the site and refraining from the exploitation of the specific material, until receiving a license, if the rules allow for the obtaining of such license. It is the step immediately before reporting the discovery to the relevant regulating entity. This should be the single way of dealing with discovery of minerals not subject to the existing mining license as it allows the country prerogative to conduct a national interest analysis as to whether such a mineral should be mined or not.

**21.3(a) Example:**

**Annotation**

**NOTE:** This Document is part of a multi-part document, Parts A – E
21. Miscellaneous Topics

21.3 Treatment of Minerals/Materials Not Under License

21.3(b) Reporting Requirements

This topic is used to define unified reporting requirements with which the right holders must comply when they find/discover minerals or materials not under license. It is important to include this topic to assure the flow of information to the country as it is the rightful owner of its own materials and minerals. It is also important to avoid confusion between notification and amendment of the license.

21.3(b) Example 1:

Article [...] (1) If in the course of exercising his rights the holder of a mining license discovers any other mineral to which such license does not relate, he shall, within thirty calendar days after such discovery, notify the [Regulating Entity] giving particulars of the deposits or the mineral discovered, and the site and circumstances of the discovery, and may apply to the [Regulating Entity] to have the mining of such deposits or such mineral included in his mining license, giving in the application a proposed program of mining.

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision shows the above-named important division between notification and amendment. The licensee may apply for an extension apart from the notification of the discovery itself, which shall be an obligation in all cases. If the discovering licensee does not apply for an extension, a third party can apply for it, and the regulating agency can grant it, if that is convenient for the State’s interests.
### 21.3(b) Example 2:

Article [...] 

(1) If in the course of exercising his or her rights under a mining lease the holder of the mining lease discovers any mineral for which the lease does not relate, he or she shall, within thirty days after the discovery, notify the [Regulating Entity] of the discovery, giving particulars of the mineral discovered and the site and circumstances of the discovery; and the holder of the lease may apply to the [Regulating Entity] to have the mining of such mineral included in his or her mining lease, giving in his or her application a proposed program of mining operations in respect of the discovery.

(2) Where the holder of a mining lease does not wish to develop a newly discovered mineral or minerals, and it is in the national interest to do so, the [Regulating Entity] may grant a mineral right under this Act to a third party subject to the reasonable rights of the holder.

### Annotation

Drawn from Uganda’s mining law (2003), this provision, in addition to distinguishing between a notification obligation and opportunity to amend an existing license to include the new discovery, addresses the case in which the discovering licensee does not wish to develop the newly discovered mineral. In such case and if it is in the public interest, the mining right can be granted to a third party.

Since this option could create risks of conflict arising from overlapping mining areas between the initial rights holder and the second rights holder, the State should ensure reasonable accommodation for the first licensee.

### 21. Miscellaneous Topics

#### 21.3 Treatment of Minerals/Materials Not Under License

#### 21.3(c) Radioactive Materials – Special Provisions

This topic is about special rules which should apply to radioactive materials which are discovered during the exercise of a mining right. It is important to regulate this topic because radioactive materials feature unique inherent risks and dangers. These risks and dangers are not only related to the discovery itself, but also to the following disposal, circulation and final use of such materials. These risks are further escalated by the growing ubiquity of non-state or loosely organized radical and violent groups. Many African countries do have a specific code concerning radioactive materials. Therefore, all actions relating to radioactive materials have to be carefully regulated or referenced in the mining law.
21.3(c) Example 1:

Article [ ]

(1) The provisions of this Act relating to exploration, and mining of minerals shall apply to radioactive minerals with such modifications as are provided in this Part and as may be prescribed in the Regulations.

(2) Where any radioactive mineral is discovered in the course of exercising any right under this Act or any authority under any other enactment, the holder of the mineral right or such other authority shall immediately notify the [Regulating Entity], but in any case, not later than seven calendar days after the discovery.

(3) Where any radioactive mineral is discovered on any land other than land subject to a mineral right, the owner or lawful occupier of the land shall as soon after he is aware of such discovery notify the [Regulating Entity].

(4) The holder of a mineral right in respect of a radioactive mineral shall within the first week of every month, furnish the [Regulating Entity] with a report, in writing, of the exploration and mining operations conducted by him in the immediately preceding month.

(5) No person shall explore for or mine or treat or possess or export or import or otherwise dispose of any radioactive mineral except under and in accordance with the terms and conditions of a permit granted by the [Regulating Entity].

(6) A permit issued under subsection (5) shall be in such form and shall be subject to the payment of such fee as the [Regulating Entity] may prescribe.

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision indicates the inclusion of the mining of radioactive materials within the scope of the mining law but provides for higher scrutiny of mining activities as it relates to the radioactive materials. This includes immediate notification of such discovery, the strictly regulated reporting requirements of such mining operations and the restrictions of export and disposal of such minerals.

For a clearer regime, it is necessary to include special provisions on the process for obtaining a license to exploit such radioactive materials, more frequent inspection of the mining facilities, and restrictions to the commerce of such minerals.

Finally, it is advisable to include specific penalties for offenses and breaches related specifically to this activity as such offenses may potentially have greater negative impact than offenses related to non-radioactive materials.
### 21.3(c) Example 2:

Article [...] 

(1) If required for the safety of the public, the President of the Republic may, by Decree, and on the recommendation of the [the Regulatory Authority], in accordance with the opinion of the [Geology Division], declare a mineral substance to be "reserved" and hence subject to special rules.

(2) A Decree which classifies a mineral substance as a "reserved" shall specify the rules and provisions which the substance is subject to. The declaration shall be published in the [Official Gazette].

(3) Thorium and uranium ores and, in general, all radioactive ores shall fall under the rules for reserved materials provided for in the above paragraphs of the present Article.

**Annotation**

Drawn from DRC’s mining law (2002), this provision creates a “reserved class” of minerals based on safety needs. These minerals are subject to specific rules that are enumerated by special decree of the President. This provision also makes a point of naming specific minerals (uranium, thorium, and all radioactive minerals) as automatically being placed in this class of mineral substances.

### 22. General Offenses and Penalties

#### 22.1 General Provisions on Offenses and Penalties

A mining law should seek to define general offenses that apply to all mining rights and the legal consequences imposed, in addition to ones unique to specific mining rights. A mining law may also incorporate references to appropriate offenses and legal consequences as enumerated under other national laws such as criminal, fraud, labour etc. Penalties need to be commensurate with the type and gravity of the offence, as well as correlated with different applicable sanctions. If appropriate, the law should primarily provide for administrative sanctions or fines, which are generally easier to impose/execute than criminal sanctions.

Some countries like Uganda provide for a general penalties law that specifies the fines to be paid in “currency points” or “currency units”. This is to accommodate currency fluctuations and regulate severity of the fines without modification of the mining law.

**22.1 Example 1:**

**Annotation**

...
### Article [1]

1. No person may explore or prospect for, or retain or mine or dispose of any mineral in [Country] except under, and in accordance with, a licence issued under this [Act][Code][Law].

2. Any person who contravenes subsection (1) of this section commits an offence and is liable on conviction –

   (a) in the case of an individual, to a fine not exceeding twenty-five currency points, or imprisonment for a term not exceeding one year or both; and

   (b) In the case of a body corporate, to a fine not exceeding fifty currency points.

3. Where a person is convicted of an offence under subsection (2) of this section, the court before which such person is convicted may –

   (a) Order the forfeiture of all minerals unlawfully obtained by such person;

   (b) And in the event that the minerals cannot for any reason be forfeited, order the forfeiture of such sums of money as the court shall assess as the reasonable value of the minerals; and any minerals or their value so forfeited shall become the property of the Government and shall be disposed of as the [Regulating Authority] may direct.

### 22.1 Example 2:

**Article [2]**

1. Any person who contravenes chapters 4, 5, 6, and 7 of this [Law][Act][Code] hereof shall be guilty of an offense and shall be liable upon conviction in a court of law.

   a. In this case of an individual, to a fine not exceeding Two Thousand United States Dollars (USD$2,000:00) or its equivalent in Liberian Dollars or to imprisonment for a term not exceeding twenty-four (24)

### Annotation

Drawn from Liberian’s mining law (2000), this provision focuses on violations of the code with criminal law implications. Depending on the harm caused by the offense, governments can consider using criminal law penalties. However, officers must know that the enforcement of criminal penalties requires a higher legal standard of evidence, which makes them more difficult to be successfully applied. The criminal procedure is usually regulated in a specific procedural code.

In all cases, including the previous example, the forfeiture of the mineral extracted as the result of a legal violation is part of the penalty or a mechanism to enforce the

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**NOTE:** This Document is part of a multi-part document, Parts A – E
months or to both such fine and imprisonment and economic penalties.

b. In the case of any other Persons to a fine not exceeding twenty-five thousand United States Dollars (USD$25,000:00) or its equivalent in Liberian Dollars.

(2) The court before whom a Person is convicted under Section [_] hereof may order the forfeiture of all Minerals obtained by such Person or if such Minerals cannot be located of such sum of money as may represent the value of such minerals. Any mineral so confiscated shall be sold or otherwise disposed of as the Court may direct and the proceeds of such sales shall be paid into the Mineral Development Fund.

22. General Offenses and Penalties

22.2 Liability

Mining activity entails high risk for all the stakeholders involved. Since a substantive share of the activities are carried out by the operator (either a private corporation or a state owned company), thus making it the better risk bearer and the liability should be clearly borne by the operator. The operator should clearly know the extent of that liability, and if it extends to its shareholders, agents or other representatives.

Insurance and warranties can replace liability, but if they are not available or applicable for any reason, the responsibility of indemnification resides in the operator or holder of mineral rights.

22.2 Example 1:

Article [_]

(1) The holder of a mineral right shall indemnify, defend and hold the [Country] harmless against all actions, claims, demands, injury, losses or damages of any nature whatsoever, including claims for loss or damage to property or injury or death to persons, resulting from any act or omission in the conduct of mining operations by or on behalf of the holder of the right.

Annotation

Drawn from Tanzania’s mining law (2010), this provision places liability obligations in the rights holder except in cases where the wrongful act was ordered or carried out by the country.
(2) Such indemnity under subsection (1) shall not apply to the extent, if any, that any action, claim, demand, loss, damage or injury has resulted from any direction given by, or wrongful act committed on behalf of, the [Country].

<table>
<thead>
<tr>
<th>22.2 Example 2:</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [...]</td>
<td>Drawn from Liberia's mining law (2000), this provision provides for joint and several liability to eliminate the determination of relative culpability and avoid compounded disputes concerning the extent of liability when multiple parties are involved.</td>
</tr>
</tbody>
</table>

Holders of mining rights are liable to the State for breaches committed under this [Law][Act][Code] by themselves, their employees, agents, contractors and/or subcontractors. When several persons jointly hold Mineral or Quarry Rights, their liability is joint and several.
# AMLA GUIDING TEMPLATE

## PART B-1: Mineral Licences – Prospecting/Reconnaissance

<table>
<thead>
<tr>
<th>23. Types of Mineral Licences</th>
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</thead>
</table>

A mining code may list in one provision the different categories of rights that are offered which allow authorized mining activities to take place. There are typically several options for mineral rights. Most (but not all) mining laws make a distinction between rights for exploration and exploitation of metallic or processed minerals and precious stones, on the one hand, and exploitation of industrial minerals, on the other hand.

The mining laws of all countries in Africa require separate mining rights for pre-exploitation activities – such as reconnaissance, prospecting or exploration – on the one hand, and either mining or quarrying, on the other hand. However, the mining laws of some Latin American countries such as Mexico and Peru provide for the grant of a single concession for exploration and mining.

The earliest stage of superficial investigation of mineral occurrences is generally called “reconnaissance” in Anglophone African countries and “prospection” in Francophone African countries. It is frequently not an exclusive right. The subsequent phase of exclusive, in-depth investigation is called “prospecting” in many Anglophone African countries and “exploration” or “recherche” in Francophone African countries.

Some Anglophone countries provide for an “exploration” licence following the expiration of the “prospecting” licence. Other Anglophone countries also provide for a retention licence available at the termination of the exploration licence for the purpose of maintaining an exclusive right to a significant mineral deposit the exploitation of which is not commercially feasible due to temporary financial, commodity market or technical conditions.

Countries that favour greater administrative control over mineral activities tend to provide for licencing of more separate phases of pre-mining activity, whereas countries that favour an investment-friendly environment tend to provide for licencing of fewer separate phases of pre-mining activity.

Some but not all countries provide for the licencing of prospecting or exploration for industrial minerals. Those that do not do so tend to be the countries that grant quarrying licences only to the owner of the surface estate.

At the mining stage, there may be several types of mining rights, depending on the type of mining involved, rather than on phases of operations. The types of mining rights may include a small-scale mining lease, a semi-industrial mining lease, an industrial mining lease, and a tailings mining lease.

For quarrying at the exploitation stage, there may be a temporary quarrying lease (for particular infrastructure construction projects) and a permanent quarrying lease for the long term exploitation of industrial minerals for sale.
23. Example 1:

Article [__]
(1) Mining permits shall have the following classifications:

(a) "R" licences, which confer on the holder an exclusive right to carry out prospecting and reconnaissance work within a demarcated area;

(b) "E" licences, which confer on the holder an exclusive right to undertake operations, as well as prospecting and reconnaissance, within a demarcated area;

(c) Small-scale mining licences which confer on small-scale mining operators the right to undertake prospecting, reconnaissance and operations within a demarcated area.

Annotation

Drawn from Madagascar’s mining law (1999), this example states that only three mining rights are available under the Act for operations with respect to metallic or processed minerals and precious stones:

- The R Permit for prospecting and minerals research or exploration within the delineated area;
- The E Permit for exploitation, as well as prospecting and research within the delineated area; and
- The PRE Permit reserved for small producers conferring the right to undertake simultaneously prospecting, research and exploitation within the delineated area.

23. Example 2:

Article [__]
(1) Subject to the provisions of this [Act][Code][Law], the right to search for or exploit mineral resources is obtained through one of the following mining rights in the form of:

(a) a Prospecting/Reconnaissance Permit;
(b) an Exploration Licence;
(c) a Small-scale Mining Lease;
(d) a Mining Lease;
(e) a Quarry Lease; and
(f) a Water Use Permit.

Annotation

Drawn from Nigeria’s mining law (2007), this example sets forth in a single article all of the different types of mining rights available under the Act, but does not explain the differences among the rights. This type of article should be followed by separate subsections devoted to each type of mining right, commencing in each case with an article describing the type and scope of activities authorized by the respective mining rights. For example:

Article [__]:
A Reconnaissance Permit confers on the holder the [exclusive] [non-exclusive] right to conduct reconnaissance activities for [specified minerals] [metallic or processed minerals] within the specified Reconnaissance Permit area during the term of the licence, subject to the conditions specified in this law.

In this example, “reconnaissance activities” should be a defined term.

Issues to be considered in drafting the corresponding language for each type of mineral licence include: (i) whether the licence confers an exclusive or a non-exclusive right, and (ii) whether the licence confers a right with respect to all metallic or processed minerals and precious stones or only a right with respect to specified minerals.
If the rights conferred by the licence are for specified minerals only, then the law should specify whether a licence may be issued to another qualified person to conduct mineral activities with respect to other minerals within the same area; and if so, what types of mineral licences for what types of minerals. It is frequently the case to provide for the issuance over the same area of both (a) a prospecting or exploration licence for metallic or processed minerals and/or precious stones and (b) a quarrying licence. It is less frequent and potentially controversial to provide for the issuance of two or more exploration or exploitation licences for metallic or processed minerals and/or precious stones over the same area.

24. Prospecting/Reconnaissance Licencing

Prospecting/reconnaissance activities typically involve the preliminary assessment of the concentration and type of minerals on or under the land within a defined area. These activities must often be conducted with a licence or authorization from a designated regulatory body, and generally do not permit the extraction of any minerals from the land, other than small quantities of samples taken from outcroppings for analysis. Prospecting/reconnaissance often, but not always, serves as a precursor to follow-on work under an exploration licence if indications of significant mineral concentration are found.

24.1 Eligibility

A mining law may restrict what classes of individuals or legal entities can receive a permit or authorization to conduct prospecting/reconnaissance activities, either by defining who may or may not apply for the right, or by defining prior conditions that must be met before such an entity can be considered eligible to apply. The eligibility requirements for this type of licence should clarify whether individuals and/or corporate entities are eligible, whether foreign and national persons are eligible, and whether any technical or financial capability is required for eligibility, as well as any criteria for disqualification.

Because the work authorized by the licence for this preliminary phase of activity is non-intrusive and not intense, the eligibility requirements are generally less restrictive than for other mining rights. In some jurisdictions, there is freedom to exercise this activity and there is no mineral
licence required for it, although registration and identification are typically required.

24.1. Example 1:

Article [__]
(1) Any natural person or legal entity with the required technical and financial ability to carry out reconnaissance surveys for indicators, and prospecting for mining and quarry materials, may carry out said activities under the terms of the present Act. A Decree of the [President] shall specify what is meant by "technical and financial capacities."

(2) Persons or companies which are subject to international sanctions or criminal investigations related to fraud, corruption or money laundering may not obtain mining or quarrying titles.

(3) No natural person may obtain or hold a mining title or permit in the event that:

(a) they suffer from a legal disability preventing them from acting in their own name; or

(b) they have been imprisoned for violating the provisions of the present [Code]/[Act]/[Law] and its implementing regulations.

Annotation

Drawn from Guinea’s mining law (2011), this article recognizes both individuals and entities, regardless of nationality or place of formation, as eligible to engage in prospecting/reconnaissance activities under the conditions set forth in the law. This is a very broad provision. It also requires, however, that the individual or entity have the necessary technical and financial capacity as a condition of eligibility for prospecting/reconnaissance rights. The article delegates to the President of the Republic the authority to specify what is intended by the term “technical and financial capacity”. Thus, in this example, the legislature establishes a very broad criteria of eligibility for authorization of prospecting/reconnaissance activity, but enables the executive to limit eligibility based on technical and financial capacity criteria that the executive is authorized to establish.

The article also specifies additional types of persons not eligible for any mineral rights, including:

- Persons subject to international sanctions or criminal investigation for fraud, corruption or money laundering,
- Any individual whose status is incompatible with the exercise of commercial activities, such as public officials, and
- Any individual condemned and sentenced to prison for violation of any provisions of the Mining Code and its implementing decrees.

24.1. Example 2:

Article [__]
A qualified applicant for a Prospecting/Reconnaissance Permit is-

(a) a citizen of [Country] with legal capacity and who has not been convicted of a criminal offence; or

(b) a body corporate duly incorporated under the [Companies Act]; or

Annotation

Drawn from Nigeria’s Mining Law (2007), the first article in this example clearly and concisely states which Nigerian nationals, locally formed companies and mining cooperatives are eligible for what is called a reconnaissance permit under Nigerian law. The article applies only to the reconnaissance permit and does not mix in considerations other than eligibility. It therefore provides great clarity.
(c) a Mining Co-operative.

Article [___]

(1) The following persons shall not be eligible to obtain or hold licences set forth in this [Law][Act][Code]:

(a) The President, Vice-Presidents, Ministers, Chief Justice and members of Supreme Court, Attorney General, members of the National Assembly, Heads and members of the Independent Government Commissions, Governor of the Central Bank and General Director of National Directorate of Security, Provincial Governors, Mayors, and General Directors of the Government Independent Agencies, advisors, experts and Deputy Ministers of the [Mining Regulating Authority] and their relatives up to the second degree of consanguinity or by marriage.

(b) Judges, Prosecutors, Members of Provincial and District Councils, any Employee of the Ministry [in charge of Defence] or Ministry [in charge of Interior Affairs] or of the General Directorate of National Security, advisors, as well as experts and staff of the Commission, stipulated in [relevant article] of this [Law][Code][Act] (describing the membership of the Commission that reviews all licencing decisions and mining agreements, among other things);

(c) Any person who has been declared bankrupt and who continues to be bankrupt under the laws of [Country];

(d) Any person whose licence has been prematurely revoked, based on justifiable reasons, by the [Regulating Authority] prior to the expiry of the licence term.

(e) Companies in which the listed figures in (a) above, have obtained or will imminently obtain direct or indirect benefits;

(f) A natural person who has been convicted by a court of competent jurisdiction to more than ten (10) years in prison or has been convicted of administrative corruption and who has completed his or her prison term but has not yet had his or her prestige restored;

Drawn from Afghanistan’s mining law (2014), the second Article in this example presents a very specific and comprehensive list of persons and companies prohibited from obtaining and holding any type of mineral licence. In some cases, the prohibition is unlimited. In other cases, the prohibition is removed after a specified time period. Drafters should consider whether transparency and corruption concerns warrant providing such a detailed list of persons and entities that are not eligible for mineral licences. In some countries, the prohibitions against licence holding by public officials are set forth in other laws. In such cases, the issue is more likely to be one of enforcement rather than drafting. Even in those cases it may be desirable to repeat such prohibitions in the mining law so that the application process is designed to screen out persons prohibited from obtaining mineral licences.
(g) Any legal person which is under a liquidation process, unless the liquidation is for the restructuring of such legal person;

(h) Any legal person that is subject to an order of dissolution issued by a court of competent jurisdiction;

(i) Any legal person in which one or more of its major shareholders, members of the executive board or members of its board of directors would be legally disqualified.

(j) Where one or more major shareholders of a legal person has been convicted of violation of the provisions of this [Law][Act][Code]; and/or

(k) Any major shareholder of a legal person or a member of its executive board is an existing employee of the [Petroleum Regulating Authority].

(2) Any person whose licence has been revoked, may not re-apply for all or part of its revoked Licence Areas for two years from the date of revocation;

(3) A major share for the purpose of this [Law][Act][Code] means ten percent or more of the total shares of a company.

(4) Any person stipulated in subsections (a) and (b) of Paragraph (1) of this Article may obtain a Licence or Contract provided for in this [Law][Act][Code] five years after termination of their term in office.

24. Prospecting/Reconnaissance Licencing

24.2 Requirements for Licence Application

Regulatory authorities generally require that eligible persons (or entities) seeking authorization to conduct prospecting/reconnaissance activities submit particular documents or show proof of certain criteria as part of the authorization process. Requirements for Licence applications vary greatly from country to country, and can include (but are not limited to):

- Proof of domicile, for the individual applicant and/or corporate entity seeking authorization;
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- Proof of a minimum level of financial and technical expertise to conduct the activities;
- A statement including any research already conducted about the mineral deposit potential of the site in question;
- Payment of fees associated with the application process;
- Submission of duly completed applicable forms.

### 24.2. Example 1:

**Article [ ]**

1. An application for the grant of a prospecting/reconnaissance licence shall be submitted to the Mining Cadastre Office in the prescribed form and-

   (a) shall contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of every shareholder who is the beneficial owner of five percent or more of the issued share capital;

   (b) shall contain the company profile and history of reconnaissance and exploration operations in Sierra Leone and elsewhere;

   (c) shall identify the name and qualifications of the person responsible for supervising the proposed programme of reconnaissance operations;

   (d) shall be accompanied by a plan of the proposed reconnaissance licence area over which the licence is sought, drawn in such a manner and showing such particulars as prescribed;

   (e) shall be accompanied by a description of the contiguous blocks comprising the proposed reconnaissance licence area, identified in the prescribed manner, which shall be considered definitive should there be any discrepancy with the plan submitted under paragraph (d);

   (f) shall be accompanied by a statement giving particulars of the technical and financial resources available to the applicant, and a certified copy of its audited accounts for the year immediately preceding the application;

   (g) shall be accompanied by a proposed programme of reconnaissance

### Annotation

Drawn from the mining law of Sierra Leone (2009), this article requires detailed information about:

1. the applicant company, its directors and principal shareholders;
2. the company profile and its history of prior reconnaissance and exploration activities;
3. the supervisor of its proposed activities;
4. a map (plan) of the proposed licence area;
5. a description of the cadastral blocks comprising the proposed licence area;
6. a statement of the applicant’s technical and financial resources, accompanied by a certified copy of the company’s audited financial statements for the prior year;
7. a proposed program of reconnaissance operations for the next year, including cost, equipment to be used, and particulars of the responsible individuals;
8. the requested licence term (maximum of one year);
9. particulars of any mineral right held by the company or by any affiliate of the company;
10. any significant adverse effects that the reconnaissance activity may have on the environment, any monument or relic in the proposed licence area, with an estimate of the cost of “combating such effects”;
11. proposals regarding the employment of [national] citizens.

This level of information required in an application for a prospecting/reconnaissance licence is high by international and regional standards, particularly for a non-exclusive prospecting/reconnaissance licence as is the case in Sierra Leone. The application requirement indicates that Sierra Leone intends to control access to mineral rights and strictly limit such access to
operations as prescribed setting out in detail the work intended over the next twelve-month period together with the estimated cost, with details of the equipment expected to be used in connection with it and the names and particulars of the persons to be responsible for the conduct thereof;

(h) shall state the period applied for which shall be no longer than one year;

(i) shall give details of any mineral right held within Sierra Leone by the applicant or by any person controlling, controlled by or under joint or common control with the applicant;

(j) shall provide details of any significant adverse effects which the carrying out of the programme of reconnaissance operations would be likely to have on the environment and on any monument or relic in the proposed reconnaissance area and an estimate of the cost of combating such adverse effects;

(k) shall give or be accompanied by a statement giving particulars of the applicant’s proposals with regard to the employment of [national] citizens; and

(l) may set out any other matter which the applicant wishes the [Regulating Authority] to consider.

24.2. Example 2:

Article [__]
(1) Applications for prospecting permits as provided for in Articles [__] and [__] (on the authority to grant a prospecting permit and its scope) above are to be sent to [the regulatory authority] and must include:

(a) an application, duly signed by the managing director of the company requesting the mining title;
(b) the company's constitutional documents;
(c) the composition of the management team and the positions of its members;
(d) the comprehensive technical programme;
(e) the details of the financial outlay per item;

<table>
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<th>Annotation</th>
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<tbody>
<tr>
<td>Drawn from the Republic of Congo’s mining law (2005), this provision requires information about the composition and the quality of the members of the applicant’s leadership team, a comprehensive description of the intended technical program and a detailed description of the planned financial effort. As in Sierra Leone, the prospecting/reconnaissance licence available under the mining law of the Congo is non-exclusive and does not provide the holder with any priority for the grant of an exploration licence. That is the case generally in African countries that offer reconnaissance licences. Countries that wish to strictly limit access to prospecting/reconnaissance rights in order to ensure that they are only granted to qualified applicants who can be expected to carry out a serious work program - while respecting the natural and social environment and reporting accurate results of their work - should consider</td>
</tr>
</tbody>
</table>
### 24. Prospecting/Reconnaissance Licencing

#### 24.3 Licence Refusal Appeal Process

Because a prospecting/reconnaissance licence is the entry level licence for authorized mineral development activity, prior to which applicants will not have made any recognized significant investment based on any existing rights, many countries that require or provide such licences provide no recourse under the Mining law in the event that an application for a prospecting/reconnaissance licence is refused. In such cases, any recourse would have to be based on the provisions of general administrative law rather than provisions of the Mining law. However, there may not be any right to obtain a prospecting/reconnaissance licence under the Mining law in those situations – particularly if activity under a prospecting/reconnaissance licence is not required prior to application for an exploration licence. On the other hand, mining laws typically provide a general appeal process that may cover the refusal of a prospecting/reconnaissance licence – especially where the prospecting/reconnaissance licence is a necessary prerequisite of an application for an exploration licence. For the purpose of a clearer legislative regime, it may be reasonable for mining laws to distinguish between the processes that apply to particular licences such that extensive processes that would apply to a large scale mining licence, could not be interpreted to apply to a prospecting/reconnaissance licence due to the general reference of the enumerated process to all mining licences.

#### 24.3. Example 1:

<table>
<thead>
<tr>
<th>Article [...]</th>
<th>Annotation</th>
</tr>
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<tbody>
<tr>
<td>A decision of the [Regulating Authority] denying the issuance of a prospecting/reconnaissance licence shall not be subject to reconsideration or appeal.</td>
<td>If the mining law provides for the licencing of prospecting/reconnaissance activity but does not require that the applicant for an exploration licence (for the next phase of mineral resource development activity) have previously carried out work on the area under such a licence as a condition for obtaining an exploration licence, no appeal process may be available.</td>
</tr>
</tbody>
</table>
### 24.3. Example 2:

#### Article [__]

1. A decision of the [Regulating Authority] denying the issuance of a prospecting/reconnaissance licence shall state the reasons for the decision. The party whose application for a prospecting/reconnaissance licence has been rejected may, within ten business days of receipt of notice of the decision, submit to the [Regulating Authority] a request for reconsideration of the decision, in writing, together with relevant documentation and arguments in writing.

2. The [Regulating Authority] shall issue its decision on reconsideration, stating the reasons therefore, within thirty (30) days of the filing of a timely request for reconsideration.

3. If the decision on reconsideration affirms the initial decision of denial, the applicant may appeal the decision on reconsideration in writing together with relevant documentation, to the [Administrative Reviewer] within fifteen (15) business days of receiving such decision.

4. The [Administrative Reviewer] shall issue his or her decision on appeal in writing, stating the reasons therefore; and said decision shall be notified to the applicant within thirty (30) days of the filing of a timely appeal.

5. If the decision of the [Administrative Reviewer] on appeal affirms the initial decision of denial, the applicant may, within 45 days of receiving notification of the decision on appeal, apply to the [Judicial Reviewer] for review of the decision and seek such remedy as the [Judicial Reviewer] is empowered to grant.

#### Annotation

If the mining law provides for a prospecting/reconnaissance licence as an exclusive right, and also provides that only the holder of that right is entitled to subsequently request and obtain a licence for the next phase of mineral resource development activity (e.g., exploration), then the denial of the prospecting/reconnaissance constitutes a barrier to entry into mineral resource development activity.

In such cases, for considerations of accountability, transparency, protection against corruption, and due process, best practice would require (1) reasoned written decisions for denials of applications for prospecting/reconnaissance licences, (2) an opportunity for reconsideration by the regulatory authority, (3) an appeal to a superior administrative authority, and (4) a judicial appeal of the administrative decision on appeal.

The example of such a best practice provision presented here is inspired by provisions of the mining laws of Uganda (2003) and South Africa (2002).
(6) The filing of a request for reconsideration or appeal of the initial decision of denial does not suspend the administrative decision denying the application unless so ordered by the [Regulating Authority] or the [Administrative Reviewer], as the case may be.

### 24. Prospecting/Reconnaissance Licencing

#### 24.4 Area

In jurisdictions that licence reconnaissance-type prospecting activity, areas are typically larger than exploration areas, which are usually larger than mining areas, because reconnaissance, prospecting and exploration proceed from larger to smaller areas as the increasingly intense investigation of mineral occurrences identify and focus on a targeted deposit. A mining law may provide for relinquishment, or the process of mandatorily reducing the area under the prospecting/reconnaissance licence during successive renewals.

Because prospecting/reconnaissance licences are for very large areas, if the mining law provides for a prospecting/reconnaissance licence that is exclusive and has a term of more than one year (including renewal), it should require either relinquishment of part of the area (typically half) after the initial year or, alternatively, a doubling of the annual fee per unit area for the second year in order to prevent or discourage the tying up of more area than a company can reasonably investigate during the term (including renewals) of the licence, and to encourage focusing on the most prospective areas.

If the mining law provides for a prospecting/reconnaissance licence that is non-exclusive, or has a term limited to one year, with no renewals, then the risk of non-productive tying up of excessive areas is low. If the licence is exclusive but limited to a one-year nonrenewable term, the mining law will likely not grant an exploration licence for the subsequent phase of mineral resource development activity over the entire area covered by the prospecting/reconnaissance licence because the maximum size of an exploration licence area is generally significantly smaller than the maximum size of a prospecting/reconnaissance licence area.

Alternatively, a mining law may limit the size of the area for a prospecting/reconnaissance licence area by charging annual maintenance fees per unit area that are relatively high or that increase in proportion to the size of the licenced area.

#### 24.4. Example 1:

**Article [__]**

A prospecting/reconnaissance licence area shall not exceed ten thousand (10,000) square kilometres.

**Annotation**

Drawn from Sierra Leone’s mining law (2009), this example sets a very large limit on the size of a reconnaissance licence area. The reconnaissance licence is...
### 24.4. Example 2:

**Article [ ]**

1. The area of land in respect of which a reconnaissance licence may be granted shall be a block or any number not more than five thousand contiguous blocks each having a side in common with at least one other block the subject of the application.

2. For purpose of this [Act][Code][Law], the surface of the Earth shall be deemed to be divided in accordance with the co-ordinates represented in the official maps of [Country] held at the [Regulating Authority] at a scale of 1:50,000,
   
   (a) by the meridian of Greenwich and by meridians that are at a distance from that meridian of 15 or a multiple of 15 seconds of longitude,

   (b) by the equator and by parallels of latitude that are at a distance from the equator of 15 or a multiple of 15 seconds of latitude, into sections ("geometric sections") each of which is bounded,

   (c) by portions of those 2 meridians that are at a distance from each other of 15 seconds of longitude, and

   (d) by portions of 2 of those parallels of latitude that are at a distance from each other of 15 seconds of latitude.

3. For purposes of this [Act][Code][Law]
   
   (a) a geometric section that is wholly within [Country] constitutes a block and

   (b) where only part of a geometric section is within [Country], that part constitutes a block.

**Annotation**

Drawn from Ghana’s mining law (2006), the maximum area of a reconnaissance licence – which is exclusive under the Act (i.e. for the minerals to which the licence relates) – is defined in terms of blocks. The size of the blocks is in turn defined in the article of the law describing the Cadastral System for mining, by reference to the geographical projection to be used for identifying the borders of areas subject to mining rights. Thus, the area is a function of the defined cadastral grid system, which assures consistency among all licence areas.

### 24. Prospecting/Reconnaissance Licencing
## 24.5 Specific Obligations of a Licence Holder

Provisions that lay out, for the holder of a prospecting/reconnaissance licence, the necessary responsibility or duty to undertake certain actions, or restrictions from undertaking certain actions or causing certain effects, are collectively treated as obligations. Obligations may be addressed in a number of different ways: in articles specific to the prospecting/reconnaissance licence, in general provisions that apply to all licences, and sometimes in other miscellaneous parts of a mining law. Obligations to be considered include the following:

1) Central identification and registration of all prospecting/reconnaissance team members;
2) Notification of local authorities before entering or leaving a prospecting/reconnaissance area;
3) Stay out of areas subject to existing mining rights other than non-exclusive prospecting/reconnaissance areas;
4) Obtain consent of landowners and lawful users prior to entering land privately owned or subject to lawful customary usage;
5) Adhere to environmental guidelines or code of conduct, including site protection and restoration;
6) Not engage in trenching, drilling or other invasive exploration activities;
7) Declaration of samples to the Department of Geology as a condition for removing them from the site;
8) General obligation to report results to all relevant Government bodies;
9) Obtain authorization for the export of samples (that is, small rock samples chipped from outcroppings because no drill core or bulk sampling is authorized at this stage); and
10) Submission of a report of findings.

### 24.5. Example 1:

**Article [...] (1) A Prospecting/Reconnaissance Permit shall be granted subject to the covenants and conditions that the holder thereof shall:**

(a) carry out prospecting/reconnaissance on a non-exclusive basis;
(b) not engage in drilling, excavation or other sub-surface techniques;
(c) submit information and such periodical reports as may be prescribed by the [Regulating Authority];
(d) conduct reconnaissance activities in an environmentally and socially responsible manner as may be prescribed by the [Regulating Authority]; and

**Annotation**

Drawn from Nigeria’s mining law (2007), this provision describes the obligations of the prospecting/reconnaissance permit holder. The article contemplates additional specifications in the regulation, contains a reporting requirement for licensees and prohibits any subsurface exploration, including drilling or excavation.

Paragraph 3 of the provision in the example essentially exempts the rights granted under the prospecting/reconnaissance licence from the requirements of the Land Use Act, because of the limited term and nature of the licence and the detailed provisions elsewhere in the mining law regarding notification, consent and compensation of land owners or lawful users in connection with licenced mineral activities. Those other detailed provisions on reconciling temporary
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<table>
<thead>
<tr>
<th>(e) compensate users of land for damage to land and property; and pay the fees prescribed by regulation.</th>
<th>access rights to land under a prospecting/reconnaissance licence with other existing and prospective lawful uses of the land are crucial to a successful outcome and the avoidance of conflict among competing land uses.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) The activities allowed under a Prospecting/Reconnaissance Permit together with corresponding environmental and social obligations shall be further specified in regulations.</td>
<td></td>
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<tr>
<td>(3) Prospecting/Reconnaissance activity authorised by a Prospecting/Reconnaissance Permit shall not constitute a land use right for the purposes, objectives, rents, fees and requirements of the [Land Use Act].</td>
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</table>

### 24.5. Example 2:

**Article [__]**

(1) No prospecting/reconnaissance licence shall authorise the holder of the licence to prospect over an area of land that is, or forms part of:

(a) An exploration area, a mining area, a retention area or a location licence area; or

(b) a forest reserve, game reserve, national park, or an urban centre, unless the holder of the prospecting/reconnaissance licence has first given notice to and obtained permission from the relevant authorities and complies with any conditions imposed by such authorities.

(2) Where it is necessary to fly over any land for the purpose of exercising any right under a prospecting/reconnaissance licence, nothing in this section shall prevent any such flight from being undertaken, provided it is in accordance with the provisions of [relevant section] (requiring compliance with other applicable laws) of this [Act][Code][Law].

(3) The holder of a prospecting/reconnaissance licence shall:

(a) subject to section (1) of this article, carry on prospecting/reconnaissance operations in accordance with the licence;

(b) submit to the [Regulating Authority] quarterly, or at such other intervals as may be prescribed, geological and financial reports and such other

### Annotation

Drawn from Uganda’s mining law (2003), this example covers most of the requirements that would be considered best practice, particularly with respect to (a) areas that are off-limits and (b) site restoration.

Licensees are obligated to remove all equipment and structures used during the prospecting/reconnaissance operation and repair any damage to the surface.
24. Prospecting/Reconnaissance Licencing

24.6 Rights of a Licence Holder

The rights of a reconnaissance-type prospecting licence holder are generally limited to the right to conduct non-invasive prospecting/reconnaissance activities as defined, within the licenced area, on a non-exclusive basis, and to collect samples in small quantities for analysis. A clear definition of the scope of this reconnaissance-type of prospecting, and how it differs from exploration, is therefore essential. A prospecting/reconnaissance licence may include the right to conduct airborne geophysical surveys, as in Sierra Leone and Uganda. Because it is usually non-exclusive, this type of licence generally does not entitle the holder to a priority for obtaining an exploration licence. However, an exclusive prospecting/reconnaissance licence that does entitle the holder to such a priority is available under the mining laws of Ghana and Liberia, and constitutes a more valuable initial mineral right than the typical non-exclusive licence.

**Example 1:**

Article [...]  
(1) Subject to this [Act][Code][Law] and the conditions of a reconnaissance licence granted under this [Act][Code][Law], the holder of a reconnaissance licence, his employees, servants or agents shall have the non-exclusive right to carry on reconnaissance operations in the reconnaissance area.

(2) For the purpose of exercising the right conferred under subsection (1), the holder of a reconnaissance licence may—

(a) enter on or fly over the reconnaissance area to carry on approved

**Annotation**

Drawn from Sierra Leone’s mining law (2009), this example is a fairly standard statement of the rights of prospecting/reconnaissance licence holders. The rights in this case are limited to superficial investigation and reasonable sampling without the use of drilling or other invasive techniques (based on the definition of reconnaissance in the mining law).

The rights are non-exclusive and do not convey any priority to obtain an exploration licence for the subsequent phase of mineral resource development activity.
**24.6. Example 2:**

**Article [...]**

1. Subject to this [Act][Code][Law] and the Regulations made under this [Act][Code][Law], a prospecting/reconnaissance licence confers on the holder and a person authorized, in accordance with this [Act][Code][Law] by the holder of the prospecting/reconnaissance licence, the exclusive right to carry on reconnaissance in the reconnaissance area for the minerals to which the reconnaissance licence relates and to conduct other ancillary or incidental activity.

2. For the purposes of exercising the right conferred under subsection (1), a holder of a prospecting/reconnaissance licence and a person authorized in accordance with this [Act][Code][Law] by the holder of the prospecting/reconnaissance licence, may enter the reconnaissance area and erect camps or temporary buildings, subject to compliance with the

**Annotation**

Drawn from Ghana’s mining law (2006), this example provides for the exclusive right to conduct reconnaissance with respect to specified minerals in the area that is covered by the licence. Drafters should consider clarifying whether the exclusivity conferred by the licence means (a) that no other mineral activity whatsoever by another person will be authorized within the licence area during the term of the licence or (b) no other mineral activity by another person with respect to the specified minerals will be authorized during the term of the licence, but mineral activity as to other minerals may be authorized.

This provision specifically empowers the licence holder to authorize another person to conduct the reconnaissance operations on behalf of the holder, provided the authorization is done in accordance with the mining law. Care should be taken in other articles to prescribe the qualifications of such third parties and the nature of their relationship with the licence holder.
provisions of this [Act][Code][Law].

(3) A holder of a prospecting/reconnaissance licence shall not engage in drilling or excavation.

(4) If a holder of a prospecting/reconnaissance licence applies for an exploration licence over all or part of the land and for a mineral which is the subject of the prospecting/reconnaissance licence and the holder has materially complied with the obligations imposed by this [Act][Code][Law] with respect to

(a) the holding of the licence, and

(b) the activities to be conducted under the licence,

The [Regulating Authority] shall within sixty days of the application, subject to the permits and other obligations required by law having been complied with, grant the applicant the exploration licence on the conditions that shall be specified in the licence.

The scope of the activity authorized by the prospecting/reconnaissance licence in the example – “reconnaissance ... and other ancillary or incidental activity” – is defined in the definition of “reconnaissance” in the “Interpretation” section of the mining law, which is the standard approach to drafting such provisions. The example adds the authorization to conduct ancillary and incidental activities to ensure inclusion of necessary related activities.

This provision includes one specific authorization as to land use and one specific prohibition as to drilling and excavation (for emphasis, even though those activities are excluded by the definition of reconnaissance). The land use authorization is typically qualified (in other articles) to require non-interference with existing land uses to the extent possible, consultation with other land users, and compensation for any damage or interference with other lawful uses of the land.

The provision in this example requires the Regulating Authority to grant the holder of a prospecting/reconnaissance licence an exploration licence if the holder has materially complied with the obligations under the Act. By granting the holder who is in compliance the right to obtain a licence for the subsequent phase of mineral resource development activity, this article provides security of tenure to the licence holder and thereby encourages investment in “greenfield” reconnaissance (for which the success rate is very low). The exclusive nature of the prospecting/reconnaissance licence and the security of tenure that it provides to the holder are considered by the mining industry to be valuable rights.

24. Prospecting/Reconnaissance Licencing

24.7 Term of Licence

Not all mining laws provide for a prospecting/reconnaissance licence. However, among those that do, the terms of such licences vary from three months to two years.

In general, because the purpose of a prospecting/reconnaissance licence is to enable large scale but non-invasive investigation of an area’s mineralization that, if successful, leads to exploration work which usually involves extensive drilling, the terms of prospecting/reconnaissance
licences are not long. Most mining laws that include separate licencing of reconnaissance activity provide a term of one year for the licences.

A few African countries (such as Ghana, Liberia, Madagascar and Namibia) grant prospecting/reconnaissance licences for periods of less than or up to a year. Under their Mining laws, the holder of a prospecting/reconnaissance licence has a right that is exclusive (or that may become exclusive, in the case of Namibia) and that has a priority for obtaining an exploration licence for the subsequent, more narrowly focused, phase of mineral resource development activity. In Madagascar, the term of an Exclusive Perimeter Reservation Authorization, under which reconnaissance activity is authorized, is limited to three months and is non-renewable.

### 24.7. Example 1:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A prospecting/reconnaissance licence shall be valid for a period not exceeding one year.</td>
<td>Drawn from Sierra Leone’s mining law (2009), this is a typical term for a non-exclusive prospecting/reconnaissance licence that confers no right or priority to obtain an exploration licence.</td>
</tr>
</tbody>
</table>

### 24.7. Example 2:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The [Regulating Authority] upon receipt of an application by an Eligible Applicant for any Mineral Right that conforms to the requirements set forth in this [Law][Act][Code] or in the Regulations, shall grant such Person a Reconnaissance Licence for the area applied for subject to the following terms and conditions.</td>
<td>Drawn from Liberia’s mining law (2000), this provision provides a shorter term for an exclusive prospecting/reconnaissance right that includes the right to obtain an exploration licence for the subsequent phase of mineral resource development activity if the holder is in compliance with his/her/its obligations under the initial licence.</td>
</tr>
<tr>
<td>a) that the [Regulating Authority] shall grant and issue a Reconnaissance Licence for a maximum period of six (6) months</td>
<td></td>
</tr>
</tbody>
</table>

### 24.7. Example 3:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>An Exclusive Permit to Reserve an Area confers on the holder an exclusive right to prospect and then, should the need arise, apply for a mining licence with a view to prospecting and/or carrying out mining operations, for one or more zones within the area covered by the permit.</td>
<td>Drawn from Madagascar’s mining law (2005), this example provides for an AERP – which is an exclusive prospecting/reconnaissance licence with an exclusive right to apply for an exploration or exploitation licence during the term of the AERP – with a very short term of 3 months. Reconnaissance-type prospecting activities are authorized under the AERP. The purpose of this licence is primarily to enable prospective applicants to reserve an area while conducting due diligence on it, contacting the local authorities, initiating an</td>
</tr>
</tbody>
</table>
environmental impact assessment and assembling an application for an exploration licence or a small scale mining licence (as spelled out in other omitted paragraphs of the article in the mining law of Madagascar).

To avoid abuses, this provision forbids renewals of AERPs and further restricts any applicant from obtaining a new AERP on any part of the surface area covered by the initial AERP for three years after it expires.

The short term of the AERP is thus inversely proportional to the robustness of the exclusive rights conferred. Because the AERP provides a very strong exclusive right, its term is kept very short in order to avoid tying up excessive areas of land that are not being explored.

### 24. Prospecting/Reconnaissance Licencing

#### 24.8 Renewal of Licence

Addressed often at the same time as the term of licence, renewal determines when, for how long, and how many times a licence holder may extend the duration of the prospecting/reconnaissance licence. Among African mining laws that provide for prospecting/reconnaissance licences, some provide that they are not renewable, others provide that they are renewable or extendable only once for a period equal to that of the initial term, and a couple of mining laws provide that they are renewable indefinitely.

If the prospecting/reconnaissance licence provides an exclusive right to conduct mineral resource development activities in a specific area and includes the exclusive right to apply for an exploration licence and to obtain such licence if in compliance with all requirements of the prospecting/reconnaissance licence, then renewals tend to be, and should be, kept to a minimum in order to avoid tying up vast areas of land for limited, non-invasive preliminary investigations that should be accomplished within a short period of time.

In cases where the prospecting/reconnaissance licence is non-exclusive and includes no right or priority to obtain an exploration licence for the next phase of mineral resource development activity, there is no risk that its existence will freeze any areas of land from further mineral resource development activities. In such cases, a more liberal rule on renewals may be appropriate.

#### 24.8. Example 1:

<table>
<thead>
<tr>
<th>Article [...]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from Ghana’s Mining law (2006), this article provides for one extension</td>
<td></td>
</tr>
</tbody>
</table>
(1) Subject to subsection (2), a reconnaissance licence may be extended once only and for a period not exceeding twelve months.

(2) Where, at least one month before the end of the extended period, or within the shorter period that the [Regulating Authority] may allow, the holder of a reconnaissance licence satisfies the [Regulating Authority] that delay by a government institution in the issuance of a permit or in carrying out a lawful activity has resulted in delay by the holder in the discharge of an obligation under the reconnaissance licence, the holder may apply in writing to the [Regulating Authority] for extension and the [Regulating Authority] may extend the term of the reconnaissance licence for a period not more than twelve months.

<table>
<thead>
<tr>
<th>24.8. Example 2:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [...]</td>
</tr>
<tr>
<td>The reconnaissance permission is valid for two years and is not renewable.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from South Africa’s mining law (2002), this provision grants a relatively long initial term for the prospecting/reconnaissance licence that is non-exclusive and includes no priority or right to an exploration licence. The initial term in this example is equivalent to the usual one-year initial term and one-year renewal term found in other mining laws. Since the licence is not exclusive, its existence does not prevent the grant of another licence over the same area, nor should it inhibit other land uses in the area. Therefore, the longer initial term is benign.</td>
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</table>

24. Prospecting/Reconnaissance Licencing

24.9 Suspension of Licence

When the Regulating Authority temporarily prohibits operations under a prospecting/reconnaissance licence, due to the licence holder’s failure to meet certain obligations or external circumstances that create dangerous conditions (e.g. conflict), this is referred to as suspension of the prospecting/reconnaissance licence. Suspension provisions should address the grounds for and length of the suspension, the authority empowered to order a suspension, what the licence holder must do in order to have the suspension lifted, and the related notification procedures. The suspension provisions may also specify whether time lost will be added to the duration of the licence term once the suspension is lifted.
Suspension is a temporary sanction that can be removed once remediation or correction of the ground for the suspension has occurred; whereas revocation of the licence is a final sanction that terminates the rights of the licence holder definitively.

24.9. Example 1:

Article [...]  
(1) The [Regulating Authority], or any person authorised by the [Regulating Authority], may, in writing, order reconnaissance, exploration or mining operations to be temporarily suspended on an emergency basis, regardless of whether such operations are authorized by a mineral right, until such arrangements are made that are in the Regulating Authority’s opinion necessary to prevent danger to life, property or the environment or to comply with this [Act][Code][Law].

(2) The [Regulating Authority] may cancel or vary the terms of any temporary suspension order.

(3) The [Administrative Reviewer] shall have the power to confirm a temporary suspension order made by the [Regulating Authority] and may not delegate this power.

(4) A temporary suspension order shall lapse after twenty-one days of its issuance, unless it is confirmed, in writing, by the [Administrative Reviewer].

(5) The [Administrative Reviewer] after consultation with the [Regulating Authority] may suspend a mineral right if the holder-

(a) fails to make any of the payments required by or under this [Act][Code][Law] on the date due;

(b) fails to meet any prescribed minimum annual programme of work or work expenditure requirement;

(c) grossly violates health and safety regulations or causes environmental harm;

(d) employs or makes use of child labourers;

Annotation

Drawn from Sierra Leone’s mining law (2009), this example provides for both (a) temporary suspensions of operations on an emergency basis for 21 days by the Regulating Authority and (b) a longer term suspension of mining rights on the non-compliance grounds stated in subsection 5 by the Administrative Reviewer, after consultation with the Advisory Board. The “Administrative Reviewer” as used in this example is the administrative authority that is the immediate superior of the Regulatory Authority in the administrative hierarchy. The provision in the example also gives the Administrative Reviewer the power to extend a temporary suspension by confirming it in writing.

In the case of a long-term suspension, the mining rights holder is provided with notice and an opportunity to cure the breach of obligation within thirty days before the suspension takes effect. The suspension may be the precursor to cancellation of the mineral right if the reason for the suspension is not corrected on a timely basis.
(e) fails to submit reports required by this [Act][Code][Law];

(f) contravenes any of the provisions of this [Act][Code][Law] or the conditions of his mineral right or the provisions of any other enactment relating to mines and minerals;

(g) dies and his heir or successor in title is not qualified under this [Act][Code][Law] to hold the mineral right, unless an application is received from the heir or successor within ninety days of the death to transfer the right to a third party who is so qualified and accepts all duties under the right;

(h) becomes an un-discharged bankrupt or becomes of unsound mind;

(i) makes any statement to the [Regulating Authority] in connection with his mineral right which he knows or ought to have known to be false;

(j) fails to substantially comply with the terms of a community development agreement when required by this [Act][Code][Law] to do so;

(k) for any reason becomes ineligible to apply for a mineral right under section [__] (listing the grounds for ineligibility).

(6) The [Administrative Reviewer] shall, before suspending any mineral right, give notice to the holder in such a manner as shall be prescribed and shall, in such a notice require the holder to remedy in not less than thirty calendar days any breach of the conditions of his mineral right.

(7) If the holder of a mineral right fails to remedy any failure or contravention specified in paragraphs (c), (d) and (k) of subsection (1), the [Administrative Reviewer] may, by notice to the holder thereof, suspend the mineral right forthwith.

24.9. Example 2:

Article [__]

(1) Without prejudice to any other provisions of this [Act][Code][Law], upon the written approval of the [Regulating Authority], the Mining Cadastre Office may suspend a mining right for a period not exceeding sixty Annotation

Drawn from Nigeria’s mining law (2007), this example provides the grounds for suspension of mining rights which apply to reconnaissance permits because they are mining rights under the law. The mining law contains additional provisions on the suspension of certain mineral rights that do not apply to
24. Prospecting/Reconnaissance Licencing

24.10 Termination of Licence

Typically, the reconnaissance-type prospecting licence is subject to the general provisions of the mining law on termination of mining rights, rather than provisions specific to that type of mineral right. The mining law should state clearly in one place the various ways in which a mining right can come to an end, which usually include expiration of the term, surrender by the holder, and revocation by the issuing authority. The law should make clear what the status of the licenced area is upon termination in each manner and any remaining potential liabilities or incapacities that the licence holder may have upon termination.

24.10. Example 1: Annotation
### Part B-1: Mineral Licences – Prospecting/Reconnaissance

**Article [___]**

(1) [A mineral right shall be deemed terminated upon (a) the expiry of the licence (b) surrender of the licence by the licence holder pursuant to Section/Article [Surrender section/article of the Law] or (c) revocation of the licence by the [Regulating Authority] pursuant to Section/Article [Revocation section/article of the Law]].

(2) On the termination of a mineral right, the former holder shall deliver to the [Regulating Authority] or as the [Regulating Authority] directs,

(a) the records which the holder is obliged under this [Act][Code][Law] or regulations made under this [Act][Code][Law] to maintain,

(b) the plans and maps covered by the mineral right prepared by the holder or at the holder’s instructions, and

(c) other documents, including in electronic format, if available, that relate to the mineral right.

(3) A person who fails to deliver, within thirty days from the date of being called upon to do so by the [Regulating Authority], a document which is required to be delivered under subsection (1) commits an offence and is liable on summary conviction to a fine not more than the cedi equivalent of US$ ten thousand or imprisonment for a term not more than three years or to both.

24.10. **Example 2:**

**Article [___]**

A prospecting permit shall expire when the specified period ends, if the holder surrenders the permit, or if it is cancelled by [the regulatory authority] for non-compliance with the obligations by which the permit-holder is bound for the reasons listed in Article [___] (on the grounds for the cancellation of mining titles) of the present mining [Code][Act][Law].

**Annotation**

Drawn from Mali’s mining law (2012), this provision simply identifies the events that result in the termination of the prospecting/reconnaissance licence (term expiration, surrender or cancelation) and refers back to the article of the law that lists the grounds for cancelation of all mineral rights, including prospecting/reconnaissance licences.

### 24. Prospecting/Reconnaissance Licencing
24.11 Revocation of Licence

A provision authorizing the Regulatory Authority to put an end to the validity of a prospecting/reconnaissance licence before the end of its term is referred to as the revocation of the licence. In some mining laws it is called withdrawal, cancellation or nullification of the licence. Whereas suspension of the licence is a condition that can be cured, revocation of the licence is final. Moreover, many mining laws provide that a person whose mineral licence has been revoked is ineligible to receive any new mineral licence for several years after the revocation. Because of the seriousness of the revocation sanction, it should be subject to certain procedural due process safeguards including notification to the licence holder of the grounds for the revocation and an opportunity to cure the problem, if feasible, or to present arguments and evidence that a failure or violation constituting grounds for revocation of the licence has not in fact occurred or should be excused.

As noted above with respect to suspension, prospecting/reconnaissance licences tend to be subject to general provisions on revocation rather than provisions specific to that type of licence in particular. Where revocation provisions are deemed necessary for a prospecting/reconnaissance licence, the mining law should clearly spell out the grounds for revocation and the steps that occur before revocation is final, including notice and an opportunity to cure the problem, as well as identify a transparent process through which the licence holder may contest the revocation.

Other issues to be given careful consideration in drafting clauses on revocation of mining rights are:

1) Whether revocation of the reconnaissance/prospecting licence should be automatic in certain circumstances and, if so, in what circumstances;
2) Whether revocation of the licence should always be preceded by an order of suspension of the licence and an opportunity for the holder to cure the problem that provides the grounds for revocation; and
3) Whether the Regulating Authority should have discretion to revoke the licence or not, in all or certain circumstances.

As a general matter, if the prospecting/reconnaissance licence is exclusive and gives the holder an exclusive right or priority to apply for an exploration licence in the licence area, then it constitutes a robust and valuable right under which the licence holder is likely to make a substantial investment in reconnaissance work. In such cases, stronger procedural safeguards would be appropriate.

Conversely, if the prospecting/reconnaissance licence is non-exclusive and does not provide an exclusive or priority right to apply for an exploration licence in the licenced area, then it constitutes a less robust and valuable right under which the licence holder is less likely to make a substantial investment in reconnaissance work. In such cases, fewer procedural safeguards may be appropriate.

24.11. Example 1:  

| Annotation |
Article [__]  

1) The [Regulating Authority] may revoke any mining right if-

(a) the holder is convicted by any court of competent jurisdiction for an offence under this [Act][Code][Law] or its Regulations and the time for appealing against the conviction, if any, has lapsed or the appeal has been dismissed or withdrawn or struck out for want of prosecution;

(b) the holder breaches any provision of this [Act][Code][Law] or regulations made or of any terms or conditions of his mining right whether express or implied;

(c) the holder breaches any order or notice issued or given under this [Act][Code][Law] or Regulations made under it, or on being required by the [Regulating Authority] by notice to show cause within a time specified in the notice why the mining right should not be revoked, the holder fails to comply or show adequate cause;

(d) the holder is declared by a court of competent jurisdiction to be insolvent or bankrupt or goes into insolvent liquidation, except as part of a scheme for reorganisation, amalgamation or an arrangement with its creditors; or

(e) the mining right is held jointly by more than one person and the provisions of subsection (1) (a) of this section apply to any one of the joint holders unless the other joint holders are able to assume the obligations of the former and adopt measures which will guarantee the performance of these obligations.

2) A mining right shall be revoked upon written advice of the [Regulating Authority] only after thirty days’ notice of the intention to revoke the mining right containing in detail the grounds thereof is given to the holder and during the period fixed the holder has failed to remedy the breach or remove the grounds for revocation within the required period.

3) Any notice issued by the [Regulating Authority] and sent by registered mail to the last known address in [Country] or given in person to an authorised representative of the mining right holder in [Country] or published in the [Gazette], shall for all purposes be sufficient notice of the

NOTE: This Document is part of a multi-part document, Parts A - E
revocation of the mining right to the mining right holder.

24.11. Example 2:

Article [...]  
(1) The [Regulating Authority] on the recommendation of the [Administrative Reviewer] may cancel a mineral right if the holder,

(a) fails to make payment on the due date, whether due to the [State] or another person, required by or under this [Act][Code][Law],

(b) becomes insolvent or bankrupt, enters into an agreement or scheme of composition with the holder’s creditors, or takes advantage of an enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation,

(c) makes a statement to the [Regulating Authority] in connection with the mineral right which the holder knows or ought to have known to be materially false, or

(d) for any reason, becomes ineligible to apply for a mineral right under this [Act][Code][Law].

(2) The [Regulating Authority] shall, before cancelling a mineral right under subsection (1), give notice to the holder and shall in the notice, require the holder to remedy a breach of the condition of the mineral right within a reasonable period, being not less than sixty days in the case of a prospecting/reconnaissance right and if the breach cannot be remedied, to show cause to the reasonable satisfaction of the [Regulating Authority] why the prospecting/reconnaissance right should not be cancelled.

(3) On cancellation of a mineral right under this section, the right of the holder shall cease but without prejudice to the liabilities or obligations incurred by another person in relation to the mineral right prior to the date of the cancellation.

Annotation

Drawn from the mining law of Ghana (2006), this provision governs the revocation of an exclusive prospecting/reconnaissance licence. It includes the following safeguards:

1) The Regulating Authority is only authorized to revoke a licence on the recommendation of the Minerals Commission;
2) The grounds for revocation are specified in the mining law and are more limited than in the first example (i.e., a breach of any term of the mining law is not a ground for revocation of the licence under the Ghanaian mining law); and
3) The Regulating Authority must give prior notice to the holder,
4) The holder is given a sixty-day period to cure the breach or explain why the licence should not be revoked.

These safeguards are stronger than those for non-exclusive rights under the first example in that a recommendation of the Commission is required in order for the Regulating Authority to revoke, the grounds for revocation are much more limited, and the holder is given a longer cure period.

As in the first example, the Regulating Authority is given the flexibility to revoke or not, based on the circumstances and the reasoning provided by the licence holder.
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<th>24.12 Surrender of Licence</th>
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Surrender provisions address instances where the licence holder gives up the mining right voluntarily before the duration of the licence has run out. As noted above with respect to suspension and revocation, prospecting/reconnaissance licences tend to be subject to general provisions on surrender rather than provisions specific to the prospecting/reconnaissance licence itself.

The mining law should clearly spell out the steps that must occur before surrender of the mining licence is recognized by the Regulating Authority.

### 24.12. Example 1:

**Article [ ]**

(1) The holder of a mining right may, upon application in the form and manner prescribed in the Regulation, and upon meeting the conditions prescribed therein, surrender the mining right.

(2) The Mining Cadastre Office shall approve an application made under subsection (1) of this section to surrender the mining right if it is satisfied that-

(a) the holder of the mining right has submitted the request for surrender in the prescribed form and manner;

(b) the surrender will not affect any liability incurred by the mining right holder before the surrender of the mining right, including environmental obligations;

(c) all rents due and fees prescribed, if any, have been paid by the holder of the mining right; and

(d) the holder of the mining right has surrendered the original title document.

### Annotation

Drawn from Nigeria’s mining law (2007), this example of a surrender provision establishes the right of the licence holder to surrender the mineral licence provided that certain conditions are met. Most importantly, the conditions require a finding that the surrender will not affect any liability of the licence holder, including environmental obligations, and that the holder of the licence has paid all fees and rents due. The provision applies to all mining rights (the language is not specific to prospecting/reconnaissance licences.)

### 24.12. Example 2:

**Article [ ]**

(1) The holder of a mineral licence may surrender the reconnaissance area, and

### Annotation

Drawn from Namibia’s mining law (1992), this example takes a different approach to surrender of the prospecting/reconnaissance licence. In contrast to
prospecting area, retention area or mining area to which such licence relates by notice in writing addressed and delivered to the [Regulating Authority] and shall together with such notice return such mineral licence, whereupon –

(a) the [Regulating Authority] shall -
   (i) cancel such mineral licence;
   (ii) make an entry to that effect in the register of mineral licences referred to in article [...] (on the register of mineral licences);
   (iii) notify the person who was the holder of such mineral licence that such mineral licence has been cancelled; and
   (iv) notify the owner of the land on which such area was situated of such surrender; and

(b) such area shall be deemed to have been surrendered on the date on which such mineral licence has been cancelled as provided in subparagraph (i) of paragraph (a).

(2) If a reconnaissance area, prospecting area, retention area or mining area is surrendered as provided in subsection (1), the holder of the mineral licence to which such area relates shall –

(a) demolish any accessory works erected or constructed by such person in such area, except in so far as the owner of the land retains such accessory, works on such conditions as may mutually be agreed upon between such owner and person, and remove from such land all debris and any other object brought onto such land;

(b) take all such steps as may be necessary to remedy to the reasonable satisfaction of the [Administrative Reviewer] any damage caused by any reconnaissance or prospecting operations and mining operations carried on by such holder to the surface of, and the environment on, the land in the area in question.

(3) The surrender of a reconnaissance area, prospecting area, retention area or mining area shall not affect any legal proceedings instituted against such the Nigerian example, which makes the administrative acceptance of a surrender subject to the fulfilment of certain conditions, this example makes surrender automatic upon the submission of a written request by the holder, together with the mineral licence. The Regulating Authority is required to enter the surrender in the register of mineral licences, to notify the surrendering licence holder of the cancellation of the licence and to notify the owner of the land covered by the surrendered licence.

Instead of imposing conditions precedent for recognition of a surrender of the licence (which is called “abandonment” in the Namibian mining law), this example imposes obligations on the surrendering licence holder after the cancellation of the licence. These obligations include:

- Demolition and removal of any works erected on the prospecting/reconnaissance area, unless otherwise agreed with the landowner.
- Remediation of any damage caused to the surface land and the environment, to the reasonable satisfaction of the Administrative Reviewer. The “Administrative Reviewer” as used in this example is the administrative authority that is the immediate superior of the Regulatory Authority in the administrative hierarchy.

Failure to comply with these post-surrender obligations is punished by a fine and/or prison term.

Whereas the surrender of the mineral licence is effective as of the date of cancellation by the Regulating Authority, the surrendering holder must retain whatever access rights have been secured with the owners of the land covered by the surrendered licence in order to accomplish the holder’s post-surrender obligations.

Like the previous example, this example stipulates that the surrender shall not affect any liability or obligation under the mining law, or any legal proceeding against the surrendering holder.

The advantage of this approach is that it speeds the process of making surrendered licence areas available to another applicant. The disadvantage is that...
24.13. Example 1:

Article [__]
A prospecting/reconnaissance licence is not transferable.

Annotation
Drawn from Sierra Leon’s mining law (2009), a non-exclusive prospecting/reconnaissance licence is not transferable. This is a typical provision. Because a non-exclusive prospecting/reconnaissance licence over the same area is available from the Regulating Authority, there is no need for transferability.

24.13. Example 2:

Article [__]
(1) A prospecting right or reconnaissance permit confers on the holder an exclusive right to carry out prospecting and reconnaissance investigations for minerals belonging to the group for which said permit was issued, within the boundaries of the holder's area and with no limit as to depth.

Annotation
Drawn from Mali’s mining law (2012), this provision states that the exclusive prospecting/reconnaissance licence is transferable. As noted above, an exclusive prospecting/reconnaissance licence is more valuable to an investor and is more likely to have given rise to significant investment than a non-exclusive licence. In order to attract junior companies that focus on early stage reconnaissance and...
A prospecting right or reconnaissance permit is a movable indivisible right that may not be subleased. It may be assigned or transferred. To this end, a rights holder must send [the regulatory authority] any contract or agreement through which it purports confer, assign or transfer the rights and obligations arising from the prospecting permit to a third party.

The assignment or transfer of a prospecting right may only occur under the same conditions which applied for the allocation of the right and shall be subject to the assignor providing [the regulatory authority] with a report on the work carried out in accordance with the Establishment Convention. The assignment or transfer shall take effect only when the order from [the regulatory authority] comes into operation.

The assignee or heir must apply for the permit within thirty (30) days from the signing of the deed of assignment or the legal instrument in which the heirs were designated, which must have been finalised subject to the condition precedent of regulatory authority approval. The terms for assignment and transfer shall be specified in the implementing decree from the regulatory authority.

24. Prospecting/Reconnaissance Licencing

24.14 Specific Violations and Penalties

Reconnaissance-type prospecting licences and their holders can be subject to applicable general violations and penalties, and may also be subject to specific violations and penalties as deemed appropriate. Specific violations usually consist of engaging in prospecting/reconnaissance activities outside of the licenced area, engaging in exploration or exploitation activities not authorized by the prospecting/reconnaissance licence, and unauthorized removal or sale of minerals from the licence area. It is essential that the reconnaissance-type prospecting activity authorized by the licence be carefully defined to distinguish it from exploration under an exploration licence.

24.14. Example 1:

Article [...]  
(1) The following offences shall be subject to a fine of [amount] to [amount]

Annotation

Drawn from Mali’s mining law (2012), these provisions include violations and penalties for prospecting before selling their assets to a larger mining company, this provision grants a robust prospecting/reconnaissance right that promotes investment in previously unexplored or underexplored areas.
and a prison sentence of between eleven days and two years, or only one of these two penalties:

(a) those who analyse samples outside of the [Country] without prior authorisation from the Mining Division.

Article [__]
(1) The following offences shall be subject to a fine of [amount] to [amount] and a prison sentence of between one month and three years, or only one of these two penalties:

(a) conducting mining or prospecting activities in the absence of an appropriate mining right;
(b) those who, within the meaning of the provisions of the Criminal Code, provide aid or assistance to illegal prospectors or operators.

(2) In addition, mineral substances which are extracted illegally, as well as the means, items and instruments which contributed to offences 1) and 2) above shall be seized by and forfeited to the State.

(3) Those who have not carried out the work in accordance with Article [__] (on measures relating to preserving public health and safety, and those relating to respecting the features of the surrounding environment) above before the relevant mining right comes to an end; and

(4) Holders of mining rights who do not, within the prescribed time periods, comply with the instructions of the [the regulatory authority] relating to the measures provided for in Article [__] (on obligations relating to public health and safety, nature conservation, and the preservation of transportation routes, the sturdiness of buildings, and the use, output or quality of water of any kind) above.

24.14. Example 2:

Article [__]
Any person who intentionally or negligently transgresses the boundaries of his or her reconnaissance area, prospecting area, claim area, retention area or mining area while carrying on reconnaissance operations, prospecting penalties that would be specific to reconnaissance-type prospecting, although not necessarily exclusive to that type of activity:

(1) sending samples for analysis outside of Mali without authorization from the Department of Mines;
(2) engaging in exploration or exploitation of mineral substances without the proper title;
(3) assisting clandestine prospectors or miners;
(4) failure to implement the approved protective measures prior to site closure; and
(5) failure to implement required measures for safety, pollution control, environmental protection, protection of communication lines, structural stability, and water usage, flow and quality.

The penalties include fines and imprisonment, as well as confiscation of illegally extracted minerals and the means, instruments and things used to extract them.

Annotation

Drawn from Namibia’s mining law (1992), this example presents an additional specific violation applicable to reconnaissance-type prospecting licences – namely, conducting operations outside of the licenced area - that may be found
| operations or mining operations or such boundaries to be so transgressed shall be guilty of an offence and on conviction be liable to a fine not exceeding [Maximum Penalty Amount] or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment. | within a general article on miscellaneous violations. |
AHLA GUIDING TEMPLATE
PART B-2: Exploration

25. Exploration Licensing

Exploration – also called “prospecting” in many Anglophone African jurisdictions (e.g., Botswana, Ghana, Namibia, South Africa, Tanzania, Zambia, Zimbabwe) and “recherche” in Francophone jurisdictions - is the systematic investigation of the surface and subsurface of the Earth in a designated area using geological, geophysical and geochemical methods for the purpose of determining the presence of economic deposits of mineral substances and establishing their nature, chemical composition, shape, grade and estimated quantity within degrees of certainty according to industry norms, as well as the most effective, efficient and appropriate means of extracting, processing and marketing the mineral products derived from the deposits under forecasted conditions of price and cost (including fiscal terms). Exploration can be conducted by the state or an investor.

Exploration activity proceeds in stages. The results of each stage are evaluated by the explorer and a determination is made to either proceed to the next stage, sell the exploration rights where possible, or abandon the project and relinquish the rights. The first stage of exploration in a geographical area that has not been the subject of extensive prior exploration or mining activity typically commences with wide scale, superficial investigation using primarily geological and geophysical methods. This is the least costly stage of exploration activity.

If the results of that activity are sufficiently promising and the explorer is willing and able, then the second stage of exploration work will typically involve progressively more narrowly targeted investigation of the type, quality, extent and quantity of concentrated mineralization in a specific area by means of drilling and the analysis of core samples taken at various depths from selected points on a grid laid over the targeted surface area, and the completion of at least a preliminary reserve study to quantify the volume of mineralization identified or projected based on the drilling and analysis in accordance with industry norms as to degree of certainty. The second stage of activity may be the first stage of exploration activity in an area that has previously been extensively explored or mined and for which substantial data is available for analysis.

If the results of the drill core analysis and preliminary reserve study are determined to justify a significant investment in evaluating the commercial feasibility of exploiting the identified deposit, the third and most expensive stage of exploration activity will involve conducting the final mineral reserve studies (if one has not already been completed), prefeasibility studies, environmental and social impact assessments and final feasibility studies with the goal of establishing the economic justification for developing the identified deposits.
In some jurisdictions, an exploration licence may be, or must be, preceded by a prospecting/reconnaissance licence as described in the previous part of this Guiding Template (Part B-1). In those jurisdictions, the main difference between prospecting/reconnaissance activity and exploration (or “prospecting”) activity is that the former is limited to the types of activity common to the first stage of “greenfield” exploration, whereas the latter includes drilling, analysis of drill core samples of ore and the conduct of in-depth studies to determine the presence of a commercial deposit of valuable mineral substances.

In other jurisdictions, the activity described under prospecting/reconnaissance licences in Part B-1 of this Guiding Template is considered part of exploration and there is no separate licensing of prospecting/reconnaissance activity.

Thus, depending on the jurisdiction, an exploration licence may be the right or title that authorizes (a) initial activity to locate and evaluate concentrations of valuable minerals in nature, and/or (b) the second stage of exploration activity following the completion of an initial stage of such activity pursuant to a prospecting/reconnaissance licence. Overall, it is essential for “exploration” (or “prospecting” or “recherche”) to be defined or described in the “definitions” and “types of mineral rights” sections of a mining law to avoid confusion.

25. Exploration Licensing

25.1 Eligibility

A mining law may restrict what legal entities can receive a permit or authorization to conduct exploration activities, either by defining who may or may not apply for the right, or by defining prior conditions that must be met before such an entity can be considered eligible to apply.

Eligibility conditions are key in determining the ease or difficulty of access to a nation’s mineral resources.

Issues to be considered include:

- Whether individuals and legal entities are eligible for exploration rights?
- Whether foreign individuals or entities are eligible, and under what conditions? (When distinguishing between foreign and national entities, mining legislation should define what is meant by a foreign entity.)
Whether and what financial and/or technical capacity is required?
Which individuals and entities are not eligible for exploration rights?

The eligibility requirements will determine not only who may obtain an exploration licence directly, but also to whom such a licence may be transferred in the future.

25.1. Example 1:

Article [__]. Eligibility for mining and quarrying rights
(1) Subject to the provisions of Article [__] below (on persons who are not eligible), the following shall be eligible for mining and quarrying rights:

(a) any natural person who is of age and is a Congolese national as well as any legal entity under Congolese law which has its registered office and its administrative office within the National Territory and whose objects are mining activities;

(b) any natural person who is of age and is a foreign national as well as any legal entity under the law of a foreign country;

(c) any scientific body.

(2) Eligible persons referred to in (1) (b) above shall be required to elect a domicile with a representative in the mining and quarrying industry which is set up within the National Territory and to act through their intermediary.

(3) Legal entities incorporated in foreign countries and the scientific bodies cited in 1 (b) and (c) above shall only be eligible for mining and quarrying prospecting rights.

Article [__]. Electing a domicile
(1) Electing the domicile referred to in the preceding Article is to be done

Annotation

Drawn from DRC’s mining law (2002), these provisions contain specific eligibility requirements for individuals and corporate entities, national and foreign, as well as circumstances that render certain types of individuals and entities ineligible to hold mining and quarrying rights. The eligibility provisions are broken up into four articles, for clarity. They cover, respectively: (1) the general rule of eligibility, (2) the local domicile requirement for foreign nationals and entities, (3) the accreditation and role of mining and quarrying representatives, and (4) the general rule of ineligibility.

The first article establishes who is eligible for what types of licences (unless declared ineligible by the subsequent article on ineligibility). It makes a distinction between (a) citizens of the DRC and companies organized as mining companies under the laws of the DRC that have their official headquarters and principal administrative office in the DRC, on the one hand, and (b) foreign citizens and companies organized under foreign laws, and (c) scientific organizations, on the other hand. Foreign citizens and companies, as well as scientific organizations, are eligible only for exploration licences for mines and quarries. They are not eligible for exploitation licences.

Foreign citizens and companies are required to make an election of domicile in care of a mining and quarrying representative based in the National Territory and to act through such representative. This requirement is intended to assure the administration that they will be able to serve all legal notices for the foreign citizen or company on a known local entity. It will also serve to establish a tax
intentionally and may only be done in writing.

(2) All service of documents, claims and actions for the performance of an act for which the domicile was elected, may be validly done at this domicile.

Article [_] Agents in the mining and quarrying industries
(1) Agents in the mining and quarrying industries require prior approval from [the regulatory authority] as regards their respectability, ethics, skills and in-depth knowledge of mining legislation, or of the management of the mining and quarrying field.

(2) In addition to representation, part of the role of agents in the mining and quarrying industries is to advise and/or assist any interested person in the granting and exercising of mining and quarrying rights as well as in disputes relating thereto.

(3) [The regulatory authority] shall maintain and publish the list of approved agents and shall update said list on an annual basis.

(4) The Mining Regulations shall lay down the conditions for approving agents in the mining and quarrying industries.

Article [_] Persons who are not eligible
(1) The following are not eligible to apply for and obtain mining and/or quarrying rights, an artisanal miner's card or a merchant's card, as well as authorisation to purchase and sell mineral substances from artisanal operations:

(a) State officials and civil servants, judges, members of the Armed Forces, the Police and Security Services, the employees of public bodies which are authorised to carry out mining operations;

(b) any person who lacks legal capacity, as provided for in Article [_] of the domicile of the foreign nationals and entities in the DRC.

The second article provides that the election of domicile required of foreign citizens and companies must be made in writing; and that any notification, request or legal process concerning anything for which such election of domicile has been made is valid if delivered to that address.

The third article describes the role and control of the mining and quarrying representatives. They must be accredited by the Regulating Authority based on the criteria of honor, ethics, competency and deep knowledge of the mining legislation or the administration of matters relating to mines and quarries. In addition to their role of representation, the mining and quarrying representatives are authorized to advise and/or assist any person or entity interested in the issuance and the exercise of mining and quarrying rights, as well as related dispute resolution. The conditions for accreditation of mining and quarrying representatives are to be set forth in the Mining Regulation; and the Regulating Authority is to maintain and publish the list of accredited mining and quarrying representatives and update it annually. This provision, in effect, creates a new profession – that of mining and quarrying representative – in the interest of establishing a high standard of competency and professionalism in the representation of mining companies before the administrative authorities and dispute resolution bodies.

The fourth article describes the categories of persons who are not eligible to receive mineral rights. They include: (a) the listed categories of public servants, (b) persons lacking legal capacity under the applicable legislation (in this case the Family Code), and (c) persons subject to a prohibition. The latter category includes persons convicted of a criminal violation of the mining law (prohibited for 10 years), persons from whom an artisanal mining or trading permit has been withdrawn (prohibited for three years) and persons whose authorization to operate a trading post for artisanal mining products has been withdrawn (prohibited for five years).
(c) any person who has been prohibited therefrom including:

(i) a person who has been convicted, by a final judgement, for violating mining and quarrying legislation or legislation relating to economic activities as regards their mining and quarrying rights and affiliates, and they shall have been prohibited from so acting for a period of 10 years;

(ii) a person whose artisanal miner's or merchant's card has been withdrawn, and prohibited from obtaining such a license for a period of three years;

(iii) a person whose authorisation to purchase and sell mineral substances from artisanal operators has been withdrawn, and purchases/sales prohibited for a period of five years;

25.1. Example 2:

Article [_] Eligibility for exploration licence.
A person shall not be eligible to apply for the grant of an exploration licence under this [Act][Code][Law] unless that person is a company incorporated or registered under the [Companies Act] and whose name has not been struck off the register of companies at the time of the application.

Article [_] Restrictions on grant of mineral rights
(1) No mineral right shall be granted to-

(a) an individual who-
   (i) is under the age of 18 years;
   (ii) is not a citizen of [Country] or has not been ordinarily resident in [Country] for a period of ten years immediately preceding his application for a mineral right;
   (iii) is an un-discharged bankrupt, having been adjudged or otherwise

Annotation
Drawn from Sierra Leone’s mining law (2009), this provision refers back to and modifies the general provision on eligibility for mineral licences. Unlike the DRC Mining Code eligibility provision which makes exploration licences available to foreign and national individuals and companies, the Sierra Leone provision limits the issuance of exploration licences to corporate entities formed under the Companies act of Sierra Leone only. However, a company can be formed under the Companies act by foreign nationals. This provision, in comparison to the DRC provision, provides the Administration with the additional assurance of knowing that each entity eligible for an exploration licence is subject to the provisions of the local Companies act and registered thereunder, as opposed to being an entity formed under the law of a foreign jurisdiction with a different legal system and tradition and possibly a different language and alphabet.

Neither the Companies Act nor the mining law of Sierra Leone requires the
declared bankrupt under any written law, or enters into any arrangement or scheme of composition with his creditors; or (iv) has been convicted of an offence involving fraud or dishonesty;

(b) a co-operative society which is not registered in accordance with the laws of [Country];

(c) a body corporate—
   (i) which is not registered or incorporated under the [Companies Act]; or
   (ii) which is in liquidation other than a liquidation which forms part of a scheme for the reconstruction or amalgamation of such body corporate;
   (iii) in respect of which an order has been made by a court of competent jurisdiction for its winding up or dissolution;
   (iv) which has made a composition or arrangement with its creditors;
   (v) which has among its shareholders any shareholder who holds at least a ten percent share of the company or a director, who would be disqualified in terms of subparagraphs (i) or (iv) of paragraph (a).

25. Exploration Licensing

25.2 Requirements for Licence Applications

Regulatory authorities generally require that eligible entities seeking authorization to conduct exploration activities submit particular documents and show proof of certain criteria as part of the authorization application process. Several countries have adopted a two-tier approach to the procedure for issuing exploration licences: that is, (1) an application procedure with defined criteria for areas in which significant deposits have not yet been identified (i.e., “greenfields” projects), and (2) a tender procedure for areas containing known deposits that have been explored or worked previously. For those areas put up for bid, the requirements are set out in the bidding terms and specifications, and the tender is conducted in accordance with established rules for transparency and objectivity. A third possibility is to grant exploration rights to known stratiform deposits by an auction procedure (i.e., by offering them to the highest bidder during a specified auction period, without the other more extensive requirements of a tender procedure).
In addition to identification and eligibility of the applicant, the requirements for the grant of an exploration licence will or may contain some or all of the following:

- The availability of the area requested;
- Proof of eligibility and domicile, for the individual applicant and/or the firm seeking authorization;
- The specification of the minerals to be targeted by the exploration project;
- A proposed work program for all or part of the licence term;
- Proof of technical and financial capability to carry out the proposed work program;
- Compliance with limitations on the number of permits or the aggregate area that a person or entity and its affiliates may hold under licence;
- Completion and submission of specified official forms;
- Payment of processing fees upon application; and
- Payment of any fees required as a condition for the issuance of the licence.

A fundamental issue in designing the requirements is whether to (a) restrict access to mineral exploration licences by imposing technical and financial standards as conditions for the grant of rights, or (b) facilitate access to such licences and eliminate non-performing licencees subsequently based on their failure to meet performance standards under their licences.

In some jurisdictions where the right to a mining licence is attached to the exploration licence, subject to the fulfilment of defined conditions, the signature of a contract between the State and the licensee may be required at the time of issuance of the exploration licence. This would often be the case when the right to explore and exploit a known valuable mineral deposit is awarded by a tender process. The contract sets forth the rights and obligations of the licensee during the term of the exploration licence and the conditions under which a mining licence will be issued. In light of increasing global commitments related to Climate Change and Land Use, it would be prudent for the State to require in such cases the conduct of an initial social, environmental and overall sustainable development assessment of the project at an early stage of contract implementation prior to the completion of the exploration phase and the authorization of mine development. The applicant’s commitment to and proposed plans for the funding and conduct of such a study in collaboration with the national and local environmental authorities and their contractors, as well as local communities, could constitute an essential component of the application.

### 25.2. Example 1:

<table>
<thead>
<tr>
<th>Article [...] Application for exploration licence</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from Tanzania’s mining law (2010), this provision sets forth the</td>
<td></td>
</tr>
</tbody>
</table>
### AMLA GUIDING TEMPLATE
#### PART B-2: Exploration

<table>
<thead>
<tr>
<th>(1) An application may be made for an exploration licence for minerals falling under any of the following groups: (a) metallic minerals;</th>
<th>requirements for the grant of an exploration licence (called a prospecting licence in the law). The law provides for a two-tier process of issuing such licences (an application process and a tender process). It sets out the requirements for the licence in the article describing the required application contents and then refers back to them in the article on the conditions for the grant of the licence.</th>
</tr>
</thead>
</table>
| (2) An application for an exploration licence including an application in respect of land in an area reserved for applications by tender for exploration licences shall be made to the [Regulating Authority] and shall be in the prescribed form and accompanied by the prescribed fee. | The requirements for obtaining an exploration licence by application include all of the elements described in the immediately preceding annotation and, in addition, the following:
1. Statement as to local procurement of goods; and
2. Minimum annual expenditure per square kilometre. |
| (3) An application for the grant of an exploration licence shall contain:
   (i) in the case of an individual, his full name and nationality, physical and postal addresses, and attach his recent passport size photograph; or
   (ii) in the case of a body corporate, its Corporate name, place of incorporation, names and nationality of directors;
   (iii) in the case of more than one person, particulars referred in items (i) and (ii) of each person. | |
| (b) shall state the type of minerals and its relevant group, as indicated in subsection (1); | |
| (c) shall state the size of the area of land over which it is sought, which shall not exceed the maximum area prescribed as provided under section [_] (stating that maximum areas are to be established by regulation), and be accompanied by a plan of the area; | |
| (d) shall contain a statement giving particulars of the financial and technical resources available to the applicant; and | |
| (e) shall contain a statement on the procurement plan of goods and services available in [Country]; | |
### Exploration licence by tender

1. An application for an exploration licence in an area designated as an area for which applications for such a licence are invited by tender shall-

   a. be in the prescribed tender form and accompanied by the prescribed tender fee; and

   b. subject to the terms and conditions of the invitation to tender, include the matters required to be included in applications by section [...] (the general article on the application requirements for an exploration licence).

2. Applications made under subsection (1) shall be submitted to the [Administrative Reviewer] for its advice.

3. On receipt of a report from the [Administrative Reviewer], the [Regulating Authority] shall consider the competing bids and shall select the bid which is most likely to promote the expeditious and beneficial
### AMLA GUIDING TEMPLATE

**PART B-2: Exploration**

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<table>
<thead>
<tr>
<th>Development of the mineral resources of the area having regard to</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the programme of exploration operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;</td>
<td></td>
</tr>
<tr>
<td>(b) the financial and technical resources of the applicant; and</td>
<td></td>
</tr>
<tr>
<td>(c) the previous experience of the applicant in the conduct of exploration and mining operations, and the successful application shall be treated as an application under section [__] (on the rules governing priority in the case of competing applications) which has priority over any other application and the applicant shall be notified accordingly.</td>
<td></td>
</tr>
</tbody>
</table>

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#### 25.2. Example 2:

**Article [__]**

In general, mining licences shall be considered and granted according to a principle of "1st come, 1st served".

**Article [__]**

(1) All applications for mining rights are to be made using the prescribed form from the Ministry of Mines, a template of which shall be set out in the decree implementing the present [Code][Act][Law].

(2) After correctly completing the form, the applicant is to file their application with said office, with acknowledgement of receipt that indicates the date and time, to the hour and minute, that the application was filed, and constitutes evidence of filing.

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**Annotation**

Drawn from Madagascar’s mining law (1999), this provision provides for the issuance of an exploration licence to the first eligible applicant who submits a complete application for an available area. No proof of technical or financial capacity is required; and no work program is reviewed as a requirement for the grant of the licence.

Madagascar is an example of a jurisdiction that relies on ex-post requirements for maintaining the validity of an exploration licence rather than limiting access to exploration licences by imposing requirements for their issuance.
### Article [__]

1. Prospecting licences, or "P" licences, relating to a defined area shall be granted by a decision of [the regulatory authority] or its representative, within no more than thirty (30) working days, to the first eligible person who filed an application which meets the conditions specified in Article [__] (which states that the template for application forms shall be set out in the implementing decree) above.

2. In cases where the applicant is applying pursuant to an exclusive permit to reserve an area, they are to attach said permit, duly endorsed by the authorities for the relevant Decentralised Territorial Collectives, to their application.

### 25. Exploration Licensing

#### 25.3 Licence Refusal Appeal Process

In order for there to be accountability of the granting authority, there should not only be standards for the grant of licences that limit or eliminate the granting authority’s discretion, but also a procedure for independent review of the authority’s decision to refuse to issue a licence.

A due process review procedure would include an initial procedure for reconsideration by the granting authority and/or his or her hierarchical superior, followed by a judicial or quasi-judicial review of the ultimate decision on reconsideration.

If a competitive bidding procedure is used to award the exploration licence, the bidding rules (either in the Mining law or regulations, or in a separate law and regulations on public contracting) should include a clear statement of the procedure and criteria for challenging any awards of exploration rights. If the bidding procedure involves a two-stage process (i.e., a bidder qualification stage to narrow the field of eligible bidders and a bid evaluation stage to determine the prevailing bid, if any), then the rules should provide separate procedures for challenges of a determination of ineligibility, on the one hand, and challenges of an award of a licence, on the other hand. The grounds for a challenge of a
decision in a competitive bidding process should be narrowly defined but should include, for example:

- Conflict of interest or misconduct by one or more members of the bid review commission affecting the outcome;
- Decision of the commission based on criteria or weighting other than those specified in the bidding rules;
- Improper influence on the decision of the commission; and
- Decision of the commission contrary to public policy established by law.

If a procedure other than competitive bidding is used to award the licence (e.g., first-come-first served, auction, or best offer), the licence refusal appeal process should be specified in the Mining law. That process should enable appeals of refusals by in the action as well as explicit refusals.

In order to enable appeals of licence refusals to potentially succeed, the licence granting procedure set forth in the Mining law should include clear statements of the following elements:

- The criteria for the grant of the licence;
- A registry and mapping of all applications for exploration licences, accurately recording the name of the applicant, the location of the exploration area sought, the mineral substances targeted and the date and time of filing the application;
- The timeframe within which a decision to grant or refuse the licence must be made; and
- The requirement that the reasons for the refusal of a licence must be provided by the granting authority to the applicant in writing;
- The timeframe within which requests for reconsideration and appeals of refusals must be filed, and with which authority.

In jurisdictions that experience a high volume of applications for mineral rights, and an actual or potential high volume of disputes over mineral rights, it may be desirable and justifiable to establish a special adjudicatory tribunal to resolve such conflicts, including appeals of licence refusals. For example, such appeals could be submitted to a review board composed of members of a mineral resource development advisory commission consisting of representatives of government, industry, artisanal and small scale mining, civil society and authorities and community leaders from the affected areas.

25.3. Example 1:

Article [...] The end of the application assessment
(1) The assessment of an application for mining and/or quarrying rights shall

Annotation
Drawn from DRC’s mining law (2002), this provision provides for an expedited administrative and judicial appeal process in the case of refusal to grant a
come to an end on the day on which the applicant is notified of the decision to grant the application or the day of the judge's decision as provided for in Article [ ] (on registration through legal channels) of the present [Code][Act][Law].

(2) In the event of a decision to refuse the application, and subject to the provisions of Article [ ] (on the application of the common law appeals to a higher administrative authority) and Article [ ] (on the shortening of time periods within which appeals may be brought) of the present [Code][Act][Law], the assessment of an application for mining and/or quarrying rights shall come to an end on the day on which the applicant is notified of the decision.

Article [ ] The application of the common law Subject to the provisions of Article [ ] (on registration through legal channels) and Article [ ] (on matters which concern appeal proceedings) of the present [Code][Act][Law], an appeal against administrative acts decreed by administrative authorities in application of, or in violation of, the provisions of the present [Code][Act][Law], or those of the Mining Regulations shall be governed by the common law, in particular by the provisions of Articles [ ] of the [Code of Judicial Organisation and Jurisdiction] and by the [relevant law] relating to procedure before the [Supreme Court], as amended and supplemented to date.

Article [ ] The shortening of time periods (1) Notwithstanding the provisions of the [ ] Act mentioned above, the applicant's preliminary appeal, as a litigant before the Administrative Division of the [Supreme Court of Justice], to the authority which may set aside or amend the administrative act must be brought within thirty days of the date on which the decision was published or the applicant was personally notified of it. A request to set aside the decision is to be brought within twenty days from the day on which notification was given for the total or partial dismissal of the appeal.

licensure under the general procedures for judicial review of administrative decisions. It includes:

- Filing a request for reconsideration with the granting authority within 30 days of the notification of the decision to refuse the licence.
- Filing a request for judicial reversal within twenty days of the rejection of the request for reconsideration;
- Filing of the briefs in opposition and the administrative record within 15 days of notification of the appeal;
- Limitation of the power of the court to grant filing deadline extensions: 12 days maximum;
- Issuance of the decision of the Supreme Court of Justice within 30 days of closure of the pleadings.
(2) The time limit for filing the reply and the one for the administrative file shall be fifteen working days from the date of notification of the appeal. The same time limit shall apply for the opinion of the [Attorney General of the Republic]. An extension of the time limits imposed on the parties for sending in the appeal and the reply, which may possibly be decided on by a reasoned order of the President of the Administrative Division of the [Supreme Court of Justice], may not exceed 12 working days.

(3) The shortening of the time limits provided for in the preceding paragraphs of the present Article only apply to refusals to grant mining and/or quarrying rights, and of the approval or perfection of mortgages.

(4) In all circumstances, the judgement of the [Supreme Court of Justice] shall be delivered within thirty working days of the deliberations relating to the case.

25.3. Example 2:

Article [...] (1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this [Act][Code][Law] may appeal in the prescribed manner to –

(a) the [Regulating Authority], if it is an administrative decision by an officer of the [Regulating Authority]; or
(b) the [Administrative Reviewer], if it is an administrative decision by the [Regulating Authority].

(2) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the [Regulating Authority], as the case may be.

Annotation

Drawn from South Africa’s mining law (2002), this provision acknowledges a right of appeal under the Promotion of Administrative Justice act and imposes an obligatory internal administrative appeal (a request for reconsideration) as a prerequisite. It does not establish expedited deadlines in the manner that the DRC provision does.
No person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection.

Sections [_] of the [Administrative Procedures Act], apply to any court proceedings contemplated in this section.

### 25. Exploration Licensing

#### 25.4 Area

The area refers to the physical boundary marking the space grantable for exploration. Most laws only provide for the maximum size permitted under the exploration licence, but a law may also provide the minimum threshold allowed. Some laws will mandate the licence holder to clearly demarcate the granted space with physical markers (stones, pegs, wooden slats), while others require solely that the size of the property be listed in the licence document itself, in the mining cadastre, and/or in the applicant’s application documents. The area covered by an exploration licence should be subject to the requirements as to form and orientation imposed by the cadastral system.

A licence should indicate the specific area granted to the licence holder, usually by geographic references and official map coordinates. Due to the larger footprint of prospecting/reconnaissance activities relative to exploration activities, the maximum grantable area for exploration is usually smaller in size relative to the maximum grantable area for prospecting/reconnaissance, subject to being reduced over time either by voluntary relinquishment or mandatory size reductions at renewals. Voluntary relinquishment can be encouraged by a system of gradually increasing annual fees payable per unit of surface area.

#### 25.4. Example 1:

**Article [_]**

(1) Subject to the provisions of this [Act][Code][Law], an exploration licence shall cover such area, not exceeding 1000 km², as is in accordance with the applicant’s application.

**Annotation**

Drawn from Botswana’s mining law (1999), this example represents perhaps the outer limit (1000 km²) of the maximum size of area available under an exploration licence (called prospecting licence under the Botswana law). It is fairly typical in requiring a reduction of at least half of the area upon each renewal, but allows some flexibility in the case of renewals after the first.
### AMLA GUIDING TEMPLATE

**PART B-2: Exploration**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Subject to the provisions of subsection (4), the exploration area shall be reduced in size to eliminate therefrom—</td>
<td>Areas covered by retention licences are eliminated because they come under a separate licence (i.e., a licence holder may obtain a retention licence for part of a licence area while continuing to hold the rest under the prospecting licence).</td>
</tr>
<tr>
<td>(a) at the end of the initial term of the exploration licence, not less than half of the initial area;</td>
<td></td>
</tr>
<tr>
<td>(b) at the end of each period of renewal, half of the remaining area, or such lower proportion as the [Regulating Authority] may in any case agree; and</td>
<td></td>
</tr>
<tr>
<td>(c) the area covered by any retention licence or mining licence granted thereon.</td>
<td></td>
</tr>
<tr>
<td>(3) The holder of an exploration licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the exploration area and, in default thereof, the designation shall be made by the [Regulating Authority].</td>
<td></td>
</tr>
<tr>
<td>(4) Where a person holds two or more contiguous exploration licences covering the same period and the same mineral or minerals the [Regulating Authority] shall, for the purposes of the elimination, under subsection (2), of part of any of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one such exploration licence.</td>
<td></td>
</tr>
<tr>
<td>(5) No compensation shall be payable to the holder of any exploration licence arising out of reductions in area effected in terms of subsection (2).</td>
<td></td>
</tr>
</tbody>
</table>

**25.4. Example 2:**

Article [...]  
(1) The area covered by a prospecting licence shall be a polygon with straight sides which are oriented north-south and east-west, with geographic north as the reference, with the exception of land borders and international boundaries.

**Annotation**

Drawn from Côte d’Ivoire’s mining law (2014), this provision imposes cadastral shape, orientation and border limitations on the area available under an exploration licence, as well as a minimum (1 km²) and a maximum (400 km²) size limit on the area.
(2) The minimum length of each segment of the polygon shall be (1) kilometre.

(3) The area covered by a prospecting licence shall have a surface area of between one (1) square kilometre and four hundred (400) square kilometres.

(4) Each time a prospecting licence is renewed, its surface area shall be reduced by a quarter.

(5) However, the prospecting licence holder may choose to retain the same surface area provided that they prove that work is being carried out over the entire area which is under the relevant licence. In this event, the prospecting licence holder shall be required to pay an option fee, the rates and terms of which shall be determined by decree.

This article is an innovative approach to the typical area reduction requirement for renewals. In light of the smaller maximum area allowed, the article only requires that the area held be reduced by one quarter, rather than one half, at each renewal. Furthermore, it allows the licence holder to opt to hold onto a larger area at renewal provided that the holder demonstrates that work is being done on the larger area and pays a special fee (set by regulation) in order to exercise that option.

### 25. Exploration Licensing

#### 25.5 Specific Obligations of a Licence Holder

Provisions that lay out, for the holder of an exploration licence, the necessary responsibility or duty to undertake certain actions or restriction from undertaking certain actions or causing certain effects are collectively treated as obligations. Noncompliance with these obligations may lead to fines and/or ordered suspensions of operations until the licencee is in compliance. Where suspension occurs, continued, uncured non-compliance beyond a specified time period may result in revocation of the licence.

Specific obligations of an exploration licence holder may include obligations before, during and after operations. Obligations prior to the commencement of operations may include: (1) introduction and presentation to local authorities; (2) preparation and regulatory approval of an environmental and social mitigation plan; and (3) establishment of an environmental restoration surety bond or fund.
Obligations during operations may include:

- Commencement of operations within a specified time period;
- Posting of an environmental surety;
- Payment of annual fees per unit of surface area held;
- Implementation of an approved work program;
- Filing regular reports on work and investment completed and results achieved (e.g., geological findings);
- Implementation of approved environmental and social mitigation plan, and filing of periodic reports thereon;
- Compliance with labour, health and safety regulations;
- Compliance with applicable immigration, customs and tax laws and regulations;
- Compliance with all applicable contract terms, in countries where a contract between the State and each exploration licence holder is required.

Obligations upon the closure of operations normally include a final report of work carried out and results achieved, as well as the implementation of the site closure and restoration provisions of the approved environmental impact mitigation plan, unless the site is to be developed as a mine.

25.5. Example 1:

Article [...] Obligations for maintaining the validity of the right

(1) In order to maintain the validity of their mining or quarrying right, the holder must:

(a) commence work within the period specified in Article [...] of the present [Code][Act][Law];

(b) pay the annual surface area fees per square relating to their title, each year before the deadline set in Article [...] (on the amounts due as annual surface area fees per square) of the present [Code][Act][Law].

(2) Should one or more of these obligations not be fulfilled, the holder shall lose their right in application of the procedure provided for in Articles [...] (on failure to comply with administrative obligations, and the related

Annotation

Drawn from DRC’s mining law (2002), this provision deals with obligations in two chapters. Chapter 1 establishes the principle that the holders of all licences must comply with two specific obligations that have specific time requirements in order maintain the validity of their rights:

- begin work within the time specified in article 197 of the Code; and
- pay the surface fee per square unit of area related to their title before the deadline set in article 199 of the Code.

Failure to comply with either of these obligations results in the licensee being stripped of the licence.

The licencsee’s failure to comply with the obligations listed in the second chapter will be penalized by fines and/or possible orders to suspend operations, or in the case of violations, by judicial process.
(3) Should the holder fail to comply with the obligations listed in the following chapters, they shall be subject to fines and/or possibly with an order to suspend operations or, in the case of an offence, shall be prosecuted.

Article [...] The obligation to commence work
A Prospecting Licence holder shall be required to commence work within six months from when the title establishing their right was issued.

(1) To cover costs for the services and management relating to the rights established by mining titles, annual surface area fees per square, for each mining or quarrying title which is issued, shall be collected for the Ministry of Mines which shall redistribute a portion to the departments of [the regulatory authority] responsible for the administration of the present [Code][Act][Law].

(2) Holders of Prospecting Licences, Operating Licences, Operating Licences relating to Tailings, Operating Licences for Small-Scale Mining, Permits to Prospect for Quarry Products and Permanent Quarry Operating Permits shall pay the surface area fees for the first year when the mining or quarrying title is issued.

(3) The holder is to settle the annual surface area fees per square for each following year before the end of the first quarter of the calendar year. However, annual surface area fees are to be paid pro rata to the relevant time period, when the initial title is issued, or in the last year during which the title is valid.

(4) Annual surface area fees per square are to be paid at the relevant counter at the Ministry of Mines which issued the mining or quarrying title, which shall issue the holder with a receipt when payment is made.

This bifurcation of obligations into two categories and the clarity and objectivity of the two obligations that are enforced by revocation of the title provides great security of title to licencees and also ensures prompt and complete payment of the fees that fund the work of the Regulating Authority.

The obligations in the second category are numerous and are only referenced here by article title, except for the obligation to prepare and obtain the approval of an Environmental Mitigation Plan (PAR) before commencing work (which must begin within 6 months of delivery of the licence). The process of approval is expedited by a sectoral environmental review authority.
Article [__] Environmental protection during prospecting
(1) Before prospecting work relating to mining or quarry products may commence, the holder of a Prospecting Licence or a Permit to Prospect for Quarry Products must draw up and obtain approval for an Environmental Management Plan (Plan d’Atténuation et de Réhabilitation (PAR)) for the proposed activities.

(2) The terms of the PAR and its approval shall be laid down in the regulations.

(3) The approval of a PAR shall fall under the jurisdiction of the department responsible for environmental protection within the [the regulatory authority] in collaboration with [the regulatory authority for the environment].

Article [__] Declaration of indicators of an archaeological discovery

Article [__] The discovery of items relevant to the national cultural heritage

Article [__] The jurisdiction of [the regulatory authority]

Article [__] The declaration of an accident in a mine or quarry

Article [__] The use of explosive products

Article [__] The relationship with local authorities

Article [__] Registers and reports
Article [__] Inspections

Article [__] The commencement and closure of a prospecting or operation/s
25.5. Example 2:

Article [__]. Legal nature of exploration right, mining right, or production right, and rights of holders thereof

(1) No person may prospect for or remove, mine, conduct, technical co-operation operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without –

(a) an approved environmental management programme or approved environmental management plan, as the case may be;

(b) a prospecting/reconnaissance permission, exploration right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and

(c) notifying and consulting with the land owner or lawful occupier of the land in question.

Article [__]. Rights and obligations of holder of exploration right

(1) The holder of an exploration right must –

(a) lodge such right for registration at the Mining Licences Office within 30 days of the date on which the right –
   (i) becomes effective in accordance with the provisions of this [Act][Code][Law]; or
   (ii) is renewed in accordance with the provisions of this [Act][Code][Law];

Annotation

Drawn from South Africa’s mining law (2002), this provision requires (for exploration licences called prospecting permits) compliance with all of the obligations noted above and also:
- Approval of an environmental management plan (as part of the licence grant process);
- Notification and consultation with the landowner or lawful occupier;
- Presentation of the licence to the Mining Licences office for registration;
- Commencement of exploration (called prospecting) activities within 120 days of the effective date of the licence;
- Maintenance of records, drilling logs, etc.; and
- Obtaining the [Regulating Authority]’s approval for any removal of bulk samples for testing.

This is a clear and comprehensive set of specific obligations of exploration licence holders.
(b) commence with exploration activities within 120 days from the date on which the exploration right becomes effective or such an extended period as the [Regulating Authority] may authorise;

(c) continuously and actively conduct exploration operations in accordance with the exploration work programme;

(d) comply with the terms and conditions of the exploration right, relevant provisions of this [Act][Code][Law] and any other relevant law;

(e) comply with the requirements of the approved environmental management programme;

(f) pay the prescribed exploration fees to the State; and

(g) subject to section [_] (on the rules regarding the removal and disposition of minerals), pay the State royalties in respect of any mineral removed and disposed of during the course of exploration operations.

Article [_.] Permission to remove and dispose of minerals

(1) Subject to subsection (2), the holder of an exploration right may only remove and dispose for his or her own account any mineral found by such holder in the course of exploration operations conducted pursuant to such exploration right in such quantities as may be required to conduct tests on it or to identify or analyse it.

(2) The holder of an exploration right must obtain the [Regulating Authority]'s written permission to remove and dispose for such holder's own account of bulk samples of any other minerals found by such holder in the course of exploration operations conducted pursuant to such exploration right.

Article [_.] Information and data in respect of prospecting/reconnaissance
(1) The holder of an exploration right or prospecting/reconnaissance permission must –

(a) keep proper records, at the registered office or place of business, of exploration operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and

(b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the [Regulating Authority] regarding the exploration operations.

(2) No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with written directions of the relevant [Officer of the Regulating Authority].

Article [...] Environmental management principles
(1) The principles set out in section [...] of the [National environmental legislation] –

(a) apply to all exploration and mining operations, as the case may be, and any matter or activity relating to such operation; and

(b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this [Act][Code][Law].

(2) Any exploration or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of exploration and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.
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<tr>
<td>(1) The holder of a reconnaissance permission, exploration right, mining right, mining permit or retention permit –</td>
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<tr>
<td>(a) must at all times give effect to the general objectives of integrated environmental management laid down in the [relevant environmental legislation];</td>
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<tr>
<td>(b) must consider, investigate, assess and communicate the impact of his or her exploration or mining on the environment as contemplated in the [relevant environmental legislation];</td>
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<tr>
<td>(c) must manage all environmental impacts –</td>
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<tr>
<td>(i) in accordance with his or her environmental management plan or approved environmental management programme, where appropriate; and</td>
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<tr>
<td>(ii) as an integral part of the prospecting/reconnaissance, exploration or mining operation, unless the [Regulating Authority] directs otherwise;</td>
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<tr>
<td>(d) must as far as it is reasonably practicable, rehabilitate the environment affected by the exploration or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and</td>
</tr>
<tr>
<td>(e) is responsible for any environmental damage, pollution or ecological degradation as a result of his or her prospecting/reconnaissance, exploration or mining operations and which may occur inside and outside the boundaries of the area to which such right, permit or permission relates.</td>
</tr>
<tr>
<td>(2) Notwithstanding the [Companies Act], or the [other relevant legislation], the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution.</td>
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</tbody>
</table>
### Article [...] Financial provision for remediation of environmental damage

1. **The holder of an exploration right, mining right or mining permit must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the [Regulating Authority].**

2. **If the [Regulating Authority] is not satisfied with the assessment and financial provision contemplated in this section, the [Regulating Authority] may appoint an independent assessor to rehabilitate the closed mining or exploration operation in respect of latent or residual environmental impacts.**

### 25. Exploration Licensing

#### 25.6 Rights of a Licence Holder

Provisions that address what possession of an exploration licence allows the licence holder to do or what the licence holder may be entitled to are collectively treated as rights. The rights of an exploration licence holder are usually exclusive exploration rights at depth within the licenced area. Although the licence usually relates to specified minerals only, under most mining laws no other exploration or mining licence can be granted to another party over the same area, except a short-term quarrying licence.

The exploration licence entitles the holder to carry out exploration activities, as defined; but not to engage in mining. The exploration licence holder generally also has the exclusive right to apply for an exploitation licence over the same area, in whole or in part, during the term of the licence.

Depending on the defined nature of the exploration right, the licensee may have the right to pledge, mortgage or transfer the licence.

#### 25.6. Example 1:

**Article [...]**

1. A prospecting licence confers on the holder an exclusive right to prospect for mining materials, within the boundaries of the holder's area, including...
### AMLA GUIDING TEMPLATE

**PART B-2: Exploration**

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<tbody>
<tr>
<td>surface area and depth of the right, as well as an exclusive right to dispose of any products extracted as part of said prospecting.</td>
<td>permit to develop commercial deposits identified within the licence area. It is a generous provision in that the exploration licence includes an exclusive right as to all such minerals, rather than specific types or classes of minerals as in some mining laws. Furthermore, that exclusive right includes the right to apply for an exploitation licence for multiple deposits within the licenced area - as opposed to a single deposit as in some more restrictive mining laws - provided that the licence holder is in compliance with its obligations under the Mining Code.</td>
</tr>
<tr>
<td>(2) It confers on the holder an exclusive right to request and obtain an operating licence, at any time during term of validity for the prospecting licence, if they have performed their obligations under the present Act, in the event they discover one or more mineral deposits within the area under the prospecting licence.</td>
<td>According to this provision, the exploration licence holder has the right to dispose of products extracted during the course of exploration. However, such right is subject to the condition that the exploration work not constitute exploitation work, and to the further conditions that the licence holder (a) submits a declaration to the Regulating Authority prior to any such disposition and (b) pays the mining taxes (e.g. royalties) applicable to the mineral products. Exemptions from the mining tax payment obligation are to be granted for samples, the maximum amounts of which are to be set by regulation.</td>
</tr>
<tr>
<td>(3) A prospecting licence constitutes a movable, indivisible right and, may not be subleased, subject of a pledge or a mortgage.</td>
<td>The exploration licence is not eligible for pledge, mortgage or sublease; but it may be transferred with the approval of the Regulating Authority, to which the licensee is entitled if in compliance with its obligations under the Mining Code.</td>
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</table>

### Article []

**(1)** A prospecting licence holder shall have the right to freely dispose of products extracted during the prospecting and assaying, provided that the prospecting work does not in fact constitute operating work.

**Article []**

**(1)** A prospecting licence holder shall have the right to freely dispose of products extracted during the prospecting and assaying, provided that the prospecting work does not in fact constitute operating work.

**(2)** Disposals shall only be possible under the following conditions:

(a) the prospecting licence holder has made a prior declaration relating to the products extracted, to the Mining Department (Administration des Mines);

(b) the prospecting licence holder has paid the mining taxes relating to said extracted products, unless an exemption has been granted for the samples by the Mining Department and the Department for the Economy and Finance (Administration de l’Economie et des Finances).

**Article []**

The rights of a mining right holder shall relate to the entire extent of the
**AML A GUIDING TEMPLATE**

**PART B-2: Exploration**

| demarcated area under the mining title, with no limit as to depth, extending down within vertical lines based on the defined area on the surface. |
|---|---|
| Article 

1. A mining right may be assigned or transferred subject to the prior written approval from [the regulatory authority] and under the conditions provided for by decree.

2. Any agreement for the transfer or assignment of a mining right must be subject to the condition precedent of said authorisation.

3. The approval of [the regulatory authority] shall be automatic where the mining right holder has fulfilled their obligations under the [Code][Act][Law]. |
| **Annotation**

Drawn from Tanzania’s mining law (2010), which calls an exploration right a prospecting licence, this provision provides for an exclusive exploration right that entitles the holder to enter the exploration area and erect camps and temporary buildings thereon in connection with the holder’s exploration activities. It also entitles the holder of a “prospecting” licence for gemstones to sell gemstones recovered during exploration to a licenced dealer. In the event of such sales, the prospecting licence holder is required to submit the particulars of the transactions to the Commissioner of Mines in order to enable the Mining Administration, among other things, to confirm that the licenced dealer has paid the applicable royalty, or enforce such payment by the dealer if it has not been made. The mining law provides that licenced dealers and licenced brokers are responsible for the payment of royalties on gemstones that they purchase.

This provision also authorizes the licence holder to apply for a retention licence and to apply for and obtain a “special mining licence” (which is long term) or a mining licence (which has a shorter term), subject to compliance with the | **25.6. Example 2:**

**Article 

1. Subject to the provisions of this [Act][Code][Law] and the Regulations, an exploration licence confers on the holder the exclusive right to carry on exploration operations in the exploration area for minerals to which the licence applies.

2. In the exercise of the rights conferred by this section, the holder may, subject to section [ ] (on restrictions on the right of a mineral licence holder to enter land), either himself or by his employees or agents, enter upon the exploration area and erect camps and temporary buildings and may erect installations in any water forming part of the exploration area.

3. The holder of an exploration licence for gemstones who in the course of carrying out exploration operations under the exploration licence recovers gemstones, may dispose of the gemstones by sale to a licenced dealer and shall promptly following any such sale submit particulars thereof to the | |
<table>
<thead>
<tr>
<th>Regulating Authority, showing the name and business address of the dealer, a description of the stones, their weight and a copy of a receipt given by the purchaser for the price received.</th>
<th>relevant application requirements.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) The holder of an exploration licence for gemstones who recovers gemstones in the course of exploration operations shall for the purpose of holding the gemstones and selling them pursuant to subsection (3) be deemed to be a mineral right holder.</td>
<td></td>
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<tr>
<td>(5) The exploration licence holder is authorized to apply for a retention licence.</td>
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<tr>
<td>(6) The exploration licence holder is entitled to apply for and obtain a special mining licence or a mining licence, subject to compliance with the application requirements specified in other articles.</td>
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### 25. Exploration Licensing

#### 25.7 Term of Licence

The term of an exploration licence should be long enough to allow time for enough investigation to enable the licence holder to make a determination of whether to pursue intensive drilling and sampling of specific targets within the licence area, provided that renewal terms are available during which feasibility studies, environmental and social impact studies and required or necessary plans for local procurement, hiring and training, and community development can be developed or negotiated. It is thought that the initial term should be short enough to prevent licensees from holding large areas for excessive periods without developing them; however, this goal could also be achieved by gradually increasing the annual fees per unit area payable by the licensees, to encourage voluntary relinquishment.

In setting the term of the exploration licence, consideration should be given to whether the term includes the initial period (typically six months) within which certain conditions prior to the commencement of operations must be fulfilled (for example, preparation, submission and approval of an environmental and social impact mitigation plan; funding of an environmental rehabilitation guarantee or account; presentations to local...
It should be noted that as requirements are increased for the grant of a mining licence (for example, Economic and Social Impact Study (ESIS), community development agreement, local procurement, hiring and training programs), more time will be needed in order to accomplish them.

The typical term of an exploration licence in Africa is 3 years, or a period not exceeding three years. (Examples: Botswana, Cameroon, CAR, Ghana, Guinea, Malawi, Mauritania, Morocco, Nigeria, South Africa, Uganda, Zimbabwe.)

The term is 4 years, or for a period not exceeding four years, in Côte d’Ivoire, DRC for precious stones, Sierra Leone and Tanzania. The term is 5 years in the DRC except for precious stones, as well as in Madagascar and Mozambique. In Angola the term is set by contract.

### 25.7. Example 1:

**Article []**

(1) Where an applicant is entitled to the grant of an exploration licence under the terms and conditions of this [Act][Code][Law], the [Regulating Authority] shall issue to the applicant the exploration licence as provided in that section and the licence so issued shall subsist for the following periods:

   (a) for the initial exploration period for which the applicant has applied, a period not exceeding four years;

(2) In determining the date for the commencement of the period for which the licence is granted, the licensing authority may take account of any period not exceeding six months from the date of the grant which is required by the applicant to make any necessary preparations for exploration operations.

**Annotation**

Drawn from Tanzania’s mining law (2010), this provision reflects a progressive awareness of the potential need for a somewhat longer than normal exploration term as well the need to accomplish certain formalities and obtain certain approvals before actual exploration work can begin.

### 25.7. Example 2:

**Article []**

(1) Where the [Regulating Authority] is satisfied that an initial period is

**Annotation**

Drawn from Malawi’s mining law (1981), this provision provides for the standard exploration term of up to three years, but also takes into account the
Part B-2: Exploration

<table>
<thead>
<tr>
<th>Section</th>
<th>Text</th>
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<tbody>
<tr>
<td>(1)</td>
<td>Required to make the necessary preparations to carry on exploration operations he may, in an exclusive exploration licence, specify a period (not exceeding three months) as the preparation period.</td>
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<tr>
<td>(2)</td>
<td>The term of an exclusive exploration licence is the period for which the licence is granted, not exceeding three years, stated in the licence, and any preparation period specified in the licence.</td>
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<tr>
<td>(3)</td>
<td>The term of an exclusive exploration licence commences on and includes the date of the grant of the licence, as stated in the licence.</td>
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<td>25. Exploration Licensing</td>
<td>25.8 Renewal of Licence</td>
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<td>Addressed often at the same time as the term of the licence, renewal of licence refers to provisions determining when, for how long, and how many times a licence holder may extend the initial duration of the exploration licence. Given the relatively short initial term of exploration licences, renewal terms are generally necessary for the completion of the studies and plans required prior to mining operations.</td>
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<td></td>
<td>Licence holders who are in compliance with the terms of their licence and their obligations under the mining law are generally entitled to renewals. Most countries provide for two renewal terms, which may be of the same length as the initial term or may be for shorter periods.</td>
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<td>Most countries have ultimate term limits on the combined initial and renewal terms; but ultimately, term limits are arbitrary and may be inadequate for the necessary preparation to develop a complex deposit or one situated in an area presenting major logistical or environmental challenges, or simply to finalize a feasibility study under difficult market conditions. To deal with such situations, Botswana, Namibia, Tanzania and Uganda provide for the availability of a retention licence after the exhaustion of renewal terms under an exploration licence.</td>
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</table>
Mining laws generally require an application for the renewal of an exploration licence to be filed no later than a certain date prior to the end of the initial term, in order to allow time for processing of the application before the initial term expires. The better mining laws also provide that an exploration licence for which a renewal application has been timely filed are automatically extended until they are either renewed or the renewal is definitively denied.

Most renewal provisions require the relinquishment of a percentage of the area held under the exploration licence (usually half) upon each renewal. An alternative approach would be to permit the holder to retain a larger area upon the payment of an additional fee in order for the licence holder to retain the area that would otherwise be subject to mandatory relinquishment (see Article 24 of the 2014 Mining Code of Côte d’Ivoire, for example). As a general matter, mining laws make very large areas available for initial prospecting/reconnaissance activity, but reduce the maximum size of the area that may be retained upon each renewal or transition from prospecting/reconnaissance to exploration and from the latter to exploitation. In doing so, the laws seek to maximum efficiency on the part of licence holders so that the country’s mineral resources are developed expeditiously, thereby generating employment, commercial activity and fiscal revenues that can be used for other national purposes.

Most mining laws require reduction of the area licenced for exploration upon renewals in order to prevent the tying up of areas larger than are necessary for a normal exploration program and to make the excess area available to other prospective applicants who may be more highly motivated to conduct exploration in the relinquished area than the initial licence holder.

### 25.8. Example 1:

**Article [___]**

(1) Where an applicant is entitled to the grant of an exploration licence, the [Regulating Authority] shall issue to the applicant the exploration licence as provided in that section and the licence so issued shall subsist for the following periods-

(a) for the initial exploration period for which the applicant has applied, a period not exceeding four years;

(b) where application for renewal has been made by the holder in the prescribed form, for the first period of renewal for which the applicant has applied, a period not exceeding three years;

**Annotation**

Drawn from Tanzania’s mining law (2010), this provision clearly states the conditions under which the exploration (called prospecting) licencsee is entitled to renewals, when the applications must be filed, and the length of the renewal terms.

The terms of exploration licences for metallic and processed minerals decline from 4 years to 3 years for the first renewal and 2 years for the second and third renewals. (For gemstones other than diamonds, there is only a one-year initial term, non-renewable.) An exploration licence for such minerals can therefore be held for up to 11 years in Tanzania, which also provides for the issuance of a retention licence for a term of 5 years, renewable once for a like term, if the required justification is demonstrated. Reduction of the surface area by half is required at each renewal, but not below 20 square kilometres.
(c) where application for renewal has been made by the holder in the prescribed form, for the second period of renewal for which the applicant has applied, a period not exceeding two years;

(d) where the holder is not in default and at the end of the second period of renewal a further period is required to complete a feasibility study, already commenced by the holder, for such further period as may be reasonably required for that purpose, but not exceeding two years.

(2) A holder of the licence who intends to renew the licence shall, not later than one month before expiry date of the licence, submit an application for renewal of the exploration licence.

(3) The [Regulating Authority] shall, on application of the holder of a licence granted under subsection (1) of this section and on payment of prescribed fees for renewal, renew the exploration licence-

(a) at the end of the initial exploration period or, as the case may be, at the end of the first renewal period, for the period referred to in paragraphs (b) and (c) of subsection (1);

(b) at the end of the second renewal period, in a case falling under paragraph (d) of subsection (1), for the period required to complete the feasibility study.

(4) The obligation of the [Regulating Authority] to renew an exploration licence is subject to the condition that-

(a) the holder is not in default except that the [Regulating Authority] shall not reject an application to renew an exploration licence on the grounds that the holder is in default, without first serving on the holder a notice giving particulars of the default and requiring the holder within a reasonable time specified in the notice to remedy the default; and

By contrast, the one-year terms of exploration licences for gemstones other than kimberlitic diamonds and for building materials are not renewable.
(b) the holder, on renewal under paragraph (a) of subsection (3), has relinquished in the case of a first renewal fifty per centum of the area held during the initial exploration period and in the case of a second renewal fifty per centum of the balance, and has by notice in writing to the [Regulating Authority] given a sufficient description of the areas he is relinquishing.

(5) The relinquished areas shall be displayed on the notice board at the [Regulating Authority] headquarters and local offices on a monthly basis.

(6) An exploration licence for gemstones other than kimberlitic diamonds, and an exploration licence for building materials shall subsist for one year from the date of grant and shall not be subject to renewal.

(7) The obligations of the [Regulating Authority] under paragraph (b) of subsection (4) shall not apply in the case where the exploration area is not more than twenty square kilometres.

25.8. Example 2:

Article [...]  
(1) The holder of an exploration licence may, not later than ninety calendar days before the initial expiry of the licence, apply to the Mining Cadastre Office for a first renewal of the licence in respect of not more than one hundred and twenty-five square kilometres of the exploration licence area, except that where the results of exploration to date strongly indicate the presence of widespread mineralisation such that a surrender to one hundred and twenty-five square kilometres would result in some highly prospective areas being surrendered, the [Regulating Authority], on the advice of the Minerals Advisory Board, may exceptionally allow such areas constituting more than one hundred and twenty five square kilometres to be retained.

**Annotation**  
Drawn from Sierra Leone’s mining law (2009), this provision sets the initial exploration term of four years that can be renewed twice for 3 years and 2 years respectively. This gradual reduction in term length encourages the licence holder to focus on the most prospective sites within the licenced area and to conduct its exploration program expeditiously.

Unlike Tanzania, Sierra Leone’s mining law does not provide for a retention licence. Thus, an exploration licence may be held for a maximum period of 9 years in Sierra Leone. That period is likely to be sufficient for the identification of a small to medium sized commercial deposit and completion of the requisite environmental and feasibility studies in order to progress to the exploitation phase, but the 9-year limit may be problematic for the detailed study of a...
(2) An application for the first renewal of an exploration licence—

(a) shall be accompanied by—

(i) a detailed annual report as prescribed describing all operations carried out in the previous year together with an annual financial report for the same period, plus a surrender report as prescribed, covering in detail all work carried out over any portion of the ground to be surrendered and accompanied by all results, data, information and interpretation since the grant of the exploration licence;

(ii) a proposed programme of exploration operations to be carried out during the period of first renewal and the estimated cost thereof;

(iii) a plan identifying that part of the exploration licence area for which renewal is sought; (iv) a description of the contiguous blocks comprising the exploration licence area for which renewal is sought, identified in the prescribed manner; and

(b) shall give particulars of any alteration in the matters stated in the application for the grant of the licence under paragraphs [___] of section [___] (on the required elements of an application for an exploration licence).

(3) The Mining Cadastre Office shall forward an application for the first renewal of an exploration licence to the Minerals Advisory Board.

(4) Upon receipt of a completed application for the renewal of an exploration licence from the Mining Cadastre Office, where the [statutory advisory board] has determined that an application for the renewal of an exploration licence has met all the criteria for such licence the [statutory advisory board] shall certify to the [Regulating Authority] in the prescribed form that it advises that the application be approved, and such certification shall be recorded in the mining cadastre registry.

(5) The [Regulating Authority] shall, subject to all prescribed criteria of this [Act][Code][Law] and of the regulations, on the certified advice of the complex or very large scale deposit in a challenging environment.

The article requires a mandatory reduction in size of the area to a maximum of 120 square kilometres for the first renewal that may be waived upon the requisite showing to the Minerals Advisory Board and the Regulating Authority. No further reduction of area is required for the second renewal.

Renewals are not automatic under Sierra Leone’s law. The licence holder is required to submit a detailed annual report of operations carried out and results achieved, as well as a proposed exploration work program for the requested renewal period. The renewal must be approved by the Minerals Advisory Board.
Minerals Advisory Board, renew the licence for the reduced area applied for with or without variation of the conditions of the initial licence, for a period not exceeding three years.

(6) The holder of an exploration licence may, not later than ninety calendar days before the expiry of a once-renewed licence apply to the Mining Cadastre Office for a second renewal of the licence.

(7) An application for the second renewal of an exploration licence-
(a) shall be accompanied by-
   (i) a report on exploration operations carried out so far and the direct costs incurred thereby;
   (ii) a proposed programme of exploration operations, feasibility studies, and environmental impact assessments to be carried out during the period of second renewal and the estimated cost thereof;
   (iii) a plan identifying that part of the exploration licence area for which renewal is sought, which shall not be greater than one hundred and twenty-five square kilometres unless it can be conclusively demonstrated that to do so would unavoidably exclude part of an economically recoverable mineral deposit;
   (iv) a description of the blocks comprising the exploration licence area for which renewal is sought, identified in the prescribed manner;
(b) shall give particulars of any alteration in the matters stated in the application for the grant of the licence under paragraphs [__] of section [__] (on the required elements of an application for an exploration licence); and
(c) shall provide evidence that a mineral discovery has been made that may be of commercial value.

(8) The Mining Cadastre Office shall forward an application for the second renewal of an exploration licence to the Minerals Advisory Board.
(9) Upon receipt of a completed application for the second renewal of an explorations licence from the Mining Cadastre Office, where the Minerals Advisory Board has determined that an application for the second renewal of an exploration licence has met all the criteria and where the holder of an exploration licence who has made and reported a discovery of possible commercial value, the Board shall certify to the [Regulating Authority] in the prescribed form that it advises that the application be approved, and such certification shall be recorded in the mining cadastre registry.

(10) The [Regulating Authority] shall on the certified advice of Minerals Advisory Board confirming all prescribed criteria of this [Act][Code][Law] and of the regulations have been met, renew the licence for a period not exceeding two years.

(11) The applicant shall be notified in writing of the decision on renewal applications, and if an application is refused, the [Regulating Authority] shall give reasons for such refusal.

(12) Where the [Regulating Authority] has refused an application to renew an exploration licence that is renewable and the cause given by the [Regulating Authority] for such refusal can be remedied by the holder of the licence, if the cause has been remedied within thirty calendar days of receiving the notice under subsection (11), the licence holder may reapply for a renewal of the licence within such thirty-day period.

<table>
<thead>
<tr>
<th>25. Exploration Licensing</th>
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<tbody>
<tr>
<td>25.9 Suspension of Licence</td>
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</table>

Suspension of a licence may be a temporary sanction against a licence holder or a de facto suspension of the licence term due to a force majeure event preventing the holder from conducting operations.
In the case of force majeure, the licence holder is excused from compliance with certain obligations during the reasonable duration of the event; and the term of the licence may be extended for that period. Careful attention should be given to the drafting of what constitutes a force majeure event, the related notification requirement, the obligations of the licence holder to use best efforts to overcome the force majeure event as peditiously as practicable, the determination and notification of the end of the force majeure event, whether the term of the licence is extended by the period of the force majeure event, and under what circumstances the licence may be terminated if the force majeure event continues beyond a specified time limit.

A distinction should be made between suspension of the mineral licence, on the one hand, and suspensions of operations, on the other hand. When the mineral licence is suspended, the rights of the holder of that right, as well as the term, are suspended; and this may complicate the remediation of the breach that the suspension requires. It also raises collateral issues to be addressed such as whether and on what conditions a third party application for the area that is subject to the suspended licence can be submitted or accepted. The suspension of operations, on the other hand, prohibits the mineral activity under thelicence but does not alter the holder’s right to occupy the licenced area and undertake whatever is necessary in order to remedy the breach of an obligation; and the term of the licence continues to run.

A suspension of the licence may be an appropriate temporary sanction for failure of the licence holder to timely make required payments or file required reports, because both the failure to meet those obligations and the remedy are administrative events wholly within the control of the licence holder and do not require any operations at the site.

A suspension of operations may be the appropriate temporary sanction for failures to implement sufficient environmental protection measures, to implement required social obligations or to meet health, safety, security and labor standards. Under such a suspension, the licence holder maintains its mineral licence for the purpose of taking the necessary remedial action, but is prohibited from conducting production activities until the problem issues have been resolved to the satisfaction of the regulatory entity.

Some mining laws provide for the suspension of operations or of the licence as a preliminary sanction to be followed by revocation of the licence if the underlying cause for the suspension is not remedied within a specified time period.

25.9. Example 1:

<table>
<thead>
<tr>
<th>Annotation</th>
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<tbody>
<tr>
<td>Drawn from Sierra Leone’s mining law (2009), this provision is designed to</td>
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NOTE: This Document is part of a multi-part document, Parts A – E
<table>
<thead>
<tr>
<th>Article [_]</th>
<th>apply to reconnaissance, exploration or mining licences. That is appropriate insofar as there can be a risk of dangerous activity taking place under a prospecting/reconnaissance or exploration licence and there is no apparent reason to be more tolerant of any of the stated grounds for suspension based on the type of licence under which they have occurred.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The [Regulating Authority], or any person authorised by the [Regulating Authority], may, in writing, order reconnaissance, exploration or mining operations to be temporarily suspended on an emergency basis, regardless of whether such operations are authorized by a mineral right, until such arrangements are made that are in the Regulating Authority’s opinion necessary to prevent danger to life, property or the environment or to comply with this [Act][Code][Law].</td>
<td>This provision makes the distinction between suspension of operations pending remediation of a condition that constitutes a danger to life, property or the environment or is in non-compliance with the mining law, on the one hand, and suspension of a mineral licence as a precursor to potential cancelation of the licence in the event of non-remediation of any of the reasons listed, on the other hand. Whereas suspension of operations is not preceded by prior notice and an opportunity to remedy the cause of the suspension, prior notice and such opportunity are required in the case of suspension of the licence.</td>
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<tr>
<td>(2) The Regulating Authority may cancel or vary the terms of any temporary suspension order.</td>
<td>The Administrative Reviewer is the supervisory authority immediately superior to the Regulating Authority in the administrative hierarchy.</td>
</tr>
<tr>
<td>(3) The [Administrative Reviewer] shall have the power to confirm a temporary suspension order made by the [Regulating Authority] and may not delegate this power.</td>
<td>This provision represents, in general, a balanced approach to protecting the interests of the State and affected stakeholders from harm in a manner consistent with providing security of title to the licence holder. Failures to comply with specific obligations of the licence holder are sanctioned initially by suspensions of operations or rights, as the case may be, and the offending licence holder is encouraged and given the opportunity to establish compliance before action to cancel the licence is taken. Because of the breadth of some of the grounds stated for ultimate cancellation of the licence, the provision may heighten the risk of loss of title more than necessary. This could be attenuated by limiting the grounds for cancellation of the licence whilst maintaining broader grounds for temporary suspension of operations which is a costly sanction in itself.</td>
</tr>
<tr>
<td>(4) A temporary suspension order shall lapse after twenty-one days of its issuance, unless it is confirmed, in writing, by the [Administrative Reviewer].</td>
<td></td>
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<tr>
<td>(5) The [Administrative Reviewer] after consultation with the [statutory advisory body] may suspend a mineral right if the holder-</td>
<td></td>
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<tr>
<td>(a) fails to make any of the payments required by or under this [Act][Code][Law] on the date due;</td>
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<tr>
<td>(b) fails to meet any prescribed minimum annual programme of work or work expenditure requirement;</td>
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<tr>
<td>(c) grossly violates health and safety regulations or causes environmental harm;</td>
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<tr>
<td>(d) employs or makes use of child labourers;</td>
<td></td>
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</tbody>
</table>
(e) fails to submit reports required by this act;

(f) contravenes any of the provisions of this [Act][Code][Law] or the conditions of his mineral right or the provisions of any other enactment relating to mines and minerals;

(g) dies and his heir or successor in title is not qualified under this [Act][Code][Law] to hold the mineral right, unless an application is received from the heir or successor within ninety days of the death to transfer the right to a third party who is so qualified and accepts all duties under the right;

(h) becomes an un-discharged bankrupt or becomes of unsound mind;

(i) makes any statement to the [Administrative Reviewer] in connection with his mineral right which he knows or ought to have known to be false;

(j) fails to substantially comply with the terms of a community development agreement when required by this [Act][Code][Law] to do so;

(k) for any reason becomes ineligible to apply for a mineral right under section [_] (on eligibility rules).

(2) The [Administrative Reviewer] shall, before suspending any mineral right give notice to the holder in such a manner as shall be prescribed and shall, in such a notice require the holder to remedy in not less than thirty calendar days any breach of the conditions of his mineral right.

(3) If the holder of a mineral right fails to remedy any failure or contravention specified in paragraphs (c), (d) and (k) of subsection (1), the [Regulating Authority] may, by notice to the holder thereof, suspend the mineral right forthwith.

(4) The powers of the [Regulating Authority] under this section shall, in relation to artisanal mining licences, be exercised by the Regulating Authority.
Authority but the Regulating Authority need not consult the [statutory advisory board].

25.9. Example 2:

Article [...] 
(1) Any serious offence, as defined in the Mining Regulations, which is committed by the holder shall be penalised with the immediate suspension of work, decided on by [the regulatory authority], subject to prior written notice having been given.

(2) The duration of the suspension shall be set in the regulations, according to the seriousness of the offence and its impact on the environment, public health and/or safety.

(3) To remedy said serious offence, [the regulatory authority] may, ex officio or at the request of the local authorities concerned, require that the holder carry out such works which it deems necessary in order to protect public health, the environment, workers or neighbouring mines. Should the holder fail to perform within the required time period, [the regulatory authority] may have said work carried out by a third party, at the holder's expense.

Article [...] 
(1) Should it be duly found that the required documents prescribed by the present [Code][Act][Law] have not been kept in proper order, [the regulatory authority] shall send a written warning to the mining operator concerned, if this failure to comply does not constitute an offence.

(2) Should the holder repeat the offence, their activities may be suspended by the Minister, after notice to comply has been given, for a period of three months, and the holder fails to comply.

(3) At the end of the suspension period, [the regulatory authority] shall carry

Annotation

Drawn from the DRC Mining Code (2002), these provisions represent a different approach to suspension. The first article provides for a suspension of work as a sanction for any “serious failure”. The provision delegates to the mining regulation the definition of “serious failure” and the length of the suspension, which is to be a function of the seriousness of the failure and its effect on the environment and public health and safety. The provision authorizes the Mining Administration to undertake the necessary remedial action if the licence holder fails to do so, at the licence holder’s expense.

The second article provides for suspension of operations for three months as the sanction for a repeated failure by the licence holder to maintain required documentation. In such case, a warning and opportunity to remedy is provided before the imposition of the suspension order. The suspension is extended for a second period of three months if the underlying cause is not remedied by the end of the initial suspension period; and if still not remedied at the end of the second suspension period, a fine of USD 500 per day is levied against the licence holder until the documents are properly maintained.

The suspensions do not ultimately lead to cancellation of the licence in either case. This approach represents a philosophy that a costly sanction that does not involve loss of rights is more conducive to remediation and compliance, as well as more attractive to long term investment, than a sanction that leads to cancellation of rights. However, it does involve a risk that the Mining Administration will not be able to cancel the mineral licence of a holder that repeatedly fails to remedy a serious violation but nevertheless complies with the obligations (stated elsewhere) necessary to maintain the licence in effect.
### 25. Exploration Licensing

#### 25.10 Termination of Licence

A mining law should state clearly in one place the various ways in which an exploration licence can terminate, which would include expiration of the term, surrender by the holder, and cancellation or withdrawal by the issuing authority. The law should make clear what the status of the licenced area is upon termination in each manner and any remaining potential liabilities or incapacities that the licence holder may have upon termination.

Some mining laws also provide that an exploration licence is automatically extended during the application process for a mining right once a timely application by the holder has been filed.

#### 25.10. Example 1:

*Article [__]*

1. Any right, permit, permission or licence granted or issued in terms of this [Act][Code][Law] shall lapse, whenever –

   (a) it expires;

   (b) the holder thereof is deceased and there are no successors in title;

   (c) a company or close corporation is deregistered in terms of the relevant

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**Annotation**

Drawn from South Africa’s mining law (2002) this provision states all of the different ways in which a mineral right granted pursuant to the act may terminate. However, it does not go on to specify the consequences for the area, any installed structures and equipment, or the licence holder under each form of termination.
acts and no application has been made or was made to the [Regulating Authority] for the consent in terms of section [_] (requiring the consent of the Administrative Reviewer for transfers of mineral rights) or such permission has been refused;

(d) save for cases referred to in section [_] (establishing an exception to the consent requirement for certain mortgages and security interests), the holder is liquidated or sequestrated;

(e) it is cancelled in terms of section [_] (concerning the Administrative Reviewer’s authority to cancel mineral rights); or

(f) it is abandoned.

25.10. Example 2:

Article [_]
(1) A mining right or authorisation expires at the end of the period for which it was granted (including subsequent renewals thereof), by relinquishment or by revocation. At the end of the term of a mining right or authorisation, the rights conferred on its holder revert to the State free of charge.

(2) Rights granted by the holder to third parties over substances and within the zone covered by the right, automatically lapse at the end of the term of such right.

(3) However, the holder of a mining right or mining operation permit for quarry substances remains liable for the payment of outstanding duties and taxes and for the obligations incumbent upon it with respect to the environment and rehabilitation of the developed sites, as well as for all the other obligations contemplated under this [Code][Act][Law], its implementing regulations and in the terms of reference or the mining agreement.

Annotation

Drawn from the unofficial English translation of Guinea’s Amended Mining Code (2011), this provision:

- States the three grounds on which mineral licences terminate: (i) at the end of their term, (ii) by relinquishment, or (iii) by revocation;
- Establishes that the rights revert to the State upon termination and that all rights granted to third parties lapse upon expiration;
- Preserves the obligations of the mineral licence or authorisation holder after expiration, particularly as to payments due and site rehabilitation; and
- Requires the holder to submit a final report of work carried out to the Mining Administration.

Thus, these terms clarify the status of the mineral rights and related obligations at termination of the mineral licence or authorisation.
Furthermore, the mining rights holder shall provide the [Regulating Authority] of a detailed report on the work carried out in five (5) copies. All information provided shall become the property of the State.

This provision applies to both exploration and exploitation licences.

25. Exploration Licensing

25.11 Revocation of Licence

A provision in which a licence is withdrawn and/or taken away by the Regulating Authority is referred to as revocation of the licence. Whereas suspension or monetary penalties may be imposed for various failures to comply with health, safety, environmental protection and other qualitative obligations – thereby providing an incentive to comply while protecting workers and communities from the consequences of such breaches, revocation of the licence is the ultimate penalty, the grounds for which should be limited and clearly stated. The revocation provisions of the law should also state whether the ground for revocation is one that can be cured and, if so, within what timeframe after notice.

25.11. Example 1:

Article [...] (1) The following shall be considered as failure to comply with administrative obligations by a rights holder: non-payment of annual surface area fees per square and failure to commence work within the time period provided for in the articles on these respective obligations.

(2) Subject to the provisions of Articles [...] of the present [Code][Act][Law] (on offences and penalties), the failures to comply as listed in Article [...] (on the non-payment of annual surface area fees and failure to commence work within the legal time period) shall constitute grounds for the Prospecting Licence, as well as [their Permanent Quarry Operating Permit] to be revoked.

(3) The Ministry of Mines shall immediately notify the holder of the decision

Annotation

Drawn from DRC’s mining law (2002), this provision stipulates two clear grounds for the revocation of exploration permits: failure to pay the annual surface fees and failure to commence work within the required timeframe. Articles 287 and 288 set forth the procedure for establishing the facts that constitute failures to satisfy those obligations. Under Article 289, notice of the occurrence of grounds for revocation is given to the licence holder, who has the right to appeal the findings under other articles of the Code. Article 290 sets forth the revocation procedure that applies once the appeal period has lapsed without an appeal or the appeal has been denied. It further provides that the licenced area returns to the public domain of the State, free and clear of any rights of the former licensee.

Finally, article 291 sanctions the holder whose licence was revoked by making the holder ineligible for mineral or permanent quarry rights for five years. It
to revoke the licence or permit and shall post an announcement in a room indicated in the Mining Regulations.

(4) Notification of the decision to revoke the licence or permit creates a right to appeal as provided for in Articles [...] (on arbitration appeal) of the present [Code][Act][Law].

(5) Such appeals must be brought within thirty days of the decision being posted in the Ministry of Mines with jurisdiction over the revoked right.

(6) Should an appeal not be brought within the time period given above, the decision to revoke the licence or permit shall be registered in the appropriate register and published in the [Official Gazette].

(7) Where an appeal is brought against a decision to revoke a licence or permit, the mining or quarrying right concerned shall remain valid for the duration of the proceedings. However, there shall be notice of the decision and the appeal proceedings which have been brought, in the register of granted licences and permits.

(8) The mining rights and [the permanent quarry operating permit] shall be cancelled by [the regulatory authority] when the holder has not brought an appeal against the decision to withdraw the licence or permit and when the time period for an appeal has lapsed or the appeal has been dismissed.

(9) The decision to cancel a licence or permit shall be made on the day the appeal is dismissed or the last day of the period within which the appeal should have been brought.

(10) The Ministry of Mines shall be notified of the decision of the to cancel the licence or permit and shall register it in the register of cancelled titles.

(11) The area which is the subject of a mining or quarrying right which has been cancelled shall return to and be held by the State.

also stipulates that the revocation does not liberate the licence holder from his environmental or tax obligations.
(12) Holders of mining rights and [a permanent quarry operating permit] who have lost their rights and whose titles have been cancelled may not obtain new mining rights or a new [permanent quarry operating permit] for a period of five years from the date on which the cancellation was registered in the register kept by the Mining Cadastre.

(13) In addition, the cancellation of mining rights or [a permanent quarry operating permit] does not relieve the holder from their environmental and tax obligations.

25.11. Example 2:

Article [...]  

(1) Subject to subsections (2), (3) and (4), the [Regulating Authority] may cancel or suspend any prospecting/reconnaissance permission, exploration right, mining right, mining permit or retention permit if the holder thereof—

(a) is conducting any prospecting/reconnaissance, exploration or mining operation in contravention of this [Act][Code][Law];

(b) breaches any material term or condition of such right, permit or permission;

(c) is contravening the approved environmental management programme; or

(d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this [Act][Code][Law].

(2) Before acting under subsection (1), the [Regulating Authority] must—

(a) give written notice to the holder indicating the intention to suspend or

Annotation

Drawn from South Africa’s mining law (2002), this provision provides broader grounds for the cancelation or revocation of an exploration licence (called “prospecting right”) than do the provisions of the DRC Code. However, the South African provision also provides due process safeguards in the form of notice of grounds for revocation (to the licencee and any mortgagees), an opportunity for the licencee to respond with justifications, and required instructions for curative measures. The revocation can only proceed if the cause is not cured within the allotted timeframe.
cancel the right;
(b) set out the reasons why he or she is considering suspending or cancelling the right;
(c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
(d) notify the mortgagor, if any, of the exploration right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.

(3) The [Regulating Authority] must direct the holder to take specified measures to remedy any contravention, breach or failure.

(4) If the holder does not comply with the direction given under subsection (3), the [Regulating Authority] may act under subsection (1) against the holder after having –

(a) given the holder a reasonable opportunity to make representations; and
(b) considered any such representations.

(5) The [Regulating Authority] may by written notice to the holder lift a suspension if the holder –

(a) complies with a directive contemplated in subsection (3); or
(b) furnishes compelling reasons for the lifting of the suspension.

25. Exploration Licensing

25.12 Surrender of Licence

A provision in which the licence holder gives up the mining right voluntarily before the duration of the licence has run out is referred to as surrender of the licence. Surrender of an exploration licence may be total or partial. Partial surrender or relinquishment of area subject to the
licences will require the issuance of a new exploration licence for the area not surrendered. Surrender/relinquishment may be automatic at the option of the licence holder upon notice to the Regulating Authority, or it may require a decision of the authority.

An exploration licence holder may wish to surrender all or relinquish part of the licenced area when it has satisfied itself that the area in question does not contain a commercial deposit of the minerals sought, or because the holder lacks the funds or does not wish to allocate further funds to continue exploring for minerals in the area, or to reduce the amount of the annual fee that it must pay in order to maintain the licenced area in subsequent years, or to reduce its aggregate licenced area holdings in order to qualify for a licence in a more attractive area that has become available in the same jurisdiction.

It is considered to be in the interest of the State to facilitate surrender or partial relinquishment of areas held under exploration licences in order to encourage exploration licence holders to focus their exploration efforts and investment expeditiously, and to make areas available for other investors as soon as no further exploration activity in the area by the existing licence holder is to be expected. Therefore, the procedure for surrender or partial relinquishment of licenced exploration areas may be simpler and faster than the corresponding procedure for the surrender or relinquishment of a licence or licenced area for exploitation. However, such procedures tend to be similar across types of licences.

The mining law provision on surrender should (a) cover both total and partial surrenders of licenced area, (b) require that any partial surrender be of blocks or segments that comply with the cadastral rules of shape and dimensions, (c) indicate whether an administrative approval is required in order for the surrender to become effective, (d) clarify the consequence of a surrender with respect to responsibility for area-based fees paid or to become due, (e) clarify the consequence of a surrender with respect to liabilities or responsibilities of the licence holder under the mining law and other laws, in particular environmental laws, and related agreements, and (f) clarify the status and availability of the surrendered area, as well as the responsibility of a subsequent holder of a licence for the area.

Care should be taken in the mining law and regulations and/or the environmental law and regulations to assure that an environmental bond, escrow account or other surety mechanism is required and has been established and that either the surrendering/relinquishing exploration licence holder has completed all necessary environmental rehabilitation work or that the [Regulating Authority] has access to a sufficient surety to complete all necessary rehabilitation work.

25.12. Example 1:

<table>
<thead>
<tr>
<th>Article [...]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from Nigeria’s mining law (2007), these two articles deal separately</td>
<td></td>
</tr>
</tbody>
</table>
## AMLA GUIDING TEMPLATE
### PART B-2: Exploration

<table>
<thead>
<tr>
<th>(1) The holder of a mining right may, upon application in the prescribed form and manner, and upon meeting prescribed conditions, surrender the mining right.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) The Mining Cadastre Office shall approve an application made under subsection (1) of this section to surrender the mining right if he is satisfied that—</td>
</tr>
<tr>
<td>(a) the holder of the mining right has submitted the request for surrender in the prescribed form and manner;</td>
</tr>
<tr>
<td>(b) the surrender will not affect any liability incurred by the mining right holder before the surrender of the mining right, including environmental obligation;</td>
</tr>
<tr>
<td>(c) all rents due and fees prescribed, if any, have been paid by the holder of the mining right; and</td>
</tr>
<tr>
<td>(d) the holder of the mining right has surrendered the original title document.</td>
</tr>
</tbody>
</table>

### Article [ ]

(1) The holder of a mining right may at any time during the period of the validity of such mining right, upon application to the Mining Cadastre Office in the prescribed form and manner and upon meeting prescribed conditions, relinquish the area or part of area covered by the mining right; provided, the geometry and dimensions of each surrendered area shall satisfy the prescriptions of this [Act][Code][Law] and its Regulations.

(2) Upon relinquishment of the area or part of the area covered by the mining right in accordance with the provisions of subsection (1) of this section, the fees payable on the basis of the area covered by the mining right shall be adjusted proportionally taking into account the area relinquished.

with the surrender of a mining right, on the one hand, and the total or partial relinquishment of land held under the mining right, on the other hand.

The provisions apply to surrender of land held under all types of mineral licences, without distinction. That is probably appropriate as between exploration and exploitation, because exploration can involve the construction of access roads and camps, the introduction of chemicals for drilling, and invasive exploration techniques. Prospecting/reconnaissance activity, on the other hand, does not present similar issues, so surrenders of area held under prospecting/reconnaissance licences could be dealt with in more summary fashion.

These articles cover both total and partial surrenders of licenced area. Apparently, in the case of a total surrender of the licence, a two-stage procedure is involved: first the surrender of the licenced land area (under the second article), and then surrender of the licence (under the first article). The second article requires, appropriately, that any surrender of licenced land area comply with the prescriptions of the law and regulations as to geometry and dimension.

The surrender of land area, total or partial, appears to require an administrative approval, whereas the surrender of the licence appears to be automatic if the stated conditions are met. The second article provides for adjustment of fees payable on the basis of the area covered by mining right, to reflect any partial surrender or relinquishment. Both articles provide that the surrender of licenced land area or of the licence does not affect any liability of the licence holder incurred prior to the surrender, including environmental liability in particular.

These provisions do not clarify the status of the surrendered area, however. Ideally, provision would be made for an environmental audit or review before the area becomes available to another licencee and a clarification of the respective environmental liabilities of the surrendering licence holder and the next licence holder. Clarification is also needed as to whether the surrendered area will subsequently be made available for minerals exploration, and if so, by

### NOTE: This Document is part of a multi-part document, Parts A – E
### (3) The relinquishment of the area or part of the area covered by the mining right shall not affect the duration of the mining right.

### (4) The relinquishment of the area or part of the area shall not affect any liability incurred by the mining right holder in respect of the area relinquished prior to the relinquishment, including environmental obligations.

### 25.12. Example 2:

**Article [...]**

1. A holder of a mineral right who wishes to surrender all or a part of the land subject to the mineral right shall apply to the [Regulating Authority] for a certificate of surrender not later than two months before the date on which the holder wishes the surrender to take effect.

2. An application under subsection (1) shall be in accordance with prescribed Regulations.

3. Subject to subsection (4), upon an application duly made under subsection (1), the [Regulating Authority] shall issue a certificate of surrender in respect of the land to which the application relates.

4. The [Regulating Authority] shall not issue a certificate of surrender

   a. to an applicant who is in default,

   b. to an applicant who fails to give records and reports in relation to the applicant’s mineral operations,

   c. where the [Regulating Authority] is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice, or

**Annotation**

Drawn from Ghana’s mining law (2006), this article combines the provisions for total and partial relinquishment of licenced area and surrender of the licence. As in the first example, the conditions and procedure are the same regardless of the type of mineral right involved; and the coverage is similar.

However, in this example, stricter conditions apply for the issuance of the certificate of surrender, and the conditions under which such a certificate shall not be issued are specified. These include, in particular, a failure to provide records and reports of mineral operations (presumably as further detailed in regulations) and “where the [Regulating Authority] is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice”. The latter stipulation appears to require an inspection of the area to be surrendered. Further clarification is needed as to whether the condition applies to environmental rehabilitation and as to the applicable standard, both of which could be provided in the mining regulation.
| (d) in respect of land, if the remaining area of the land after the surrender would be less than one block. |
| (5) Where a certificate of surrender is issued under this section, the [Regulating Authority] shall, where only part of the land subject to the mineral right is surrendered, amend the relevant licence accordingly or cancel the mineral right where the surrender is in respect of the whole area covered by the mineral right. |
| (6) Land in respect of which a certificate of surrender is issued, shall be treated as having been surrendered with effect from the date on which the certificate of surrender is issued under subsection (3). |
| (7) The surrender of land under this section shall not affect a liability incurred by a person in respect of that land before the date on which the surrender took effect. |

25. Exploration Licensing

25.13 Transfer/Assignment of Rights

Transfer and assignment of rights refers to provisions that deal with whether a licence holder may hand over, sell, rent (either in whole or in part) or in any way encumber/place a lien on the licence for the benefit of another person or entity. The ability to transfer or assign rights to an exploration licence, or ownership of the company holding the licence, and any conditions for such transfer or assignment, are key considerations in a mining law. Most exploration work is carried out by junior mining companies, usually with the goal of discovering a commercial deposit and then selling the rights to develop it – in whole or in part – to a major mining company. While transfer of exploration rights do not on their own grant the transferee the right to exploit a mineral deposit, acquisition of another company’s exploration licence covering a substantial identified deposit can place a larger mining company in a preferential or exclusive position to acquire exploitation rights for the deposit, since most regimes give the exploration licence holder a preferential or exclusive right to acquire such an exploitation licence during the term of the exploration licence, subject to meeting the requirements for issuance of the exploitation licence.
If such transfers and sales are discouraged or rendered difficult, that in turn can have a negative impact on investment in exploration, since the vast majority of investment in exploration in previously underexplored territory around the world since about 1990 has been made by or through junior mining companies that lack the capability to develop and exploit a major mineral deposit on their own and who invest with the intent of transferring their rights or shares to a major mining company if they make a substantial discovery. On the other hand, countries are entitled to verify that the transferee is an eligible person who is not disqualified from holding the licence. Accordingly, review and control over transfers and assignments to assure compliance with eligibility and capability requirements is the norm.

The transfer provisions should specify that the transferee assumes all of the obligations under the licence, and also whether the transferor remains responsible or liable for obligations incurred during the transferor’s tenure.

25.13. Example 1:

Article [...].

1) Subject to this section, an exploration licence or any interest therein or any controlling interest in the holder thereof may be transferred to any other person provided that the [Regulating Authority] is notified not less than 30 days before the intended transfer.

2) In such notification, the applicant shall give to the [Regulating Authority] such details of the transferee as would be required in the case of an application for an exploration licence.

3) Where the [Regulating Authority] is satisfied that the transferee is not disqualified under any provision of this act from holding an exploration licence, he shall notify the applicant of his approval of the transfer of the prospecting licence or an interest therein.

4) Upon the transfer of an exploration licence, the transferee shall assume and be responsible for all rights, liabilities and duties of the transferor under

Annotation

Drawn from Botswana’s mining law (1999), this provision establishes an equilibrium between the licence holder’s right to transfer the licence and the State’s right to require that the transferee be an eligible holder. It also clarifies that the transferee assumes all of the transferor’s liabilities and duties under the licence.

This is a liberal transfer provision because:

● It requires only the eligibility of the transferee; and
● the mining law does not state that the transferor continues to be liable for the results of the transferor’s action or inaction during its tenure as holder of the licence.
### Part B-2: Exploration

#### 25.13. Example 2:

**Article [__]. The deed of assignment**

(1) Mining rights and [permanent quarry operating permits] may be the subject of a total or partial assignment. Said assignment shall be final and irrevocable. In the absence of provisions to the contrary, the common law relating to assignment shall apply.

(2) Any partial assignment must comply with the provisions of Articles [__] (on the shape and location of mining areas) of the present [Code][Act][Law].

(3) In addition, any partial assignment of an operating right or a [permanent quarry operating permit] shall be effective only from when the amended mine or quarry operating right is granted.

(4) It is a prerequisite that the assignee must be a person who is eligible to hold the mining rights or the [permanent quarry operating permits].

(5) The deed of assignment must contain a commitment on the part of the assignee to assume all of the holder's obligations with regard to the State which arise from the mining or [permanent quarry operating permit] concerned.

**Article [__]. The assessment of an assignment application.** The assessment of an assignment application is to be done in accordance with the provisions of Article [__] (on cadastral surveys) and Article [__] (on the assessment of a subleasing application) of the present [Code][Act][Law].

**Article [__]. The registration and enforceability of the deed of assignment**

(1) In the event of the partial assignment of a mining or quarrying right for prospecting, the Ministry of Mines shall issue a new mining or quarrying title.

**Annotation**

Drawn from DRC’s mining law (2002), these articles provide a substantial amount of detail as to the treatment of various aspects and types of transfers of mineral rights. The same procedures and standards apply for transfers of exploration rights as for transfers of exploitation rights.

The first article establishes that mineral rights and quarry rights may be transferred in whole or in part; that partial transfers must conform to cadastral rules as to the size and form of licenced areas, specified in other articles; that rights can only be transferred to an eligible person, and that the agreement of transfer must contain the engagement of the transferee to assume all of the obligations of the transferor under the licence; as well as other details.

The second article refers back to other articles for the details of the review of applications for transfers of mineral rights and quarrying rights, respectively.

The third article provides that a partial transfer is only enforceable when a new licence has been issued and registered.

The fourth article establishes a time period for and the content of the technical part of the review of a request for transfer. The technical review focuses on verifying the financial capacity of the transferee, the latter’s assumption of the obligations corresponding to the licence, and the acceptability of any changes proposed by the transferee in the documents related to the licence, such as the environmental management and site rehabilitation plans. The article requires written reasons for any refusal of a request for transfer and a right to appeal any refusal. It also provides for the registration of the transfer immediately following notice of the approval of the transfer to the transferor and transferee.

The fifth article clarifies that a transfer of mineral rights does not free the
### AMLA GUIDING TEMPLATE

#### PART B-2: Exploration

<table>
<thead>
<tr>
<th>(2) In the event of the partial assignment of an operating right or a [permanent quarry operating permit], the partial assignment shall be registered when the new right is granted.</th>
<th>transferor from any payment obligations to the State incurred prior to the transfer, nor does it extinguish the initial licence holder’s environmental rehabilitation obligations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) In order to be binding on third parties, the registration of the deed of assignment is to be done in accordance with the provisions of Article [...] (on the registration and enforceability of mortgage deeds) of the present [Code][Act][Law].</td>
<td>The sixth article establishes that mineral rights are transferrable by succession, including corporate mergers in accordance with applicable provisions of general law, provided that the successor in interest must be eligible to hold the mineral right.</td>
</tr>
<tr>
<td>Article [...]. The transfer of a right</td>
<td>The seventh, eighth and ninth articles refer to other articles whose provisions must be complied with in the case of partial transfers by succession, transfers by merger, and transfers through the estate of a deceased individual.</td>
</tr>
<tr>
<td>(1) Subject to the provisions of Article [...] (on cadastral surveys) and Article [...] (on the assessment of a subleasing application) of the present [Code][Act][Law], the technical assessment of the application file for the transfer of a mining right or a [permanent quarry operating permit] into the transferee’s name is to be carried out within twenty working days of the date on which the application file was sent to the [Technical Division] by the Ministry of Mines.</td>
<td>The tenth article establishes that the transferee becomes responsible vis à vis the State and third parties for all obligations of the transferor in respect of the transferred mineral rights, irrespective of any clause to the contrary in the agreement between the transferor and the transferee. In other words, any limitation of liability of the transferee in the agreement of transfer is only binding as between the transferor and the transferee.</td>
</tr>
<tr>
<td>(3) The technical assessment shall consist of:</td>
<td>The eleventh article establishes that exploration licences, specifically, may be subject to option rights, while the twelfth article provides (by cross-reference) for the registration of option rights. These final provisions are designed to promote investment in exploration through the popular forms of farm-outs and farm-ins.</td>
</tr>
<tr>
<td>a) verifying the transferee’s financial ability;</td>
<td></td>
</tr>
<tr>
<td>b) verifying that the transferee has assumed the transferor’s obligations;</td>
<td></td>
</tr>
<tr>
<td>c) determining, where appropriate, that any changes proposed by the transferee to the original documents which were the basis for the mining right or [permanent quarry operating permit] being granted do not alter the technical findings for the project.</td>
<td></td>
</tr>
<tr>
<td>(3) Should the transfer of a mining right or a [permanent quarry operating permit] be refused, written reasons must be given and said refusal gives the</td>
<td></td>
</tr>
</tbody>
</table>
right to appeal as provided for in the provisions of Articles [... and [...] (on appeal proceedings) of the present [Code][Act][Law].

(4) The transfer of a mining right or a [permanent quarry operating permit] shall be registered in the appropriate registry kept by the Ministry of Mines in accordance with Article [...] (on the registration and enforceability of mortgage deeds) immediately after the transferor and transferee have been notified of the decision to approve the transfer.

(5) A transfer may only take place if it relates to mining rights or [Permanent Quarry Operating Permits] which are currently valid.

Article [...]. The obligations of the assignor after assignment
Notwithstanding any clause to the contrary, a transfer does not relieve the original holder of their obligations, with regard to the State, to pay the fees and charges which relate to their mining or quarrying title during the period in which they were the holder, nor does it relieve the holder of their obligations relating to environmental rehabilitation.

Article [...]. Deeds of transfer
(1) Mining rights and [permanent quarry operating permits] may be transferred in whole or in part under the terms of a merger agreement and on account of death of the holder to his beneficiaries. In the absence of provisions to the contrary, common law relating to transfers shall apply.

(2) It is a prerequisite that the person to whom the right is to be transferred must be eligible to hold mining or quarrying rights.

Article [...]. Deeds of partial transfer
The partial transfer of mining rights and [permanent quarry operating permits] is to be done in compliance with the provisions of Articles [...] and [...] (on the shape and location of mining areas) of the present [Code][Act][Law].
| Article [...] | The registration and enforceability of deeds of transfer  
In order to be binding on third parties, the registration of deeds of transfer is to be done in accordance with the provisions of Article [ ] (on the registration and enforceability of mortgage deeds) and Article [ ] (on the registration and enforceability of a deed of assignment) of the present [Code][Act][Law]. |
| Article [...] | A deed of transfer under the terms of a merger agreement and on account of death  
The terms and procedures for the admissibility and assessment of deeds of transfer under a merger agreement and on account of death shall be those provided for for deeds of assignment relating to mining rights organised under the present [Code][Act][Law]. |
| Article [...] | The obligations of the person to whom the right is transferred  
Notwithstanding any clause to the contrary, the person to whom the right is transferred shall remain liable with regard to the State and third parties to fulfil all of the obligations of the original holder of the mining right or [permanent quarry operating permit]. |
| Article [...] | Option contracts  
A prospecting licence may be the subject of an option contract. Such a contract may be freely concluded between the parties and gives the recipient the right to obtain an interest in the enjoyment of an operating right following on from a Prospecting Licence or in the total or partial alteration of it if a certain investment is realised and/or specific work is completed as part of the mining activities relating to the Prospecting Licence in question. |
| Article [...] | The registration of option contracts  
The registration of option contracts is to be done in accordance with the provisions of Article [ ] (on the registration and enforceability of mortgage deeds) of the present [Code][Act][Law]. |
25. Exploration Licensing

25.14 Specific Violations and Penalties

In addition to the general Offenses and Penalties described in Part A of this Guiding Template, the common specific violations and penalties that apply to Exploration Licences are (1) conducting exploration activities in an area for which the operator does not hold an exploration licence, (2) engaging in mining under an exploration licence, and (3) not meeting the applicable work and expenditure requirements. It is therefore of critical importance, notably in cases where a mining right may ultimately attach to an exploration licence to clearly define and distinguish between what activities are permitted under exploration licences and mining rights, respectively – particularly with respect to the taking and disposal of samples under an exploration licence. Typical penalties include fines, suspension of the mineral right, and seizure of minerals (that are mined illegally).

25.14. Example 1:

Article [...]

(1) The following offences shall be penalised with imprisonment for a period of between two months and three years and with a fine of between [x] and [y] [national currency] or with only one of these two penalties: whoever is engaged in prospecting or mining work relating to a mine or quarry without a title, or outside of the limits for their title, or whoever undertakes mining work with a prospecting licence.

(2) The above fine shall be between [2x] and [2y] [national currency] if the related substance is diamond or another gemstone.

(3) A conviction shall result in the State seizing the fraudulently mined products and the relevant instruments used for this.

Annotation

Drawn from Guinea’s mining law (2011), this provision articulates the classic prohibition against engaging in exploration without a licence or outside of the licence area and the prohibition against engaging in mining (exploitation) while only holding an exploration licence. The law provides for a range of financial penalties dependent on the type of violation, as well as seizure of any mineral products obtained in the course of the violation.

Though no amounts are specifically given in the example, the fine amount should be significant enough to meet the deterrence objective of sanctions.
(4) Should the offence be repeated, the fine shall be tripled and the prison sentence doubled.

25.14. Example 2:

Article [__]

(1) A person who--

(a) conducts exploration or mines minerals or carries out quarrying operations otherwise than in accordance with the provisions of the [Act][Code][Law];

(b) in making an application for mining rights, knowingly makes a statement which is false or misleading in any material particular;

(c) in any report, return or affidavit submitted in pursuance of the provisions of this [Act][Code][Law], knowingly gives any information which is false or misleading or fails to declare in any material particular;

(d) removes, possesses or disposes of any mineral contrary to the provisions of this [Act][Code][Law], commits an offence.

(2) A mining rights holder who is guilty of an offence under section [__] (on illegal mining, false and misleading statements, false or non-declaration and smuggling) is liable to have his licence revoked and on conviction at the first instance, to a fine not less than [x][national currency]; and imprisonment of not less five years, if the offence is a continuing one, whether or not it is a first offence, the person convicted shall, in addition, be liable to a fine of [x][national currency] in respect of each day during which the offence continues.

(4) A person who--

**Annotation**

Drawn from Nigeria’s mining law (2007), this provision contains a more generic description of the violations discussed above. However, the penalties for violations are much more severe. In light of the exchange rate of +/- 250 Naira to one US dollar on September 14, 2015, the penalty for the offenses of unauthorized exploration or mining is a fine of the equivalent of USD 100,000 and a prison sentence of not less than 5 years.

Notably, the Nigerian law covers a broader range of offences, including but not limited to knowingly giving false and misleading information or failing to declare relevant information. While it can be of value to provide a broader range of offences as shown in this example, for organizational clarity it may serve a mining law to place offences that occur across all mining licences in a general offences and penalties section, restricting offences discussed here to those that are narrowly specific to the particular licence.

Article 134 of Nigeria’s law contains a specific offense of salting as described therein (perhaps in light of the 1997 Bre-X salting scandal). The fine for salting is *not less than* USD 2,500; and a prison term of up to 2 years may be assessed in addition or in the alternative.
| (a) places or deposits, or causes to be placed or deposited in a place any minerals, with the intention to mislead any other person as to the mineral possibilities of the place; or |
| (b) mingles or causes to be mingled, with samples or ore, any substances which may enhance the value or in any way change the nature of the ore, with the intention to cheat, deceive or defraud; or engages in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting, or dealing in ores, metals or minerals, contrary to the provisions of this [Act][Code][Law] commits an offence under this [Act][Code][Law] and is liable on conviction to a fine of not less than [x][national currency] or to imprisonment for a term not exceeding 2 years or to both fine and imprisonment. |
26. Large Scale Exploitation Licensing

Activities involving the extraction of minerals that require complex technologies and equipment in order to separate the minerals from the host rock or in order to access the orebody at depth underground are referred to as large scale exploitation. Such mining activities may be conducted in an open pit, underground or alluvial type of operation, depending on the location and nature of the mineral deposit. Large scale exploitation typically includes relocation of large amounts of waste rock and water from the mine.

Most countries, including all African countries, require separate licences, permits, authorizations or concessions for exploration and exploitation, respectively. By doing so, the country is able to impose certain conditions or prerequisites that must be met before a company is granted the right to proceed from exploration to exploitation. Some countries (such as Mexico and Peru), however, grant a single concession for exploration and exploitation. In those countries, the holder of such a concession is able to proceed from exploration to exploitation without obtaining a separate exploitation licence, but subject to compliance with environmental impact assessment and mitigation rules and other operating requirements. This is similar to the case in some African countries whose mining laws provide for the execution of a contract with mining companies covering both the exploration and the exploitation phases of a project.

Many mining laws provide that exploitation rights to a previously worked or studied area containing a deposit for which substantial geological information is already available, and for which no exploration licence is currently in effect, are to be awarded based on a competitive tender process. In such cases, the mining law will provide for the reservation of such areas for tender, and for the establishment of the rules that will apply to the process. Those rules may contain provisions for the compensation of the entity that carried out the prior exploration work (for example, under a prior exploration licence that has expired) that identified the deposit and provided the basis for conducting the tender process. The rights granted in such cases may include both an exploration stage, in order to complete certain studies and plans that must be submitted as a prerequisite to exploitation, and a subsequent exploitation stage.

Large scale exploitation activity can generally be divided into sub-phases of (1) mine development and construction, (2) extraction, processing and marketing of mineral products derived from the mine, and (3) mine site closure and site restoration.
A mining law will generally restrict what legal entities can receive a licence or authorization to conduct mineral exploitation activities, either by defining who may or may not apply for the right or to what type of entity the right may be granted, or by defining prior conditions that must be met before a person or entity can be considered eligible or qualified to apply.

Most mining laws provide that if an exploration licence is currently in effect for a particular area, then only the holder of that exploration licence is eligible to apply for an exploitation licence for all or any part of the area covered by the exploration licence. This is considered to be an important incentive to motivate investors to invest in high risk minerals exploration and mine planning and is therefore an investor-friendly approach. A state may still opt for an approach that allows for a competitive tender for such exploitation licence with fair compensation to the entity that carried out the exploration work if the law allows for it and if deemed appropriate for the circumstance. Most mining laws also require that the applicant for a large scale exploitation licence be a company organized under local law specifically for the purpose of conducting mining activities. Individuals or foreign companies that may have been eligible to hold an exploration licence are therefore required to form such a company under the law of the jurisdiction where the deposit is located, which local company will then be eligible to receive the exploitation licence. This assures the State that the holder of the exploitation licence will be subject to local law and taxation and that it is not a company organized for purposes other than mining and that might take advantage of certain incentives granted to mineral rights holders for other business purposes that are not entitled to such incentives. This requirement also facilitates the implementation of any State equity participation requirements that the country may have. In addition, the mining law typically requires that the exploration licence holder be in compliance with conditions of its exploration licence in order to be eligible to apply for an exploitation licence.

In the case of areas that are reserved pursuant to the mining law for the grant of a large scale exploitation licence by a tender process, the rules for that tender process will specify the eligibility requirements for potential bidders. The eligibility requirements in such cases may require an upfront payment or the making of certain commitments.

Finally, many mining laws specify certain types or classes of persons or entities that are ineligible to receive the grant of an exploitation licence. These would include, for example: any person or entity whose mineral licence has been revoked by the regulatory authority within the last 5 years, who is insolvent or in bankruptcy, who is found guilty of tax fraud, or members of the Mining Administration acting directly or indirectly and members of the Government.
### 26.1. Example 1:

**Article [ ]**

1. Mines may be operated only under an operating licence or a small-scale mining licence.

2. An operating licence may only be allocated to a juristic person under Mauritanian law, and in accordance with the terms provided for in the present Act. It may only apply within the area for its existing prospecting licence and shall be granted automatically if the holder of the prospecting licence has fulfilled their obligations.

3. Once the operating licence has been allocated, the prospecting licence shall remain valid outside the area for the operating licence.

**Article [ ]**

1. No person may engage in mining activities if they do not have the technical and financial ability required to meet the provisions of Articles [ ] (on the duty to comply with best practices for a going concern and the duty to respect obligations relating to workers' health and safety, public health and safety, and respect for the essential features of the surrounding environment) of the present Act and to meet the environmental requirements provided for in the implementing regulations.

2. Any prospecting licence holder, insofar as they have fulfilled their obligations, shall be granted an operating licence.

3. Once the operating licence has been granted, [the Regulatory Authority] shall evaluate the financial and technical capacity of the holder before giving authorisation for operations to commence.

4. In the event that the operating licence holder does not meet the required criteria for operating, the operating right may be subject to:

   a. the holder forming a partnership with a legal entity which meets the 

### Annotation

Drawn from Mauritania’s mining law (2008, as modified), the first of these articles states that a large scale or small scale exploitation licence can only be granted, in accordance with the conditions provided in the Mining Code, to a company organized under the law of Mauritania. It also makes clear that the exploitation area must lie within the boundaries of an exploration licence and that the holder of the latter is entitled to receive the exploitation licence if it has fulfilled its obligations. Thus, this provision is consistent with the principle of security of tenure by providing that only the holder of the exploration licence, or a local company formed by the holder, is eligible to receive an exploitation licence for an area within the area covered by the exploration licence. The provision also clarifies that the exploration licence continues in effect in the areas covered by it that are outside of the area for which the exploitation licence is issued.

The second article provides that the applicant who receives an exploitation licence must establish its technical and financial capacities before mining operations will be authorized under the exploitation licence. In other words, obtaining the exploitation licence is a necessary condition for mining, but it is not sufficient by itself to authorize mining activity. If the exploitation licence holder’s technical and financial capabilities are inadequate, the holder must do one of two things within 6 months of notification by the Ministry: Either (1) form a local corporate joint venture with another company that satisfies the criteria, or (2) transfer the exploitation licence to a Mauritanian company that satisfies the technical and financial capacity requirements.

This is one way of encouraging junior mining companies to engage in exploration - by making it possible for them to obtain valuable exploitation licences and giving them alternatives if they are unable to satisfy the technical and financial capability requirements.
### AMLA GUIDING TEMPLATE

**PART B-3: Large Scale Exploitation**

<table>
<thead>
<tr>
<th>Required criteria for operating, in a new entity under Mauritanian law, to which the operating licence shall be transferred; (b) the assignment of the operating licence to a juristic person under Mauritanian law which meets the required criteria for operating</th>
</tr>
</thead>
<tbody>
<tr>
<td>(5) One of these solutions must be implemented within six (6) months from when [the Regulatory Authority] notifies the operating licence holder that they do not meet the required criteria. During this period, the operating licence shall remain valid.</td>
</tr>
</tbody>
</table>

#### 26.1. Example 2:

**Article [ ]**

1) The following may mine or quarry in terms of the present Act:

(a) any natural person, or public or private sector juristic person under Guinean law which demonstrates their financial and technical ability to undertake the requested operations;

(2) A decree of the [Head of Government] shall specify what is meant by "technical and financial ability".

(3) Persons or companies which are subject to international sanctions or criminal investigations related to fraud, corruption or money laundering may not obtain Mining Titles or Permits.

**Article [ ]**

1) No natural person may obtain or hold a Mining Title or Permit in the event that:

(a) their status is incompatible with carrying out business activities;

(b) they have received a prison sentence for violating the provisions of the present [Code][Act][Law] and its implementing regulations;

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**Annotation**

Drawn from Guinea’s mining law (2011, as amended in 2013), these five articles establish the rules of eligibility for large scale exploitation concessions. They include (A) general rules of eligibility applicable to all applicants, (B) the rule and conditions of eligibility of the exploration licence holder in the target area, and (B) provisions for eligibility rules to be set by regulation in the case of licence areas awarded by competitive bidding.

The general rules of eligibility applicable to all applicants include positive standards that an applicant must meet and negative standards that exclude certain categories of potential applicants, as follows:

1) The applicant must be a citizen of Guinea or a company organized under the laws of Guinea;

2) The applicant must meet the required technical and financial capability standard established by regulation (in the form of a Presidential decree);

3) The applicant must not be subject to international sanctions or criminal investigations relating to fraud, corruption or money laundering;

4) In the case of an applicant who is an individual:
   a) The applicant’s status must not be incompatible with the conduct of commercial activities;
   b) The applicant must not have been sentenced to jail for
NOTE: This Document is part of a multi-part document, Parts A – E
26. Large Scale Exploitation Licensing

26.2 Requirements for Licence Applications

Regulating entities generally require that eligible entities seeking authorization to conduct mining activities submit particular documents or meet certain criteria as part of the authorization process. Requirements for licence applications at this stage of the mining process are typically lengthier and specific, incorporating greater elements of environmental and social concerns than at the prospecting or exploration stage.

The general requirements for obtaining a large scale exploitation licence should be set forth in the law to ensure consistency, clarity, objectivity and transparency in the award of the licence. The requirements should then be further detailed in the regulations and/or the relevant bidding procedures for a competitive and transparent invitation to tender according to rules to be defined in the regulations.

(2) The invitation to tender shall be implemented by the [relevant technical committee] together with the [Advisory Commission].

of the exploration licence for the area must:

d) Have met its obligations under the Mining Code,

e) Have filed an application for the exploitation concession in accordance with the regulations, at least three months prior to the date of the exploration licence, and

f) Demonstrate its intent and ability to invest at least USD 1 billion in developing a bauxite or iron ore deposit, or at least USD 500 million in developing a deposit of a different mineral. (For smaller investments, Guinea provides an exploitation permit that has a shorter term than the mining concession but is subject to the same eligibility requirements except as to the amount of the investment.)

If the area for which the large scale exploitation concession is sought is not subject to an exploration licence and is offered by a tender process, Guinea’s Mining Code provides that the eligibility rules and other requirements for that process set forth in the regulations will apply, and that the bidding procedure is carried out by the technical committee on licences together with the national mining commission.

NOTE: This Document is part of a multi-part document, Parts A – E
A feasibility study demonstrating how a proven commercial deposit will be developed. An approved Environmental and Social Impact Study, Environmental Management Plan and Rehabilitation Plan are required virtually everywhere either as a requirement for the grant of the large scale exploitation licence or as a condition prior to the commencement of operations under the licence. Recently, approved plans for social obligations – local hiring, training and promotion, local procurement, and local community development – are required either as a condition for the grant of the licence or as conditions to be met within a short period after the mining licence takes effect. State participation in the company that holds the exploitation licence may be required, if that policy is enshrined in the mining law.

26.2. Example 1:

Article [__]
(1) As regards a company under [national] law, a Mining Concession shall be given automatically, to the holder of a prospecting licence which has complied with their obligations under the Mining Code, by decree of the Cabinet, on a proposal from [the Regulatory Authority], after receiving approval from [the Advisory Commission]. This application must be submitted at least three months before the end of the period of validity for the prospecting licence in respect of which it is brought.

(2) The following shall be eligible for the Mining Concession system established by the present [Code][Act][Law]: investments of an amount equal to or greater than one (1) billion United States dollars (USA).

(3) An application for a mining concession must be given in together with a file, as detailed in the mining regulations, and which must include each of the following:

(a) a copy of the prospecting licence, which must still be valid, and proof of payment for any taxes and fees due;

(b) a report on the results from the prospecting, with regard to the type, quality, volume and geographic location of the mineral resource which was identified;

(c) the plan for the first or second reassignment, as the case may be, together

Annotation

Drawn from Guinea’s mining law (2011, as amended in 2013), this provision complements the eligibility requirements described in 26.1 above by specifying in detail the documents that the holder of an exploration licence must file with the holder’s application in order to obtain the exploitation licence or mining concession for up to one half of the licence area held under the exploration licence. By stating in the Mining Code that the exploration holder who complies with the specified conditions has the right to receive the exploitation licence or mining concession, as noted above in 26.1, and by specifying in the Mining Code the documents required to be submitted, rather than delegating the authority to set the documentary and other requirements to the Executive Branch, Guinea confers a robust right to obtain an exploitation licence or mining concession on the exploration licence holder and eliminates or greatly circumscribes the existence of discretion in the process of granting exploitation licences and mining concessions.

As noted above, Guinea’s mining law also contemplates the awarding of large scale exploitation permits and mining concessions by a competitive bidding process in cases where there exists a studied and documented deposit but no exploration licence is in effect. In such cases, the requirements are set in the bidding rules as established pursuant to regulations.

Guinea’s law requires the submission of a feasibility study among the other documents that must accompany an application by an exploration licence holder for an exploitation permit or mining concession. A significant innovation in
with the results from the prospecting work, and corresponding to half of the previous surface area;

(d) a feasibility study which is to include:
   (i) a detailed environmental and social impact assessment, together with an Environmental and Social Management Plan, including a Hazard Plan, a Risk Management Plan, a Health and Safety Plan, a Rehabilitation Plan, a Plan for the Resettlement of Affected Population Groups, for those affected by the project, and the measures for mitigating the negative impact and optimising the positive impact;
   (ii) an economic and financial analysis of the project and the plan for obtaining the necessary licences and permits;
   (iii) the plans and estimates for the industrial infrastructure;
   (iv) a plan to support Guinean businesses, for creating and/or strengthening the capacities of [SMEs/SMIs] or businesses owned or controlled by Guineans, for the provision of the required goods and services for their activities, and a plan for promoting the employment of Guineans, which must at least comply with the quotas set in the present Code[Act][Law];
   (v) a detailed timetable for the work which is to be carried out;
   (vi) a community development plan annexed to the Local Development Agreement, which is to include, among other things, aspects such as training, medical, social, educational and road infrastructure as well as the infrastructure for supplying water and electricity; this Agreement shall be signed and the development shall be carried out once the title has been obtained; and
   (vii) an architectural blueprint of the registered office for the company, together with an application addressed to the relevant administration for the allocation of a plot of land; with regard to the allocation of concessions for iron ore, bauxite, gold and diamond, the registered office must be completed within no more than three years from when the concession is allocated.

(4) The allocation of a mining concession shall entail the cancellation of the prospecting licence within the area for the mining concession.

(5) Prospecting related to the operations may continue. Should a mineral of a

Guinea’s law is the stipulation that the feasibility study must take into account:

1) an Environmental and Social Impact Study including a Threat Assessment, A Risk Management Plan, A Health, Hygiene and Safety Plan, A Rehabilitation Plan, a Relocation Plan for the Affected Populations and measures to reduce the negative impacts of the project and to optimize the positive impacts;
2) the economic and financial analysis of the project and the plan for obtaining the necessary permits and authorizations;
3) plans and estimates for the industrial infrastructure;
4) a plan for the support of Guinean enterprises in the creation or the reinforcement of the capacities of small and medium scale enterprises and industry or enterprises controlled by Guineans for the supply of goods and services necessary for the activities and a plan to promote the employment of Guineans for which the minimum must conform to the quotas in this law.

These factors that must be taken into consideration by a feasibility study for a large scale exploitation project in Guinea are a significant innovation in integrating economic and social development planning goals into the required mine planning process. The setting of fixed local employment quotas in the law, however, creates a rigidity that may be self-defeating and possibly in conflict with international treaty obligations.

This provision of Guinea’s mining law also requires a community development plan attached to a local community development agreement covering, among other things, training; and medical, social, educational, road, water and electric infrastructures; to be signed upon obtaining the mining licence. The law thereby converts a soft law CSR obligation into a hard law requirement for the grant of a large scale exploitation licence.

The innovative expansion of the mine planning requirements in the Guinean mining law does not only apply to very large scale exploitation projects, however. They are requirements for all applications for exploitation permits for small mines as well. Those requirements may constitute a significant barrier to
different category to the one for which the concession was allocated be discovered as part of this prospecting, the holder shall have a pre-emptive right to the relevant operating right. This right must be exercised within no more than eighteen (18) months from the date on which the State is notified of said discovery.

(6) [The Regulatory Authority] shall ensure that the assessment of an application and the cadastral survey are carried out.

(7) The technical evaluation and the environmental and social impact assessment as well as the related opinions shall be matters for [the Regulatory Authority] in conjunction with [the Regulatory Authority].

(8) The decision to approve or refuse the mining title, notify the party concerned and ensure it is published shall be matters for [the Regulatory Authority].

(9) An Agreement determining the operating terms for the Concession shall be negotiated and signed in accordance with the provisions of Article [] of the present [Code][Act][Law].

(10) For a deposit which has been revealed, where there is no valid prospecting licence, a Mining Concession shall be granted following the procedure for a competitive and transparent invitation to tender according to rules to be defined in the regulations.

(11) The invitation to tender shall be implemented by [the Regulatory Authority] together with the [Advisory Commission].

(12) The legal instruments which sanction the allocation, extension, renewal, transfer, subleasing, withdrawal or surrender of a mining concession must be published in the Official Gazette and on the official web site for [the Regulatory Authority].

(13) When areas which have already been prospected are put on the market in order to grant a mining concession, through an invitation to tender, this entry for Guinean entrepreneurs seeking to develop small scale mines involving investments of less than USD 10 million, for example. Consideration should be given as to whether or in what form to apply such terms to different sizes and types of mining projects.

The Guinean mining law includes other, more standard documentation required with an application for a large-scale exploitation licence, stipulates the regulatory bodies that review the cadastral and technical aspects of the application, and provides for the negotiation and signature of a mining agreement that sets forth the terms on which the mine will be exploited. It also requires the publication of all decisions regarding mineral licences.
must be published in at least two widely-circulated newspapers, and this must be done at least forty-five (45) days before the deadline for the submission of tenders.

26.2. Example 2:

Article [...]
(1) An application for the grant of a large-scale mining licence shall be submitted to the Mining Cadastre Office in the prescribed form.

(2) An application for the grant of a large-scale mining licence shall—
(a) contain the registered name and place of incorporation of the company, its certificate of incorporation and certified copy of its memorandum and articles of association, the names and nationalities of its directors and the name of every shareholder who is the beneficial owner of five percent or more of the issued share capital;
(b) contain the company profile and history of exploration operations in Sierra Leone and elsewhere;
(c) identify the name and qualifications of the person responsible for supervising the proposed programme of mining operations;
(d) be accompanied by a plan of the area over which the licence is sought drawn in such manner as prescribed;
(e) state the period applied for;
(f) identify the minerals in respect of which the licence is sought;
(g) give or be accompanied by a statement giving details of the mineral deposits in the area of land over which the licence is sought, including details of all known minerals proved, estimated or inferred, ore reserves and mining conditions;

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision requires documentation supporting an application for a large scale exploitation licence that is similar to Guinea’s law in comprehensiveness. There is some redundancy in the environmental protection requirements; and the requirements with respect to local employment and procurement are described as the applicant’s proposals – which suggests some flexibility and that they may be subject to negotiation.

The Sierra Leone provisions also requires the identification of the directors of the applicant company and of all shareholders of a share of five per cent or more; and it further requires:

- The identification of interested and affected parties including land owners and lawful occupiers of the proposed mining area (k); and
- Details of consultation with interested and affected parties and the results thereof.

This reflects a sensitivity to the rights of landowners and lawful land occupiers in the affected area, which is often a source of conflict if not addressed early, fairly and openly.
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(h) be accompanied by a technological report on mining and treatment possibilities and the intention of the applicant in relation to them;

(i) give or be accompanied by a statement giving particulars of the proposed programme of mining operations, including a statement of-

(i) the estimated date by which the applicant intends to work for profit;

(ii) the estimated capacity of production and scale of operations;

(iii) the estimated overall recovery of ore and mineral products;

(iv) the nature of the products;

(v) proposals for the progressive reclamation and rehabilitation of land disturbed by mining and for the minimisation of the effects of mining on surface water and ground water and on adjoining or neighbouring lands;

(vi) the effects of the mining operations on the environment and on the local population and proposals for mitigation, compensation and resettlement measures;

(vii) any particular risks (whether to health or otherwise) involved in mining the mineral, in particular a radioactive mineral, and proposals for their control or elimination;

(j) give or be accompanied by a statement giving a detailed forecast of capital investment, operating costs and revenues and the anticipated type and source of financing;

(k) contain the identification of interested and affected parties including land owners and lawful occupiers of the proposed mining area;

(l) contain details of consultation with interested and affected parties and the results thereof;

(m) be accompanied by a report on the goods and services required for the...
mining operations which can be obtained within Sierra Leone and the applicant’s proposals with respect to the procurement of those goods and services;

(n) give or be accompanied by a statement giving particulars of the applicant’s proposals with respect to the employment and training of citizens of Sierra Leone;

(o) be accompanied by details of the applicant’s proposals for insurance including life and health cover for its employees;

(p) give or be accompanied by a statement giving particulars of expected infrastructure requirements;

(q) be accompanied by a report on the proposed marketing arrangements for the sale of the mineral production;

(r) give details of any mineral rights held in Sierra Leone, by the applicant or by any person controlling, controlled by or under joint or common control with the applicant;

(s) be accompanied by an environmental impact assessment licence as may be required by the [Regulating Authority] under subsection (2) of section 131;

(t) set out any other matter which the applicant wishes the [Regulating Authority] to consider; and

(u) be accompanied by the prescribed non-refundable fee.

(3) Where an application for the grant of a large-scale mining licence is made by a person who is not the holder of an exploration licence to which the proposed mining area relate, there shall be provided in addition to the matters referred to in subsection (1), a statement giving particulars of the financial and technical resources available to the applicant for the proposed mining operations.
### 26. Large Scale Exploitation Licensing

#### 26.3 Large Scale: Licence Refusal Appeal Process

Many African mining laws lack specific provisions on the appeal of refusals to grant large scale exploitation licences. Therefore any appeals of such decisions can only be taken under the provisions of the country’s general administrative law and/or judicial law. Such laws may not take into account, however, whether the mining law grants an exploration licence holder who has complied with specific requirements an enforceable “right” to the grant of an exploitation licence, for example, or the extent to which the exploration licence holder has spent years and millions of dollars on exploration studies, planning for mine development planning and social obligations to the host community. Given the high risk nature of minerals exploration and the length, scope and cost of exploration activities needed in order to satisfy the requirements for obtaining a large scale exploitation licence (as detailed in the preceding subsection), international best practice would include provisions in the mining law that specify the rights and procedures for appeals of administrative decisions that refuse to issue requested licences.

The provisions on the licence refusal appeal process would include some form of the following administrative and judicial components:

1. The requirement that a refusal to grant a licence be issued in writing, delivered to the applicant within a specified time frame, specifying the reasons for the refusal;
2. An opportunity for the applicant to respond to the decision within a specified period, presenting arguments why the licence application requirements were met, in writing and/or in person, and requesting reconsideration;
3. The issuance of a final decision on reconsideration by the decisional authority in writing explaining its reasons, delivered to the applicant within a specified time frame, possibly subject to one limited extension of time;
4. An opportunity for an appeal in writing by the applicant to a higher administrative authority or to an independent review board within a specified period;
5. The issuance of the decision on appeal by that administrative authority or board within a specified timeframe, possibly subject to one limited extension;
6. If the independent review board option is implemented, that may be the final, non-appealable decision (as an arbitration award would be);
7. If the administrative appeal is to a higher administrative authority, then the right of the applicant to appeal an unfavourable decision of the administrative appellate authority to one or more specified levels of judicial authority would normally be provided;
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8) Preservation of the status quo pending the outcome of the appeal process, including automatic extension of the term of the applicant’s exploration licence during the appeal process, with the exploration licence terminating either upon the delivery of the large scale exploitation licence in the case of a successful appeal or after a reasonable interval such as 60 or 90 days following the issuance of the final, non-appealable decision affirming the administrative decision to refuse the licence (in order to allow for closure of the exploration site).

Factors to be considered in designing the process for appeals of a refusal to grant a large scale exploitation licence include:

- Whether the applicant has the right to obtain the exploitation licence under the mining law, provided the applicant complies with the specified requirements, or whether the applicant has only the exclusive or priority right to apply for the exploitation licence, and the administration retains the discretion to grant the licence or not based on a variety of factors;
- Whether the applicant has invested substantially in exploration and development planning based on a reasonable expectation of obtaining the large scale exploitation licence;
- Whether there is a clause in the mining law or in an agreement signed with the applicant pursuant to the mining law that stabilizes the law, regulations and interpretations for a specified time period, in reliance upon which the applicant made a significant investment; and whether the law or agreement provides for resolution of any dispute as to the grant of a large scale exploitation licence by arbitration or some other alternative dispute resolution mechanism;
- The freezing of development work on the identified deposit during the appeal process (which suggests the need for timeframes to assure an efficient appeal process);
- The standard that the Regulatory Authority is held to in justifying its decisions;
- Whether the country has sufficient activity in the mining industry and related disputes to necessitate and justify the existence of an independent review board or a court specialized in mining-related appeals and disputes;
- Whether the refusal to grant the licence is due to a decision by a different authority, such as the Environmental regulatory authority, to deny an environmental permit or approval that is a prerequisite for the exploitation licence (in which case a provision for the suspension of the decision of the mining regulatory authority during an appeal of the decision of the other regulatory authority would be necessary); and
- The extent to which general administrative and judicial appellate procedures are adequate or need adjustment in order to accommodate the need for appellate procedures with respect to refusals to grant large scale exploitation licences.

The elements of best practice and factors to be considered in regard to appeals of a refusal to grant a large scale exploitation licence are important in establishing the accountability of the regulatory authority and the governance of the licensing process by law. This is an aspect of mining law.
that is generally in need of greater attention in the mining laws of African countries.

### 26.3. Example 1:

**Article [...]: Notice of decision on application for large-scale mining licence**

1. The [Regulating Authority] shall cause the applicant to be notified of, the decision on the application and—
   - (a) if the application is granted, of the details of the proposed large-scale mining licence; or
   - (b) if the application is refused, of the detailed reasons for such refusal.

2. With the exception of subsection (2) of section [...] (on appeals of a refusal to grant an artisanal mining licence) any decision or order of the [Regulating Authority] under this [Act][Code][Law] may be reviewed upon the application of any affected party to the [Judicial Reviewer] which shall hear and determine the issue de novo but such application must be made within sixty calendar days of the date of such decision or order.

**Annotation**

Drawn from Sierra Leone’s mining law (2009), this provision requires the Regulating Authority to provide to the applicant the detailed reasons for a decision refusing to grant a large scale mining licence and affords the applicant an appeal to the High Court within 60 days after the decision. The High Court is to determine the issue “de novo” — i.e., the Court is not limited to reviewing the reasonableness of the Regulating Authority’s decision. The appeal procedure provides the applicant with a second chance to win the licence.

### 26.3. Example 2:

**Article [...] (1) Should the granting of an operating licence application be refused, reasons are to be given in writing and said refusal is subject to the right to appeal as provided for in the provisions of Articles [...] and [...] (on arbitration appeal) of the present [Code][Act][Law].**

2. An operating licence may be refused only if:
   - the feasibility study has been rejected;
   - the applicant lacks sufficient financial ability;
   - the EIA has been rejected in a final decision, in accordance with the below provisions.

**Annotation**

Drawn from the mining law of the DRC (2002), these provisions provide a robust right to appeal a decision of refusal to grant an exploitation licence, which refusal must be justified in writing. The provisions set standards for the refusal to grant a licence and circumscribes the regulatory authority’s discretion by specifying the grounds on which the licence can be refused, and explicitly limiting those grounds with respect to the three main elements of an application for an exploitation licence: the feasibility study, the financial capacity of the applicant and the environmental impact study.

The provision of the DRC mining law specifically authorizes appeals of decisions refusing to grant an exploitation licence by internal or international arbitration – in the latter case, pursuant to the ICSID rules for eligible investors.
A feasibility study may only be rejected for the following reasons:

- it does not comply with the directive from [the Regulatory Authority] specifying its content in accordance with generally recognised international practices;
- the study contains manifest errors;
- it does not comply with the EIA.

(4) Proof of the applicant's financial ability may only be rejected for one of the following reasons:

- the financing plan does not comply with the feasibility study;
- there is clearly insufficient proof of the likely availability of the financing which is to be obtained from the sources identified by the applicant.

(5) Proof of financial ability may not be rejected if, in the case of external funding, the applicant has produced proof from the financial sources which were identified, demonstrating the feasibility of the financing within the parameters considered by the applicant, and, in the case of internal financing, the financial statements of the person or company certified by a Chartered Accountant or a Public Accountant recognised by the courts, demonstrating their self-financing ability.

Article [...]  
(1) Subject to the provisions relating to appeals to a higher administrative authority and appeal proceedings, penalties and punishments provided for by the present [Code][Act][Law], disputes which may result from the interpretation or application of the provisions of the present [Code][Act][Law], may be settled through arbitration as provided for in the present Article.

(2) Disputes resulting from the interpretation or application of the provisions of the present [Code][Act][Law], shall be the subject of arbitration according to the procedure provided for in the provisions of Articles [...] to [...] of the

or under the ICSID additional facility for ineligible international investors (from non-ICSID member countries).

With respect to arbitration, the DRC mining law provides that the law to be applied is DRC law, that the arbitral award will be enforceable in the DRC, and that the State renounces sovereign immunity as to both jurisdiction and execution. The renunciation as to execution of arbitral awards is perhaps overly broad in the current context, since most countries permit the enforcement of international arbitration awards against the commercial assets of sovereigns and their parastatal entities, regardless.

Ghana’s mining law (2006) takes a similar approach, but these DRC provisions appear to be the most specific and robust safeguards, among African mining laws, of the rights of exploration licence holders to a decision on their applications for an exploitation licence based on clear standards set forth in the mining law.
<table>
<thead>
<tr>
<th>Article</th>
<th>Clause</th>
<th>Content</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Code of Civil Procedure].</td>
<td>(3)</td>
<td>Notwithstanding the provisions of paragraph (2) of the present Article, disputes which may arise during the interpretation or application of the provisions of the present [Code][Act][Law] may, at either party's request, be resolved through arbitration in accordance with [the Convention on the Settlement of Investment Disputes between States and Nationals of Other States], provided that the holder is a national of another contracting State under the terms of Article [_] of said Convention.</td>
</tr>
<tr>
<td></td>
<td>(4)</td>
<td>When the mining or quarrying title is issued, the holder is to consent to such arbitration in accordance with said convention and is to state this both on their own behalf and on behalf of their affiliates. In addition, they shall accept that such an affiliate shall be considered a national of another contracting State.</td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>Holders who are not nationals of another contracting State may submit disputes which arise during the interpretation or application of the provisions of the present [Code][Act][Law] to any arbitration tribunal of their choosing, but they must notify the State of the names, contact details and rules of practice for the arbitration tribunal, on the day on which the mining title is issued, to the Ministry of Mines.</td>
</tr>
<tr>
<td>Article [_]</td>
<td>(1)</td>
<td>In accordance with the above Article, arbitration shall take place in French, at the place agreed on by the State and the holder.</td>
</tr>
<tr>
<td></td>
<td>(2)</td>
<td>For the purposes of arbitration, the arbitration authority shall refer to the provisions of the present [Code][Act][Law], the laws of [Country] and its own rules of procedure.</td>
</tr>
<tr>
<td></td>
<td>(3)</td>
<td>Decisions made by the arbitrator shall be enforceable and an application regarding enforcing said decisions may be brought before any court with jurisdiction in the National Territory according to the procedures provided for in the [Code of Civil Procedure] or in the holder's country.</td>
</tr>
</tbody>
</table>
(4) Should the provisions of the above paragraph be applied, the State shall waive any immunity relating to jurisdiction or enforcement.

26. Large Scale Exploitation Licensing

26.4 Area

Area refers to a provision that enumerates the physical boundary, marking the size of the space grantable for mining. Most laws only provide for the maximum size permitted under the licence, but a law may also provide the minimum threshold allowed. The area of a mining licence must be entirely within the area of the applicant’s licence and conform to the cadastral rules as to shape and orientation. In some cases, it is limited to the area where the deposit is located and only such other area as is necessary for the extraction, processing, stockpiling and transportation of the minerals, and related infrastructure for workers and management. There is often a limitation of the maximum surface area that can be held by a single company and its affiliates.

### 26.4. Example 1:

Article [...]  
The surface area covered by the operating licence shall be demarcated according to the deposit. It must be located entirely within the area for the prospecting licence or licences which belong to the same holder, from which it derives.

**Annotation**  
Draw from Chad’s mining law (1995), this provision provides that the area of a large scale exploitation permit is a function of the commercial deposit and must be entirely situated within the area covered by one or more exploration permits held by the same person.

### 26.4. Example 2:

Article [...]  
The area of land in respect of which any Mining Lease is granted shall be determined in relation to the ore body as defined in the feasibility study submitted in respect of the Mining Lease together with an area reasonably required for the workings of the mineral resources; provided such area shall not exceed fifty square kilometres.

**Annotation**  
Drawn from Nigeria’s mining law (2007), this provision establishes the typical requirements of area size in relation to the orebody and necessary related workings, location within the exploration licence or small-scale mining lease of the holder, and also impose a size limit of 50 square kilometres.
# 26. Large Scale Exploitation Licensing

## 26.5 Specific Obligations of a Licence Holder

Provisions that lay out, for the holder of a large scale exploitation licence, the necessary responsibility or duty to undertake (or refrain from) certain actions are collectively treated as obligations. Noncompliance with these obligations may lead to fines and/or ordered suspensions of operations until the licensee is in compliance and ultimately revocation of the licence. Where suspension occurs, continued, uncured non-compliance beyond a specified time period may result in revocation of the licence.

Examples of obligations in order to maintain the validity of the licence are: the obligation to commence exploration work within a specified timeframe, the obligation to post and maintain adequate surety for environmental rehabilitation of the worked sites, and the obligation to pay annual maintenance fees per unit area covered by the licence by a specific date each year. Failures to timely meet those obligations would result in loss of licence. All other failures to meet obligations would be punished by fines or suspensions until cured, or ultimately by loss of licence if uncured beyond a specified very reasonable cure period.

Many of the obligations for other types of licences apply to the obligations of large scale mining licence holders as well. The following specific obligations are often included in addition to or in lieu of those for exploration licensees:

- Commencement of mine development work within a specified time period;
- Posting of a site rehabilitation surety (e.g., bank guarantee) and/or funding of an escrowed reserve fund for site rehabilitation and remediation of environmental damages during the life of the project;
- Implementation of an approved Environmental and Social Management Plan, periodically reviewed and updated, including monitoring and reporting;
- Implementation of an approved work plan;
- Implementation of an approved local procurement plan;
- Implementation of an approved local hiring, training and promotion plan;
- Implementation of an approved community development agreement;
- Implementation of approved worker health, safety and welfare training and regulations;
- Implementation of approved infrastructure development, operation and maintenance plans;
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- Maintenance of daily logs and registers of production, product shipments, equipment deliveries and shipments, accidents, and site visitors;
- Implementation of accident and emergency preparedness and response measures;
- Periodic filing of reports of operations, production, shipments, sales, costs and geological information;
- Compliance with periodic and spot inspections and/or audits;
- Timely and accurate declaration and payment of royalties, customs duties and taxes. (Fiscal terms are presented and discussed in another Part of this Guiding Template.)

It is essential that the obligations of licence holders be clearly stated in one or more chapters of the mining law and not be dispersed throughout the document, in order to be sure that they are internally consistent. Careful consideration should be given to the definition of what constitutes compliance with the requirement to commence work within a specified time period. If the law contemplates that certain plans (and/or agreements) are to be prepared, submitted and approved after the licence is granted, allowance must be made for the time necessary to prepare and negotiate those plans and/or agreements.

#### 26.5. Example 1:

**Article [__]: Obligations for maintaining the validity of the right**

(1) In order to maintain the validity of their mining or quarrying right, the holder must:

- (a) commence work within the period specified in Article [__] (on the obligation to commence work) of the present [Code][Act][Law];
- (b) pay the annual surface area fees per square relating to their title, each year before the deadline set in Article [__] (on the terms for annual surface area fees per square) of the present [Code][Act][Law].

(2) Should one or more of these obligations not be fulfilled, the holder shall lose their right in application of the procedure provided for in Articles [__] to [__] (on failure to comply with administrative obligations) of the present [Code][Act][Law].

**Article [__]: The obligation to commence work**

**Annotation**

Drawn from DRC’s mining law (2002) and other sources, this example deals with obligations in two chapters. The first chapter establishes the principle that the holders of all mineral right holders must comply with two specific obligations that have specific time requirements in order maintain the validity of their rights:

- begin work within the time specified in the Code (three years for large scale exploitation licences); and
- pay the surface fee per square unit of area related to their licence before the deadline set in the Code (i.e., by the end of the first calendar quarter).

Failure to comply with either of these “licence maintenance” obligations results in the licensee being stripped of the licence.

The obligations listed in the subsequent chapter of the DRC mining law are conditions for operations under the licence, rather than conditions for the maintenance of the validity of the licence. The licensee’s failure to comply with
### AMLA GUIDING TEMPLATE
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<table>
<thead>
<tr>
<th>Article</th>
<th>Environmental Protection while Operations are Ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Any applicant for an Operating Licence shall be required to submit an environmental and social impact assessment (ESIA), together with an environmental management plan for the project (EMPP), and to obtain approval for their ESIA and EMPP, as well as implement the EMPP.</td>
</tr>
<tr>
<td>(2)</td>
<td>Before any operations which were not provided for in the ESIA may begin, the Operating Licence holder must revise their ESIA and EMPP, taking into account the environmental and social protection requirements.</td>
</tr>
</tbody>
</table>

An Operating Licence holder shall be required to commence development and construction work within three years from when the title establishing their right was issued. The Mining Regulations set out detailed terms for the application of this provision.

**Article [ ]**: The obligation to pay annual surface area fees per square

1. To cover costs for the services and management relating to the rights established by mining titles, annual surface area fees per square, for each mining or quarrying title which is issued, shall be collected for the Mining Cadastre which shall redistribute a portion to the departments of [the Regulatory Authority] responsible for the administration of the present [Code][Act][Law].

2. The Operating Licence holder is to pay the surface area fees for the first year when the mining or quarrying title is issued.

3. The holder is to settle the annual surface area fees per square for each following year before the end of the first quarter of the calendar year. However, annual surface area fees are to be paid pro rata per square, when the initial title is issued, or in the last year during which the title is valid.

4. Annual surface area fees per square are to be paid at the relevant counter at the Ministry of Mines which issued the mining title, which shall issue the holder with a receipt when payment is made.

**Article [ ]**: Environmental Protection while Operations are Ongoing

Environmental and social protection is an essential obligation of every large scale exploitation licence holder, whether the obligation is specified and regulated by the environmental ministry or agency or by the Regulating Authority for the mining sector. The obligation described in the example has

The operating obligations set forth in the example are numerous and are grouped in the categories specified below, which generally correspond to those cited in the introduction to this section of the Guiding Template.
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<tbody>
<tr>
<td><strong>Account the impact of the operations which were not previously provided for, in order to obtain approval from [the environmental Regulatory Authority] according to the same procedure as for the original approval. The financial guarantees shall be subject to proportional adjustment.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(3) The Operating Licence holder shall be required to carry out rehabilitation work on all or part of the Area, in accordance with their rehabilitation plan as approved by [the environmental Regulatory Authority], before the Operating Licence is surrendered, revoked, or expires.</strong></td>
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</tr>
<tr>
<td><strong>(4) The terms for the application of this Article, including financial guarantees, shall be laid down in the Mining Regulations.</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Article [__]: Financial guarantees for environmental protection</strong></td>
<td></td>
</tr>
<tr>
<td><strong>(1) Before starting any operations which shall affect the surface or subsoil of the Area, the Operating Licence holder is to make a security deposit at a banking institution which is set up in the country, is to have a business stand surety or is to obtain a commitment from an insurance company, or is to deliver a financial guarantee sent by a major bank in order to cover the rehabilitation work (each of these options shall hereafter be referred to as the “guarantee”). The type of guarantee must be approved by [the environmental regulatory authority]. The total amount for the guarantee shall be decided on and, if necessary, adjusted by the relevant authority, based on the extent of the work to be carried out in accordance with the approved rehabilitation plan, and this amount may be increased or reduced based on the cost of the rehabilitation work which remains to be completed.</strong></td>
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</tr>
<tr>
<td><strong>(2) From when a mining product which follows from an Operating Licence is first marketed, the holder shall set up a rehabilitation fund in a bank account open with a commercial bank set up in [the country] and approved by [the environmental Regulatory Authority], in the name of the holder and the State. Money shall be paid into said fund from the holder's funds, and money shall be authorised to be withdrawn exclusively to pay for rehabilitation work in the following three components, which are now classic:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>1) The obligation to have submitted an environmental and social impact study (EIES in the example), together with a project environmental and social management plan (PGESP in the example), for approval by the environmental Regulating Authority, to have obtained the approval of the EIES and the PGESP by that authority and to implement the PGESP. The environmental Regulating Authority could be the general environmental ministry or agency or it could be a mining sector environmental regulatory unit, depending on the existing legislative framework and institutional capacity of the country. In some countries, the approval of the EIES and PGEP is required before the large scale exploitation licence can be issued. In others, those documents are required to have been prepared and submitted with the application for the licence, but their approval by the environmental regulatory authority is a condition that must be satisfied prior to commencing work under the large scale exploitation licence.</strong></td>
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<tr>
<td><strong>2) The obligation to revise the EIES and the PGESP before commencing any work not contemplated by the original documents, and to obtain the approval of the modified plan by the environmental regulatory authority before commencing the work.</strong></td>
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</tr>
<tr>
<td><strong>3) The obligation to complete authorized environmental rehabilitation work on any site prior to the relinquishment, the revocation or the expiration of the large scale exploitation licence.</strong></td>
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<tr>
<td>The particulars of compliance with these obligations are to be spelled out in the Regulation. In the current global context, it is essential that the Environmental and Social Impact Study take into consideration the need to balance competing land uses and steps to meet climate change related commitments.</td>
<td></td>
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</tbody>
</table>
| The third article of the second chapter in the example is very important. It requires the licence holder to establish a financial surety or guarantee to assure the completion of site rehabilitation work prior to the commencement of...
PART B-3: Large Scale Exploitation

| accordance with the approved rehabilitation plan. Each year, the total amount for the guarantee or surety referred to in the above paragraph shall be decreased by the annual funds paid into the rehabilitation fund. When the holder withdraws funds from the rehabilitation fund, this shall be signed for by [the environmental Regulatory Authority] or by the latter in the event that the holder fails to comply with their obligations with regard to rehabilitation. |
| operations under the large scale exploitation licence. The article in the example requires the posting of a financial instrument (surety bond, insurance policy or corporate or bank guarantee) in the first instance, in a form and amount approved by the Regulating Authority. The surety article further provides that the licence holder will replace the approved surety gradually with annual payments into a rehabilitation fund in a local bank account opened jointly in the name of the holder and of the State. The licensee will be able to draw on the fund, subject to countersignature by the Regulating Authority, in order to pay site rehabilitation expenses. If the licensee fails to perform such work, the environmental regulatory authority is authorized to draw from the fund in order to complete the site rehabilitation, after giving the licensee notice and an opportunity to cure the deficiency. The licence holder remains liable for any shortfall in the amount of the fund. |

(3) If the holder of the Operating Permit does not rehabilitate the Area in accordance with the requirements of the present [Code][Act][Law], [the environmental regulatory authority] shall draw up a certified report in this regard and notify the holder of this by summoning them to appear in order to be heard within ten (10) days. If the holder does not appear within the allotted period of time, [the environmental regulatory authority] shall withdraw the required amount from the rehabilitation fund to pay for the rehabilitation work which was not carried out, and, should there not be sufficient funds in the rehabilitation fund, it shall request that the guarantee be made available to it. If the holder appears within the allotted period of time but does not agree with [the environmental regulatory authority] with regard to a plan and deadline for corrective measures to be taken, or does not carry out the agreed plan within the allotted time, [the environmental regulatory authority] shall withdraw the required amount from the rehabilitation fund to pay for the rehabilitation work which was not carried out, and, should there not be sufficient funds in the rehabilitation fund, it shall request that the guarantee be made available to it. Should there be any shortfall in the funds for completing the required rehabilitation work, the holder shall be responsible for this.

Article [...] The Agreement Relating to the Occupation of the Plot of Land

(1) Before any land may be occupied for more than a year, the Operating Licence holder must identify the landowner, in particular at the relevant land offices, to inform them of the holder’s project and to negotiate an agreement relating to occupation of the land.
(2) For plots of land which are part of State property, before they may be occupied, the holder must request that this be put in order at the local land offices.

Article [__]. Landowners

The following shall be considered to be landowners within the meaning of the present [Code][Act][Law]: the registered owners with a title deed, or land certificates, occupants whose ownership is likely to be recognised in land legislation, as well as the State and its various divisions, with their respective public and private State property, in accordance with the laws and regulations in force.

Article [__]. The Temporary Suspension of Land Registration

As soon as the [Land Office of the Ministry responsible for Regional Development] has been notified by [the Regulatory Authority] that the Operating Licence has been granted, all applications for land certification and registration for plots of land within the mining area as well as for any other sector-based activities which involve occupying the land, shall be suspended for a maximum of two (2) years, until the agreements provided for in the provisions of the articles in the present [Code][Act][Law], on agreements relating to occupation by the holder, have been concluded.

Article [__]. The Role of Local Authorities

(1) Local authorities shall serve as facilitators, as far as is required, for reaching and complying with the necessary agreements.

(2) In the event that the landowner does not reside in the area which was granted to the holder, and in the event that the holder is unable to contact said owner, the holder is to inform the local authorities with jurisdiction that this is the case. They shall then be responsible for bringing the holder and the owner into contact, at the holder's expense.

Relations with Landowners

The relations between surface right owners and mining licence holders can be a source of serious conflict if not addressed comprehensively in the law and implemented with sensitivity. A recent trend in mining law is to require mining licence holders to identify the lawful owners or users of the land to be subject to mining operations, and to obtain their consent to the terms and conditions of occupation of the surface area by the licence holder. The example includes provisions to this effect from a draft amendment to the mining law of Madagascar, which includes the following elements:

- Prior to occupying any land area for more than one year, the licence holder must identify the owner of the land, notify him of the mining project, and negotiate an occupancy agreement with the landowner. If the State is the landowner, arrangements are made through the local land registry.
- The definition of landowners for purposes of the mining law includes the registered owners, the persons named on a deed, the occupants whose rights are subject to recognition by the real property legislation, as well as the State and its subdivisions.
- In order to avoid people claiming new property rights in order to negotiate compensation from the licence holder, the example provides that the land registry will be closed to new land claims for a period of two years after notification is given to the land registry service of the grant of a large scale mining licence, so that the licence holder can negotiate the necessary occupancy agreements.
- The local administrative authority is required to facilitate the conclusion and respect of the necessary agreements. Provisions are included to deal with the case of a landowner who cannot be located.
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<tbody>
<tr>
<td>(3) Where it is still not possible to find or identify the owner, a provisional administrator shall be appointed to represent them. The rules and procedures applicable to this shall be laid down in the regulations.</td>
<td>• The occupancy agreement will generally be in the form of a lease, but can be in any other legal form agreed upon by the parties.</td>
</tr>
<tr>
<td>Article [__]. The Type of Agreement Relating to the Occupation of the Plot of Land</td>
<td>• The occupancy agreement must be equitably and transparently negotiated to protect the landowner and the licensee from abuse.</td>
</tr>
<tr>
<td>(1) In general, the agreement between the mining licence holder and the landowner is to be drawn up as a lease agreement, indicating their respective rights and obligations, and more specifically, the fees or rent, indemnity, and compensation payable for occupying the land.</td>
<td>• If the parties are not able to reach agreement, mechanisms for mediation and conciliation are provided.</td>
</tr>
<tr>
<td>(2) The parties may agree on other types of contracts, showing their agreement as regards the occupation by the holder, with their respective rights and obligations.</td>
<td>• The licensee is responsible for any damage to property, but his responsibility is limited to the payment of an indemnity in an amount equal to the approximate value of the damage caused.</td>
</tr>
<tr>
<td>Article [__]. The Standards for Negotiating an Agreement</td>
<td></td>
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<tr>
<td>The preliminary agreement is to be negotiated in a fair and transparent manner, and must aim to prevent the owners from any form of dispossession and the holder from misuse.</td>
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<tr>
<td>Article [__]. Indemnity and Compensation as regards the Landowner</td>
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<tr>
<td>Rent, indemnity and fair compensation paid to the owners by the holder must be adequate, in accordance with any loss of enjoyment of property or loss which the owners may suffer as a result of the holder’s activities.</td>
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<tr>
<td>Article [__]. Conciliation and Mediation in Order to Reach an Agreement Relating to Occupying the Plot of Land</td>
<td></td>
</tr>
<tr>
<td>(1) Failing an amicable agreement being reached, and before any arbitration appeal or appeal proceedings, disputes between mining licence holders and landowners, shall first be subject to either conciliation or mediation at the initiative of either party.</td>
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</tbody>
</table>

**NOTE:** This Document is part of a multi-part document, Parts A – E
(2) Conciliation shall be carried out with the [national committee for consultation and dialogue relating to mines].

(3) Mediation shall be carried out by the mediation institution for protecting the rights of property owners.

Article [...]. The Conciliation Procedure between the Holder and the Landowner

(1) The [national committee for consultation and dialogue relating to mines] shall have three months to reconcile the parties and shall officially report on the content of the agreement on a deal, even if only partial, or shall report non-conciliation, as the case may be.

(2) The report is to be signed by the parties and the conciliator. If they do not know how to sign their name, this shall be noted.

(3) Either party may file an original copy of the report with the Chief Registrar of the Court of First Instance for the area, which shall include it in its registers. It shall issue execution copies of it and append an order for execution to it, and they count as a writ of execution.

Article [...]. The Mediation Procedure between the Holder and the Landowner

(1) Mediation shall be conducted in accordance with the provisions relating to institutional mediation in the [Code of Civil Procedure].

(2) The organisational structure, functioning and the establishment of the mediation institution for protecting the rights of property owners at the level of local communities shall be defined in the regulations.

Article [...]. The Holder’s Responsibility to Compensate the Landowner

(1) The holder shall be required to compensate the landowner for any damage which the work may cause to the surface of the public or private property, as...
well as to the environment.

(2) The holder is only obliged to compensate the landowner for damage suffered as a result of the mining/prospecting operations.

Article [__]. Temporary suspension on the basis of financial ability

With effect from a written notification (from the Finance Minister charged with the function) by (the Regulatory Authority), all activities within the perimeter of the mining license will be suspended for a maximum period of 2 years, until the agreements contemplated in articles [__] of [code] [Act] [law] have been complied with regarding the financial ability of the holder.

Article [__]. Role of the Local Authority

(1) As and when required, the Local Authority shall act as a mediator in respect of the obtaining and maintaining of the requisite agreements.

(2) In the event that the landowner does not reside within the area of the mining permit and the rights holder is unable to contact the landowner, the local authority must be informed of this fact by the rights holder, and will at the rights holder's cost establish contact between the rights holder and the landowner.

(3) In the event that it proves impossible to locate the land owner, or he is unidentifiable, a provisional administrator will be appointed on the landowner's behalf. The procedures for such appointment are set out in the regulations.

Article [__]. Land use agreements

(1) In general, land use agreements between the land owner and rights holder takes the form of a lease, setting out their respective rights and obligations and more specifically compensation, rental payments and indemnification for the use and occupation of the land.

**Sustainable Development Obligations**

The concept of Corporate Social Responsibility is increasingly becoming codified in mining laws as a responsibility to negotiate and implement a community development agreement with the community or communities that will be impacted by mining operations. The example requires the large scale mining licence holder to negotiate a community development agreement with the affected communities after issuance of the exploitation licence, as a condition of the grant of the required authorization to commence operations under the licence. The negotiated community development agreement must be submitted to the Regulating Authority for its review and approval, to assure that the agreement focuses on making a contribution to sustainable development and not just the construction of facilities that may not be useful over the long term.
(2) The parties may agree to different forms of land use agreements governing the right holder’s use and occupation of the land and the parties’ respective rights and obligations.

Article [__]. Manner of negotiation

The land use agreement must be negotiated on an equitable and transparent basis ensuring the landowner's entitlement to evict the rights holder for just cause.

Article [__]. Indemnification and compensation of the Landowner

The indemnity and compensation payable by the rights holder must be adequate in all respects to ameliorate the loss of use or damage caused by the mining activities to the landowner.

Article [__]. Conciliation and Mediation of disputes regarding land use agreement

(1) Prior to any judicial intervention being instituted, all disputes between landowners and rights holders must be submitted by either party to conciliation and failing which mediation.

(2) Conciliation must be held under the auspices of [the National Committee for Consultation and Dialogue in mining].

(3) Mediation must be held under the auspices of the Institute for Mediation for the Protection of Fundamental Rights.

Article [__]. Procedure for conciliation between the landowner and rights holder

(1) [The National Committee for consultation and Dialogue in Mining] shall attempt to settle the dispute within 3 months of the referral by means of an oral process to determine the terms of the land use agreement.

**Labour and Employment Obligations**

In addition to requiring compliance with the national labour legislation, the example requires the licence holder to develop, in consultation with the national labour authority, a National Recruitment, Training and Promotion Plan designed to increase the employment of nationals of the host country at all levels. This provision makes the approval of such a plan by the Regulating Authority a precondition for the grant of visas and work permits for the expatriate employees of the licence holder. The Regulating Authority is to supervise the implementation of the approved Plan.

**Local Procurement Obligations**

Similar to the obligation to develop a National Recruitment, Training and Promotion Plan, the example also requires the licence holder to develop, in consultation with the national Commerce department, a National Procurement Plan designed to maximize the procurement by the licence holder of services, material and equipment from national providers. The Plan must be filed with the Regulating Authority for approval, as a precondition to the grant of the
(2) The minutes of the oral process will be signed by the parties and the Conciliator. If a party cannot sign, mention will be made of this in the minutes.

(3) Either party may place an original minute of the oral process before the Registrar of the Court of First Instance and have it registered. The Registrar will deliver a legally binding decision and manner of execution of the decision.

Article [__]. Responsibility of rights holder to remedy damage

(1) The rights holder is obliged to remedy all damages caused by the mining operations to the surface, underground, public or private land and the environment.

(2) The rights holder must provide the landowner with an indemnity equivalent in value to the estimated damage that will be caused.

Article [__]. The Obligation to Consult Local Communities

All Operating Licence holders shall be required to consult with representatives from local communities likely to be affected by said holder’s mining operations.

Article [__] The Negotiation of a Community Development Agreement

required authorization to commence operations under the licence.

Approval of the licensee’s National Procurement Plan is also a precondition to the grant of import licences for the material and equipment needed to build and operate the mine.

The provision requires the licensee to file annual reports on the implementation of the National Procurement Plan.

**Cultural Heritage Protection**

Consistent with best practice concerning any construction project affecting the area below ground, the article on protection of cultural heritage requires the licence holder to inform the local administrative authority and the national authority responsible for art and culture of any cultural artefacts revealed in the course of digging. The licence holder is required to leave the artefacts in place for inspection and disposition by the cultural authorities; but if the latter do not remove or secure them or declare the site reserved for archaeological investigation within 60 days of notification, the licence holder is authorized to remove the artefacts and preserve them for the State while continuing mining operations.

**Security and Hygiene**

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<tr>
<th>Article [ ]</th>
<th>A Community Development Agreement as a Condition for Authorisation to Commence Operations under the Operating Licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The conclusion of a Community Development Agreement with the communities likely to be affected by the holder's mining activities is a prerequisite for authorisation being granted to commence operations under the Operating Licence.</td>
</tr>
<tr>
<td>(2)</td>
<td>The Operating Licence holder must, after obtaining the Licence, submit the Community Development Agreement, signed jointly with representatives from communities likely to be affected by the holder's mining activities and all other invested and affected parties, to the Regulatory Authority.</td>
</tr>
<tr>
<td>Article [ ]</td>
<td>The Obligation to Perform according to the Community Development Agreement</td>
</tr>
<tr>
<td></td>
<td>The Operating Licence holder shall be required to fulfil its obligations under the Community Development Agreement.</td>
</tr>
<tr>
<td>Article [ ]</td>
<td>The Obligation to Comply with National Legislation</td>
</tr>
<tr>
<td></td>
<td>All Operating Licence holders shall be required to comply with the national labour legislation which is then in force.</td>
</tr>
<tr>
<td>Article [ ]</td>
<td>Recruitment, Training and Promotion Plan</td>
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<tr>
<td>(1) All Operating Licence holders must prepare a Recruitment, Training and Promotion Plan for national staff, in consultation with [the Ministry responsible for Labour]. The purpose of said plan must be to increase the number of national staff employed at all levels in the operation, and it must be submitted to the Regulatory Authority for approval.</td>
<td></td>
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</tbody>
</table>

In the area of security and hygiene, the example provides that:

- Exploitation is subject to protective measure set forth in special regulations;
- The licence holder must comply with the measures prescribed by the Regulating Authority in order to prevent or eliminate the dangers that exploitation work may pose to the state of public health, conservation of mineral deposits, water sources and public ways;
- In an emergency or in the event of refusal of the licensee to comply with prescribed safety measures, the latter are to be implemented by the Regulating Authority at the expense of the licensee;
- In cases of imminent peril, authorized agents of the Regulating Authority may immediately take the measures necessary to eliminate the danger;
- Any serious or mortal accident in the mine or its dependencies is to be reported to the local administrative and judicial authorities without delay;
- The licence holder is required to publish safety instructions for the particular aspects of his mine. These instructions must be delivered to the [Mines Department], and presented to the licensee’s personnel and any other public persons able to access the mine. The details of how the safety instructions must be publicized will be set forth in the regulations.
- The use of explosives is subject to special conditions set forth in an appendix to the Mining Regulation.
(2) Once the recruitment plan has been approved, the State shall make all licences and permits available to the holder, including entry visas required for expatriate staff hired in accordance with said plan.

(3) The implementation of the Recruitment, Training and Promotion Plan for National Staff shall be regularly monitored by the Regulatory Authority.

Article [ ] National Procurement Plan

(1) All Operating Licence holders shall be required to draw up a National Procurement Plan in consultation with [the Ministry of Trade and Industry]. The purpose of said Plan must be to maximise procurement in services, material and equipment sourced nationally, and it must identify all services, materials and equipment required to construct and operate the mine, as well as providers and suppliers. Said plan must be submitted to the Regulatory Authority for approval before authorisation to commence operations under the operating licence is granted.

(2) Once the National Procurement Plan has been approved, the State shall give the holder authorisation to import the material and equipment required to construct and operate the mine under the Operating Licence, if necessary.

Article [ ] The Annual Report on the Implementation of the National Procurement Plan

All Operating Licence holders must submit an annual report on the implementation of the approved National Procurement Plan to the Regulatory Authority. In addition, the Regulatory Authority may require that the report be independently audited.

Article [ ] The discovery of artefacts of national cultural heritage

(1) In the event that artefacts of national cultural heritage are discovered, whether movable property or not, the holder is prohibited from moving these

**Infrastructure**

In the area of infrastructure, the example provides that:

- The plans for any project infrastructure must be reviewed and approved by the competent administrative authority, after consultation with the local territorial authority.
- Roads created within and outside of the licence area may be utilized, provided that there is no interference with mine operations and that the licence holder so agrees, by neighbouring mining, commercial and industrial establishments, subject to mutually agreed upon just compensation of the licensee and contribution to the maintenance costs of the roads.
- Such roads may also be open to use by the public on similar terms as established in an agreement with the local community whose residents make use of the roads.
- Unless otherwise agreed in writing between the licence holder and the State, any infrastructure remaining in place at the termination of the licence falls within the public domain of the State.
objects. In this case, the holder is to inform the local administrative authorities and the authorities responsible for [Culture, the Arts and Museums], in writing and without delay.

(2) Depending on the prevailing circumstances, the holder may be required to remove, secure and keep these artefacts of national cultural heritage, and to do so on behalf of the State and at the State's expense, if the local administrative authorities and the relevant authorities responsible for [Culture, the Arts and Museums] do not remove or secure them, and do not declare that the site is to be reserved for an archaeological study to be conducted, within sixty days of notice being given regarding the discovery.

Article […] Special regulations

Any operating of mines shall be subject to the measures for health, safety, and protection laid down in special regulations.

Article […] The jurisdiction of [the Regulatory Authority]

(1) An Operating Licence holder must comply with the measures ordered by [the Regulatory Authority] in order to prevent or eliminate the causes of hazards which the work poses to public health and safety, the conservation of deposits, and to public roads and waterways.

(2) In the event of an emergency, or should the holder and their affiliates or subcontractors refuse to comply with these measures, the measures shall be undertaken and carried out by [the Regulatory Authority] at the holder's expense.

(3) In the event of imminent danger, duly authorised officials of [the Regulatory Authority], shall immediately take the necessary measures to avert the danger and, wherever necessary, may make demands of local authorities and operators.

Article […] The declaration of an accident in a mine or quarry

Miscellaneous Obligations

The example provides that the large scale exploitation licence holder is subject to the following obligations in this area:

- Before commencing mining activities, the holder must meet with the local authorities and present them with a copy of the licence.
- The holder must maintain the registers and file the reports of activities as required by the Regulation.
- The licence holder is subject to inspections by authorized agents of the Administration, which inspections shall take place during the hours when the offices, shops and work sites are open, and in accordance with the regulations.
- The opening or closing of any mining site must be notified without delay to the Regulating Authority in accordance with the regulations.
### Article 3: The publication of safety instructions

(1) All Operating Licence holders shall be required to publish safety instructions in terms of the specific conditions of their operations. Said instructions are to be sent to the [Mining Division] and brought to attention of the holder’s staff and the public which is able to access the holder’s operating site.

(2) The Mining Regulations shall determine how the safety instructions are to be published.

### Article 4: The use of explosives

All Operating Licence holders who make use of explosives shall be subject to special regulations on the use thereof, annexed to the Mining Regulations.

### Article 5: Building authorisation and infrastructure planning

(1) An Operating Licence holder shall be required to build and maintain any infrastructure necessary for the activities connected to their titles or to the related environmental authorisation, in accordance with the provisions of the present chapter.

(2) A plan for any infrastructure which is to be built by the holder is to be submitted to the relevant administrative authority for approval, after consulting with the local authorities with territorial jurisdiction.

### Article 6: The use of project infrastructure

(1) Transportation routes created by the holder within or outside of the mining Area may, when this does not hinder the operations, and subject to the
holder agreeing to this, be used for operations by neighbouring mining, industrial and commercial establishments, at their request, and fair compensation is to be set by common agreement between the parties, and shall include interested parties contributing to the maintenance of said routes.

(2) Transportation routes created outside of and within the Area may be open to the public under the conditions provided for in the above paragraph, subject to fair compensation to be agreed on between the holder and the local community whose inhabitants use said transportation routes.

Article [__]: The State’s rights over the infrastructure

Unless otherwise expressly agreed in writing between the State and the holder, any infrastructure which is beneficial to the public at a large which is built by an Operating Licence holder, and which remains onsite when the holder’s right expires or is no longer valid, shall belong to the State.

Article [__]: Relationship with local authorities

Before beginning activities, an Operating Licence holder shall be required to appear before the local authorities with jurisdiction and give them a copy of the holder’s mining title, and obtain an acknowledgement of receipt.

Article [__]: Registers and reports

An Operating Licence holder shall be required to keep registers, and prepare and file reports of their activities in accordance with the Mining Regulations.

Article [__]: Inspections

(1) An Operating Licence holder must submit to inspections carried out by officials in charge of inspecting mining or quarrying operations.

(2) In all instances, these inspections shall take place during work hours for offices, workshops or building sites.
(3) The Mining Regulations shall determine the conditions under which these inspections shall be carried out.

Article [...] The opening and closure of a prospecting or operations centre.

Whenever a mining operations centre is opened or closed down, this must be reported to the Mining Department, without delay, according to the terms laid down in the Mining Regulations.

26.5. Example 2:

Article [...] The present [Code][Act][Law] requires the holder of a very large-scale exploitation licence (a concession, when the amount of the investment is at least USD 1 billion) that did not discover the commercial deposit for which its concession is granted to indemnify the third party that discovered the deposit, for its costs incurred in that effort.

Article [...] The holder of a concession must commence development work within 1 year after the issue of the concession, after which increasing monthly monetary penalties will be assessed if work has not commenced. If development work is not commenced within 2 years, the concession may be cancelled. Commencement of development work is defined as the engagement of preparatory, development and construction work in the amount of at least 10-15% of the total investment.

Article [...] The holder of a concession must deliver reports and supporting documentation in accordance with regulations fixing the content and periodicity of the reports. (This is a general obligation of all mineral right holders.)

Article [...] The holder of a large scale exploitation licence must file with the [Regulating

Annotation

Adapted from, Guinea’s mining code (2011), this provision contains extensive and comprehensive obligations of large-scale exploitation licence holders that include - in addition to work, reporting, health, safety and environmental requirements and fee payments:

a) local procurement, hiring and training requirements with target percentages;
b) compensation of lawful occupiers of land within the licenced area;
c) signature of an anti-corruption code of conduct; and

d) disclosure of all interested persons.

These are perhaps the most comprehensive and extensive obligations on large-scale exploitation licensees in Africa. (Many of the same obligations also apply to holders of exploration licences and small scale mining permits, as well.)

The articles of the Guinean mining code on the obligations of concession holders (for large-scale exploitation) cited in the example are paraphrased from the original text in French.
**AMLA GUIDING TEMPLATE**  
PART B-3: Large Scale Exploitation

<table>
<thead>
<tr>
<th>Article</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Authority[] a final report of the work accomplished upon termination of the licence.</td>
</tr>
<tr>
<td>2.</td>
<td>All mineral rights holders must carry out their operations using techniques confirmed by the mining industry and in accordance with the terms of the [Code][Act][Law], the [relevant environmental legislation] and the respective implementing regulations of each law.</td>
</tr>
<tr>
<td>3.</td>
<td>All mineral right holders shall give preference to qualified local PMEs, PMIs or [Country nationality] owned companies in their contracting for goods and services, to achieve specified percentages of such entities among their contracts, to require their subcontractors to subscribe to the same plan, and to file an annual report of their progress towards meeting the applicable standard.</td>
</tr>
<tr>
<td>4.</td>
<td>Consistent with article [_] above, all mineral rights holders are required to prioritize the employment of qualified [Country nationals], based on target percentages for each category of worker and annual reporting requirements. These target percentages will be determined in subsequent regulations.</td>
</tr>
<tr>
<td>5.</td>
<td>All mineral rights holders are obliged to develop and submit to the [National Office of Training and Professional Improvement] a plan for the transfer of technology and responsibility to [Country national] companies and personnel and a “[Country] Plan” that meets specified criteria.</td>
</tr>
<tr>
<td>6.</td>
<td>All mineral rights holders must comply with [Country]’s international agreements, including in particular with ECOWAS, the Kimberley Process and the EITI.</td>
</tr>
</tbody>
</table>

NOTE: This Document is part of a multi-part document, Parts A – E
### All mineral rights holders shall pay an indemnity to the legitimate occupants of the areas necessary for their activities, determined in accordance with the provisions of the mining [Code][Act][Law].

**Article [_]**
All exploitation licence holders must enter into a Community Development Agreement (CDA) with the local community situated in proximity to the concession. The CDA must be consistent with principles specified in the regulations of this [Code][Act][Law]. The exploitation licence holder must contribute annually either 0.5% or 1% of its gross revenues, depending on the category of mineral for which its concession was issued, to a Local Development Fund in order to finance local community development activities.

**Article [_]**
Exploitation licence holders shall inform the local community 12 months in advance of mine closure and formulate a plan acceptable to the local authorities for the restoration of the mine site at closure in a manner acceptable to the community, eliminating or mitigating all environmental risks and re-establishing the native vegetation at the site.

**Article [_]**
All mineral licence holders must comply with the [national Insurance Code] and maintain all required coverages with approved companies in [Country].

**Article [_]**
Exploitation licence holders must submit a prior declaration to the [Regulating Authority] for all purchase, sale, import or export transactions in mineral substances, as well as all beneficiation and transformation operations, including the fabrication of metals, alloys and concentrates.

**Article [_]**
All mineral licence holders have a general obligation to comply with environmental protection and health regulations, as well as utilize adapted
## AMLA GUIDING TEMPLATE

### PART B-3: Large Scale Exploitation

<table>
<thead>
<tr>
<th>Article</th>
<th>Content</th>
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<tbody>
<tr>
<td></td>
<td>Techniques and methods to protect the environment, workers and the nearby populations in accordance with the [relevant Environmental legislation] and international best practices.</td>
</tr>
<tr>
<td></td>
<td>Article [...] schön All mineral rights holders are obliged to protect against listed potential harm or dangers to the environment, workers and the local populations.</td>
</tr>
<tr>
<td></td>
<td>Article [...] schö Exploitation licence holders must establish and fund a trust account to guarantee the financing of mine closure and site rehabilitation at the conclusion of mining operations.</td>
</tr>
<tr>
<td></td>
<td>Article [...] schön All mineral rights holders must establish environmental health and safety regulations that meet the higher of (a) national [[Country] standards adopted by the respective [Ministries of Public Health, Labour and the Environment], or (b) such higher standards as are met by the licence holder elsewhere. The regulations must be approved by the [Regulating Authority] after favourable recommendation by the [Committee for the Evaluation of Health and Environmental Impacts]. Once approved, they must be posted on the most visible sites for workers.</td>
</tr>
<tr>
<td></td>
<td>Article [...] schö The usage of explosives is subject to regulation by joint orders of the [Regulating Authority] and the [Ministries of Defence and Security]. All mineral rights holders must disclose to the technical department of the [Regulating Authority] the identity of all parties with an interest in them, including shareholders, affiliates, directors, senior executives and control persons.</td>
</tr>
<tr>
<td></td>
<td>Article [...] schön All mineral rights holders shall sign a Code of Conduct with the [Regulating Authority].</td>
</tr>
</tbody>
</table>

**NOTE:** This Document is part of a multi-part document, Parts A – E
### Article [__]
The holder of an exploitation licence shall file annually with the [Regulating Authority], within 90 days after the end of the calendar year, a Plan of Surveillance against Corruption, containing the elements specified in this article.

### Article [__]
Exploitation licence holders shall pay the specified annual surface fees per square kilometre of area covered by their concession.

### Article [__]
Exploitation licence holders must make payment of the mining tax for each substance mined, at the time when it is removed from stockpiles.

### Article [__]
(1) Exploitation licence holders must prepare and submit for approval by the [Regulating Authority] and the [Ministry of Finance], respectively, lists of the goods and equipment that they intend to import, in order to enjoy the benefit of the special import regimes under this [Code][Act][Law].

(2) Mineral licence holders are subject to the various declaration, reporting and payment obligations in the chapters of this [Code][Act][Law] on fiscal obligations, customs and exchange controls.

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### 26. Large Scale Exploitation Licensing

#### 26.6 Protection of Open Pit/Shaft Mines

Protection of open pit/shaft mines refers to provisions that specify the steps required by a mining licence-holder to secure the area in and around...
mines for the duration of mining activities. Mine sites are potentially dangerous places. The machinery and equipment used in large scale exploitation projects for excavation and hauling is enormous and in nearly constant use in and around the mines during production. Dynamite is used to free ore from rock formations. Subsidence and cave-ins are a constant risk. Mine waste in tailings piles and tailings ponds may be highly toxic. Therefore, mining laws often do, and should, require large scale exploitation licence holders to implement comprehensive plans to secure the mine site, including the processing facilities, waste piles, tailings ponds, access roads and equipment storage and maintenance facilities, etc. and restrict access to authorized, trained personnel.

The provisions of the mining law requiring mine security and safety planning aim to protect both mine workers and members of the surrounding communities as well as other visitors from harm. Such provisions may require the licence holder to develop a site security and safety plan that meets standards set out in the regulations. Submission and approval of the plan may be required as a prerequisite to the commencement of operations; and the site security and safety measures will typically be subject to periodic inspections and adjustments as conditions at the mine change over time.

These obligations are singled out here because of their importance, although the requirements are often spelled out in regulations rather than in the mining law itself. Depending on the jurisdiction, the responsible administrative authority may be different than the Regulating Authority for the mining sector. These obligations are covered as part of the environmental topics in Part D of the Guiding Template.

### 26. Large Scale Exploitation Licensing

#### 26.7 Rights of a Licence Holder

Provisions that address what possession of a mining licence allows the licence holder to do or what the licence holder may be entitled to are collectively treated as rights. In addition to the right to explore for and mine the minerals under the licence, a large scale exploitation licence may include most of the following rights (subject to applicable permits and regulations) with respect to the specified minerals in the area for which the licence is granted:

- to build the mine, erect structures and install equipment necessary for the mining, processing, storage and shipment of the mineral products;
- to build or install structures and facilities for the mine staff and their families;
- to utilize ground-water within the licenced area for uses related to the mine activity;
to utilize timber resources at the site for uses related to the mining operation;
- to utilize any natural hydropower resources within the licenced area for uses related to the mining operation; and
- to build infrastructure for the delivery of the mineral products from the mine to points of sale;
- to obtain the extension of the exploitation licence to other minerals discovered in commercial quantities within the licence area; and
- to obtain the renewal of the exploitation licence if the holder is in compliance with its obligations.

These rights are not necessarily expressed in a single section of the mining law; but it would facilitate understanding and implementation if they were.

### 26.7. Example 1:

**Article [__]**

(1) A mining lease confers on the holder the right within the mining lease Area to-

(a) obtain access and to enter the mining lease area;
(b) exclusively use, occupy and carry out mineral exploitation within the mining lease area;
(c) exclusively carry out exploration within the mining lease area;
(d) utilise the water and wood and other construction materials as necessary for mineral exploitation in accordance with the permit and regulations;
(e) use such portions as may be required for the purposes of growing such plants and vegetables, or keeping such animals, poultry and fish as may be reasonable for use of the employees at the mine;
(f) store, remove, transport, submit to treatment, transform and process the mineral resources, and dispose of any waste; and

### Annotation

Drawn from Nigeria’s mining law (2007), this provision is a succinct statement of the typical rights of holders of exploitation rights. The right to access and enter the mining lease area is actually subject to further conditions and a process developed elsewhere in the Act.
26. Large Scale Exploitation Licensing

26.8 Term of Licence

The term of a large-scale exploitation licence is typically either the expected life of the mine as estimated in the feasibility study, possibly subject to a limit, or a fixed term of typically 15-30 years. The term of a large scale exploitation licence is typically much longer than other types of licences due to the more extended, time consuming nature of the mining activities.

In establishing the term of the licence, consideration should be given to the reasonable amount of time necessary to complete pre-mining
consultations and work, particularly in connection with local community relations and resettlement, if necessary, as well as to the reasonable time necessary to close the mine and rehabilitate the site after the closure of mining operations.

26.8. Example 1:

Article []
A special mining licence granted to an entitled applicant shall be for the estimated life of the ore body indicated in the feasibility study report, or such period as the applicant may request whichever period is shorter.

Annotation
Drawn from Tanzania’s mining law (2010), this provision sets the term of the large scale exploitation licence as the life of the ore body. This is reasonable, but it does not explicitly account for the period of development, construction and testing or the mine closure and site rehabilitation period at the close of production. That could be clarified in the regulations, however.

This type of provision runs the risk of becoming a licence in perpetuity, particularly as it pertains to terms and conditions, new fiscal regime. If governments use this route, it is best to provide for periodic review or time constrained stability clauses as well as a provision under savings provisions in the event of a new mining law.

26.8. Example 2:

Article []
(1) A large scale mining licence shall be valid for the period specified in the licence; provided however, that such period shall not exceed 20 years.

(2) A large scale mining licence may be renewed for a period not exceeding 10 years each subject to sub-article (3) of this Article.

(3) The licensee shall have the right to renew the licence provided that he can demonstrate the continued economic viability of mining the deposit, has fulfilled the obligations specified in the licence, and is not in breach of any provision of this Code/Act/Law, regulations or directives which constitute grounds for suspension or revocation of the licence.

Annotation
Drawn from Ethiopia’s mining law (2010), this provision sets a fixed term of twenty years for large scale mining licences in its Mining Operations Proclamation of 2010. This term may be long in the case of a modest-sized gold mine, but the holder can surrender the licence prior to the end of the term. The licence term may be short for major projects, but the article provides for unlimited renewals of up to ten years each if the holder is in compliance with its obligations.

26. Large Scale Exploitation Licensing
26.9 Renewal of Licence

Addressed often at the same time as the term of licence, renewal of the licence refers to provisions determining when, for how long, and how many times a licence holder may extend the initial duration of the mining licence. In the case of large scale licences, once a mine has been developed and exploration of the deposit has continued, geological risk is diminished and further development or expansion of a mine can be planned with greater accuracy than in the initial feasibility study. Near the end of the initial and subsequent terms of the large scale exploitation licence, the licensee has a track record of performance. If the performance is satisfactory – i.e., the licensee is not subject to any notice of suspension or grounds for revocation of the licence – renewal of the licence should be virtually automatic, provided that an updated ESIA (Environmental and Social Impact Assessment) for the project is approved and any other required plans or agreements are likewise updated and approved.

The length of the renewal term may be a function of the feasibility study for the expansion or extension of the mine (if the initial term was a function of the initial feasibility study) or a fixed number of years. Typically, the renewal term is shorter than the initial term. However, some mines have been in operation for centuries – which could not have been predicted initially or in connection with any early renewals.

Where there is language for the exercise of discretion by the regulatory authority when addressing renewal, provisions should include some general objective criteria including compliance with existing legislation. Parties may want to use this opportunity to negotiate new terms and conditions in order to reflect material change circumstances in addition to renewal process language. Denial should be subject to a review process given the extensive nature of the investment in Large Scale Exploitation.

26.9. Example 1:

Article [...] (1) An operating licence shall be granted for the entire operating life of the mine as indicated in the feasibility study, and this period of validity may not exceed twenty (20) years.

(2) It shall be renewable for successive periods of a maximum of ten (10) years.

(3) The mining title shall be renewable on an application from the holder.

Annotation

Drawn from Côte d’Ivoire’s mining law (2014), this provision provides for successive ten year renewals to which the exploitation permit holder is entitled if in compliance with the obligations of the licence. Whereas the initial term of an exploitation licence is based on the life of the mine as indicated by the feasibility study, but limited to a maximum of 20 years, renewals are for a fixed term of ten years.

The number of renewals is not limited. Moreover, the exploitation licence holder has the right to the renewal of its licence if in compliance with its
submitted at least three months before the current period of validity expires.

(4) The renewal of the mining title shall be automatic when the holder has fulfilled their obligations.

(5) The rights remain valid pending the outcome of the renewal application notified to the holder in writing.

(6) The conditions for the renewal of the mining title shall be specified by decree.

obligations (although this standard is open to interpretation and ideally could be more specifically limited).

Because Ivory Coast requires a feasibility study as a key element of the application for an exploitation licence, it has chosen to base the initial term of the exploitation licence on the life of the mine projected by the feasibility study. It makes sense since to fit the licence term to the life of the mine, since some mines will be fully depleted in less than ten years while others may continue operating for decades. The twenty-year limit of the initial term reflects the reality that any mine must be demonstrated to be acceptably profitable within that timeframe or else it will not be developed. And from the perspective of the State, the mining law may change within that timeframe.

The investor in a mine that proves to have a life longer than the initial licence term is protected by the virtually automatic renewal provision. The renewal term is fixed rather than flexible because no feasibility study is required for renewal. While the renewal term is potentially shorter than the initial term of the licence, the licence holder is protected by its right to virtually automatic renewals and the absence of any limit on the number of renewals.

As in most mining laws, the licence holder must apply for the renewal by a stated time before the expiration of the initial term of the licence – in this case, 3 months. That is potentially a short processing time for an exploitation permit renewal; however, Article 40 provides that the expiring licence continues in effect so long as the holder has not been notified of a refusal of the renewal request. It would be preferable for the law or the regulations to specify that the initial licence continues in effect during any appeals of a refusal to renew, and for a sufficient period of time following a final decision of refusal on appeal – e.g. 6 months – in order to allow for the completion of site closure and rehabilitation work that probably will not have been undertaken beforehand.

See also Option 2 under the preceding sub-topic, for Ethiopia’s similar provision.
26.9. Example 2:

Article [__]

(1) A holder of a mining lease may, at any time but not later than three months before the expiration of the initial term of the mining lease or a shorter period that the [Regulating Authority] allows, apply in a prescribed form to the [Regulating Authority] for an extension of the term of the lease for a further period of up to thirty years in respect of all or any number of contiguous blocks the subject of the lease and in respect of all or any of the minerals the subject of the lease.

(2) An application made under subsection (1) shall be accompanied with a proposed programme of mineral operations.

(3) On an application duly made under subsection (1) and if the holder has materially complied with the obligations imposed by this [Act][Code][Law] with respect to the holding of and activities pursuant to the mining lease, the [Regulating Authority] shall grant the extension of the term of the lease on conditions specified in writing.

(4) Where the holder has made an application for an extension of the term of the lease, and the term of the lease would but for this subsection, expire, the lease shall continue in force in respect of the land the subject of the application until the application is determined.

Annotation

Drawn from Ghana’s mining law (2006), this provision similarly requires that the renewal application be filed at least three months before the expiration of the existing licence, that the latter is extended if necessary during the processing of the application, and that the licence holder is entitled to the renewal if in compliance with the obligations of the licence. The automatic extension of the licence is a necessary element of renewal provisions that require administrative action on the part of the regulatory authority that may or may not be completed within the three month (or more) period between a timely renewal application and the date of termination of the initial term of the licence.

The renewal term available under Ghana’s law is the same as the initial term of the exploitation licence - up to 30 years – and is substantially longer than the renewal term provided for under the mining law of Côte d’Ivoire, above. However, Ghana’s mining law provides for only one renewal term, whereas the mining law of Côte d’Ivoire provides for unlimited renewals. The maximum initial and renewal term under Ghana’s law is sixty (60) years. That is the equivalent of the maximum initial term plus four renewals under the law of Côte d’Ivoire. Ghana’s mining law does not provide for the unusual case of a mine that continues in operation for more than sixty years, whereas Côte d’Ivoire’s mining law does. Such mines do exist (e.g., Potosi, Bolivia; Almaden, Spain, and salt mines in Canada and Germany have been in operation for centuries). An extension of the exploitation licence term beyond 60 years for a long-life mine would require special legislation in Ghana.

26. Large Scale Exploitation Licensing

26.10 Suspension of Licence

Suspension of a licence may be a temporary sanction against a licence holder or a de facto extension of the licence term due to a force majeure
event preventing the holder from conducting operations.

A distinction should be made between suspension of a mineral licence, on the one hand, and suspensions of operations, on the other hand. When the mineral licence is suspended, the rights of the holder of that licence, as well as the term, are suspended; and this may, depending on the nature of the breach, complicate the remediation of the breach that the suspension requires (e.g., if the breach relates to operations on the mine). It also raises collateral issues to be addressed such as whether and on what conditions a third party application for the area that is subject to the suspended licence can be submitted or accepted. The suspension of operations, on the other hand, prohibits the mineral activity under the licence but does not alter the holder’s right to occupy the licenced area and undertake whatever is necessary in order to remedy the breach of an obligation; and the term of the licence continues to run. There are instances in which it is appropriate to suspend the mineral licence with an allowance for solely carrying out the activities necessary to remediate the breach. A mining law should also, where appropriate, address rules that apply to regulate the suspension of the licence or operations at the request of the licence holder.

In all cases, suspension provisions should clearly state the consequences of suspension and the procedure for the lifting of the suspension.

26.10. Example 1:

Article [__]. Suspension of Mineral Exploitation Rights

(1) Subject to sub-articles (2) and (3) of this Article, the [Regulating Authority] may suspend mineral exploitation rights partially or fully where it believes that the activity of the Licensee is likely to become an imminent danger to the local community, the environment or its employees, provided that such suspension is the only remedy under the prevailing circumstances. The [Regulating Authority] shall inform the licensee the date by which the suspension lapses and it may resume operation.

(2) Before acting under sub-article (1) of this Article, the [Regulating Authority] shall give notice in writing to the Licensee:

a) setting out the grounds for considering the suspension of the licence;
b) directing the licensee to take specified measures to remedy any contravention, breach or failure; and

c) specifying a reasonable date of not less than 5 working days, before which the licensee may, in writing, submit any matter for the [Regulating Authority]

Annotation

Drawn from Ethiopia’s mining law (2010), this example provides for the Regulating Authority to suspend mining operations of a licence holder in cases where continued operation “is likely to become an imminent danger.” The provision requires prior written notice to the licence holder specifying the reasons for the suspension, the measures to be taken, and a prompt opportunity to be heard in opposition. The example also stipulates the grounds for the lifting of the suspension.

This example is geared to the prevention of harm rather than the sanctioning of any violations. It provides due process safeguards for the rights of the licence holder.
(3) The [Regulating Authority] may lift the notice for suspension of a mineral right where:

a) the licensee complies with the notice contemplated in sub-article 2(b) of this Article by rectifying, removing, or as appropriate by mitigating the grounds for suspension, or by preventing the recurrence of such grounds within the time specified in the notice; or

b) where it accepts the reasons supplied by the licensee in accordance with sub-article 2(c) of this Article for the lifting of the suspension.

26.10. Example 2:

Article [__]: Suspension of production

(1) The holder of a mining lease shall notify the [Regulating Authority] three months in advance where the holder proposes to suspend production from the mine and shall in each case, give reasons for the suspension.

(2) Where the holder is unable to give the required notice as provided under subsection (1) for reasons beyond the holder’s control including, without limitation, market conditions and the holder suspends production from a mine, the holder shall, within fourteen day of the suspension notify the [Regulating Authority].

(3) The suspension of production shall not exceed twelve months and the holder may apply in writing to the [Regulating Authority] for extension for a period not exceeding twelve months.

(4) On receiving the notification under subsection (1) or on the [Regulating Authority] becoming aware of a suspension of production, the [Regulating Authority] shall cause the matter to be investigated and shall, subject to any relevant requirement contained in the mining lease -

Annotation

Drawn from Ghana’s mining law (2006), this example includes provisions for both a voluntary suspension of production by the licence holder and the mandatory suspension of the licence by the Regulating Authority.

The first section in the example requires the licence holder to give prior notice of any suspension of production to the Regulating Authority, which will investigate the causes of the suspension of production and either approve or require resumption of full production by a certain date. Voluntary suspensions are limited to a duration of 12 months, which may possibly be extended for another 12 months. The Regulating Authority may attach conditions to its approval of a suspension.

This provision only applies in the case of regimes that require the licensee to operate at a certain level of production, which some countries require in order to assure a revenue stream from the exploitation of the mineral resource, rather than allowing the licence holder to operate freely based solely on corporate strategy. The example recognizes that market conditions or other factors beyond the licence holder’s control may require a suspension of production at times.
The second and third sections in the example set out the grounds and procedures for mandatory suspensions or cancellations of all mineral rights and mining leases (i.e., large scale exploitation licences), respectively. Those sections give the Regulating Authority the latitude to decide whether to impose a suspension of the licence or to cancel the licence in any particular circumstance. Ideally, where a failure of compliance can be corrected by the licence holder, temporary suspension should be the sanction rather than cancellation. The implementing regulations should clarify in what circumstances suspension will be imposed and in which circumstances an exploitation licence will be cancelled. There is also a need to clarify in the regulations the procedure for lifting a suspension of the licence.

### Article [ ]: Suspension of a mineral right

1. The Regulating Authority, on the recommendation of the Advisory Body, may suspend or cancel a mineral right if the holder,

   (a) fails to make payment on the due date, whether due to the Republic or another person, required by or under this [Act][Code][Law],

   (b) becomes insolvent or bankrupt, enters into an agreement or scheme of composition with the holder’s creditors, or takes advantage of an enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation,

   (c) makes a statement to the Regulating Authority in connection with the mineral right which the holder knows or ought to have known to be materially false, or

   (d) for a reason, becomes ineligible to apply for a mineral right under this [Act][Code][Law].

2. The Regulating Authority shall, before suspending or cancelling a mineral right under subsection (1), give notice to the holder and shall in the notice, require the holder to remedy a breach of the condition of the mineral right within a reasonable period, being not less than one hundred and twenty days in the case of a mining lease or restricted mining lease or sixty days in the case of another mineral right and what the breach cannot be remedied, to show cause to the reasonable satisfaction of the Regulating Authority why the mineral right should not be suspended or cancelled.
(3) On cancellation of a mineral right under this section, the right of the holder shall cease but without prejudice to the liabilities or obligations incurred by another person in relation to the mineral right prior to the date of the cancellation.

Article [__]: Suspension or cancellation of mining lease

(1) Without limiting the scope of the preceding section, the [Regulating Authority] may on the recommendation of the [Advisory Body] suspend or cancel a mining lease if the holder has failed other than for good cause, for a period of two years or more, to carry out any or a material part of the holder’s programme or mineral operations.

(2) The [Regulating Authority] shall before suspending or cancelling a mining lease give notice to the holder and shall in the notice, require the holder to remedy the breach within a reasonable period, being not less than one hundred and twenty days, and where the breach cannot be remedied, to show cause to the reasonable satisfaction of the [Regulating Authority] why the mining lease or restricted mining lease should not be suspended or cancelled.

(3) A dispute between the [Regulating Authority] and a holder of mining lease in respect of a matter arising under subsection (2) shall be referred for resolution under section [__] (on dispute resolution).

### 26. Large Scale Exploitation Licensing

#### 26.11 Termination of Licence

A mining law should state clearly in one place the various ways in which an exploration licence can terminate, which would include expiration of the term, surrender by the holder, and cancellation or withdrawal by the issuing authority. The law should make clear what the status of the licenced area is upon termination in each manner and any remaining potential liabilities or incapacities that the licence holder may have upon
NOTE: This Document is part of a multi-part document, Parts A – E
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<th>either during the period of or on termination of his licence, he shall, not less than three months or such other period as the [Regulating Authority] may allow before such cessation or termination, furnish to the [Regulating Authority] a full register of assets showing those assets which he intends to remove and those which he intends to leave in the concession area, and shall further notify the [Regulating Authority] of any potentially hazardous substances, erections or excavations in the concession area.</th>
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<tr>
<td>(2) On receipt of a notice in terms of subsection (1) above, [Regulating Authority] shall, if he deems it necessary—</td>
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<td>(a) certify that specified items of fixed machinery are necessary for the care and maintenance of the concession area and such items and machinery shall not be removed;</td>
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<td>(b) require that specified buildings and other items of fixed machinery shall be removed; or</td>
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<tr>
<td>(c) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.</td>
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<tr>
<td>(3) If removal of specified assets which the holder has indicated that he wishes to remove is prohibited under subsection 2(a) above, the Government shall pay reasonable compensation to the holder for such assets and any person who acquires a mineral concession over the area concerned shall reimburse the Government the sum equal to the compensation so paid.</td>
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<td>(4) Upon cessation of operations by the holder of a mineral concession in terms of this clause, the mining area shall revert to the owner thereof provided that should the [Regulating Authority] determine that the area should be retained, it shall be so retained by the Government subject to payment of fair compensation to the owner for such right of retention.</td>
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<td>(5) Any fresh water dam and the waters impounded thereby shall be left intact</td>
</tr>
<tr>
<td>ownership of the area under the licence, water resources, and maps describing the area. Similar to South Africa, Botswana addresses the different ways in which termination occurs elsewhere in the law, but this provision goes further to explicitly spell out the effect of termination beyond simply the end of the right to mine under the licence.</td>
</tr>
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</table>
on cessation of operations in or termination of a mineral concession.

(6) Upon termination of any mineral concession the holder thereof shall deliver to the [Regulating Authority]—

(a) all records which the holder is obliged under the provisions of this [Act][Code][Law] to maintain; and

(b) all plans or maps of the area covered by the mineral concession prepared by the holder or at his instructions.

(7) Any person who fails to deliver any document required to be delivered under the provisions of subsection (1) within 14 days of being called upon to do so by the [Regulating Authority] shall be guilty of an offence.

(8) Where the holder of—

(a) a prospecting licence has made application for a renewal thereof or for either a retention licence or a mining licence over part of the area covered by his prospecting licence;

(b) a retention licence has made application for a renewal thereof or for a mining licence; or

(c) a mining licence or a minerals permit has made application for a renewal thereof, the [Regulating Authority] may extend the period of validity of such prospecting licence, retention licence, mining licence or minerals permit, as the case may be, pending his decision on the application.

### 26. Large Scale Exploitation Licensing

#### 26.12 Revocation of Licence
A provision in which a licence is withdrawn and/or taken away by the Regulating Authority is referred to as revocation of the licence. Whereas suspension or monetary penalties may be imposed for various failures to comply with health, safety, environmental protection and other qualitative obligations – thereby providing an incentive to comply while protecting workers and communities from the consequences of such breaches - revocation of the licence is the ultimate penalty, the grounds for which should be limited and clearly stated.

The revocation provisions of the law should also state whether the ground for revocation is one that can be cured and, if so, within what timeframe after notice. One approach shown below is to differentiate between licence maintenance obligations, on the one hand, and operating obligations, on the other hand. Licence maintenance obligations are limited to a small number of very objective obligations that must be performed by specific deadlines – such as the commencement of work within a specified period after issuance of the licence and annual payment of licenced area fees. These obligations may be strictly enforced. That is, a failure of timely compliance cannot be remedied (although it may be excused on grounds of force majeure). All other obligations are operating obligations under this approach. Failures to meet those obligations are generally sanctioned by orders to suspend operations until the failures are remedied. Depending on the type of obligation involved, the sanction may be a fine in lieu of or in addition to an order to suspend operations. This approach provides security of tenure to investors in mining projects by not endangering the validity of their licence, while motivating them to remedy compliance failures by preventing them from operating the licenced mine until the failure is cured, and/or imposing financial penalties. A variation on this approach is to provide that if operations are suspended for more than a certain time limit – such as 6 months or one year – without remedy of a compliance failure, then that situation becomes grounds for termination of the licence.

Another approach to revocation is to describe or list the types of major compliance failures that may lead to revocation of the licence. These may include, among other things, failure to commence production within a certain number of years after the issuance of the licence or a voluntary suspension of operations for more than a specified period of time. Such safeguards are often included in mining laws in order to prevent companies from “sitting” on a deposit without developing it or marketing the resources for reasons of corporate strategy that are inconsistent with the State’s development goals. Under this second approach, the revocation procedure should, and virtually always does, provide for notice to the licence holder in writing of the compliance failure, a reasonable statutory period of time within which the holder has the opportunity to present evidence that compliance was in fact made or to remedy the deficiency, and a second notification that either the condition has been remedied or that it has not and the licence will be revoked. This approach presents the licence holder with greater risk of loss of licence, but seeks to balance that with a greater opportunity to cure any and all compliance failures.

A third approach is to provide that the licence may be revoked for a much broader variety of compliance failures. This approach vests greater discretion in the Regulating Authority to determine whether to revoke the licence for a particular failure, accumulation of failures, or pattern of repeated failures. Notice in writing to the licence holder and an opportunity to present evidence of compliance or to remedy the failure within a
reasonable period of time is always an essential element of this approach. Its advantage is flexibility. The regulatory authority need not revoke the licence for failures considered minor, but may revoke the licence for consistent repeat failures that cumulatively amount to unsatisfactory compliance by a deficient operator. This approach is generally considered by investors to provide insufficient security of licence unless the regulatory authority has an established track record of reasonable enforcement in which they have confidence.

### 26.12. Example 1:

**Article [] Reasons for the Withdrawal of an Operating Licence**

1. The failure to comply with Article 286 (on the non-payment of annual surface area fees and failure to commence work within the legal time period) shall constitute grounds for the operating licence to be withdrawn.

2. Without prejudice to the provisions of Articles [] to [] of the present [Code][Act][Law] (on offences and penalties), any failure to comply with obligations relating to the operations listed in chapter [] of title [] of the present [Code][Act][Law] shall be penalised firstly with fines and/or possibly with an order to suspend operations or, in the event of an offence, by prosecution.

3. However, the following acts shall result in the operating licence being withdrawn:

   a. fines imposed for failing to comply with obligations relating to the operations are not paid within a period of [three months] from when the operating licence holder is notified of the fine, or
   b. an order to suspend operations being carried out under an operating licence is not lifted within a period of [twelve months] from when the Operating Licence holder is notified of the order of suspension, due to the fact that they still have not rectified the failure to comply referred to in the order of suspension in question,

**Article []: The Procedure for the Withdrawal of an Operating Licence**

1. The Mining Cadastre shall immediately notify the holder of the decision to withdraw the licence or permit and shall post an announcement in a room indicated in the Mining Regulations.

### Annotation

Drawn from the DRC’s mining law (2002), this example provides for revocation of the licence for failure to strictly comply with two specified licence maintenance obligations. This is a safeguard against speculation. If licence holders cannot commence operations within the required timeframe, or fail to pay the required annual licence maintenance fees on time, their licences are revoked.

Whereas failures by licensees to comply with the numerous other operating obligations are penalized in the first instance by suspensions of operations or monetary fines, if the fines are not paid or the cause of the suspension is not corrected within stipulated timeframes, then the exploitation licence will be revoked.

This bifurcation of obligations and the related sanctions into two categories (licence maintenance obligations and operating obligations, respectively), and the clarity and objectivity of the two obligations that are strictly enforced by revocation of the licence, provides security of licence to licensees by minimizing their risk of loss of the licence. It also ensures prompt and complete payment of the fees that fund the work of the Regulating Authority.

Enforcement of the various operating obligations by means of fines and suspension orders requires attentive monitoring by the authorities, but incentivizes licence holders to correct the deficiencies in their operations while maintaining their licences. Because some licensees will be unable to pay the fines or make the necessary corrections, the example provides that they will lose their licences if they have not paid their fines within three months or made the
(2) Notification of the decision to withdraw the licence or permit creates a right to appeal as provided for in Articles [...] of the present [Code][Act][Law] (on arbitration appeal).

(3) Such appeals must be brought within thirty days of the decision being posted in the Ministry of Mines with jurisdiction.

(4) Should an appeal not be brought within the time period given above, the decision to withdraw the licence or permit shall be registered in the appropriate register and published in the [Official Gazette].

(5) Where an appeal is brought against a decision to withdraw a licence or permit, the mining right shall remain valid for the duration of the proceedings. However, there shall be notice of the decision and the appeal proceedings which have been brought, in the register of granted licences and permits.

Article [...] The Cancellation of Mining Rights
(1) Mining rights shall be cancelled by [the Regulatory Authority] when the holder has not brought an appeal against the decision to withdraw the licence or permit and when the time period for an appeal has lapsed or the appeal has been dismissed.

(2) The decision to cancel a licence or permit shall be made on the day the appeal is dismissed or the last day of the period within which the appeal should have been brought.

(3) The Ministry of Mines shall be notified of the decision of the to cancel the licence or permit and shall register it in the register of cancelled titles.

(4) The area which is the subject of a mining or quarrying right which has been cancelled shall return to the State.

Article [...]
**AMLA GUIDING TEMPLATE**

**PART B-3: Large Scale Exploitation**

| (1) Holders of mining rights who have lost their rights and whose titles have been cancelled may not obtain new mining rights for a period of five years from the date on which the cancellation was registered in the register kept by the Ministry of Mines. |
| (2) In addition, the cancellation of mining rights does not have the effect of releasing the holder from their environmental and tax obligations. |

**26.12. Example 2:**

Article [__]

(1) Subject to the provisions of this section, the [Regulating Authority] may suspend or cancel a mineral concession if the holder thereof—

(a) fails to make any of the payments required by or under this [Act][Code][Law] on the due date;

(b) contravenes any provision of this [Act][Code][Law] or the conditions of his mineral concession or the provisions of any other written law relating to mines and minerals;

(c) dies, becomes of unsound mind, becomes insolvent, commits any act of bankruptcy, enters into any agreement or scheme of composition with his creditors, takes advantage of any written law for the benefit of debtors, or, in the case of a company, goes into liquidation, except as part of a scheme for its reconstruction or amalgamation.

(d) makes any statement to the Government in connection with his mineral concession which he knows or ought to have known was false; or

(e) for any reason is or becomes ineligible to hold a mineral concession under the provisions of section 6 (on the types of individuals and companies that are...

**Annotation**

Drawn from Botswana’s mining law (1999), this provision provides the Regulating Authority with discretion to suspend or cancel a licence (or not) for any of the grounds stated in Article 76. This form of the third approach described in the introduction above is in contrast to the approach under the 2002 Mining Code of the DRC which makes a distinction between the grounds for cancelation and the grounds for suspension. The DRC Code requires cancellation for failure to comply with the two requirements stated in Article 286, and provides for possible fines and suspensions for everything else. By contrast, the regulatory authority in Botswana may, but is not required to, revoke a licence for any violation of the mining law or licence conditions or any other related law.

Whereas on paper this provision does not appear to provide security of licence to licence holders, in fact Botswana is consistently the most highly rated mining country in Africa in the Fraser Institute surveys, due to the confidence of investors in the fair and reasonable implementation of the mining law by the regulatory authority, together with a generally good business climate.

Thus, matching the type of revocation terms with the country’s administrative capability and reputation is important. In the DRC, where the general business climate is considered poor and there is a low level of trust in the administration generally, an approach that circumscribes administrative discretion has worked in attracting investment and developing the sector. In Botswana, where the general business climate is considered favourable and there is a high level of
not eligible to receive mineral rights).

(2) Before suspending or cancelling a mineral concession under paragraphs (a) and (b) of subsection (1), the [Regulating Authority] shall give the holder thereof notice in writing specifying the particular failure or contravention and calling upon the holder to remedy the same within such period, being not less than 30 days, as may be specified in such notice.

(3) If the holder of a mineral concession fails to remedy any failure or contravention specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), the [Regulating Authority] may, by notice to the holder thereof, suspend or cancel the mineral concession forthwith.

26. Large Scale Exploitation Licensing

26.13 Surrender of Licence

A provision in which the licence holder gives up the mining right voluntarily before the duration of the licence has run out is referred to as surrender of the licence. Surrender of a large scale exploitation licence may be total or partial. Partial surrender will require the issuance of a new licence for the area not surrendered. Surrender may be automatic at the option of the licence holder upon notice to the Regulating Authority, or it may require a decision of the issuing authority.

26.13. Example 1:

Article [...] Abandonment of land subject to mineral rights
(1) The holder of a mineral right who wishes to abandon all or any part of the land subject to licence shall apply to [Regulating Authority], not later than ninety days before the date on which he wishes the abandonment to have effect, for a certificate of abandonment.

Annotation

Drawn from Tanzania’s mining law (2010), this provision requires the acceptance of the surrender by the issuing authority. The reasons why the issuing authority may decide not to accept the surrender and not issue the certificate are not specified. It would be preferable to state those grounds in the law. They might include:
### AMLA GUIDING TEMPLATE
#### PART B-3: Large Scale Exploitation

<table>
<thead>
<tr>
<th>229</th>
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<tr>
<td>(2) Subject to this section, [Regulating Authority] shall issue to the applicant a certificate of abandonment either unconditionally or subject to such conditions relating to the abandoned land as [Regulating Authority] may determine.</td>
<td>• The proposed partial surrender of area does not comply with cadastral rules as to the size and form of the retained area and the surrendered area;</td>
</tr>
<tr>
<td>(3) An application under this section-</td>
<td>• Failure to remove installations and equipment as required; and</td>
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<td>(a) shall identify the land to be abandoned and, if the application applies to only a part of the land subject to the licence, shall include a plan clearly identifying both the part to be abandoned and the part to be retained;</td>
<td>• Inadequate demonstration of required site rehabilitation or of the absence of needed rehabilitation due to lack of work on the site proposed for surrender.</td>
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<tr>
<td>(b) shall state the date on which the applicant wishes the abandonment to take effect;</td>
<td>Note that the Tanzanian provision stipulates that acceptance of the surrender of area does not affect any liability incurred before the date of surrender. Drafters may wish to go further and clarify that the acceptance of the surrender does not release the licence holder from liability for subsequently discovered damage caused by activity of the holder.</td>
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<tr>
<td>(c) shall give particulars of the operations which have been carried on under the licence on the land to be abandoned; and</td>
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<tr>
<td>(d) shall be supported by such record and reports in relation to those operations as [Regulating Authority] may reasonably require.</td>
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<tr>
<td>(4) A certificate of abandonment shall take effect on the date on which it is granted to the applicant, and-</td>
<td></td>
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<tr>
<td>(a) where the certificate relates to the whole of the land subject to the holder’s licence, the licence shall be cancelled with effect from the same date; and</td>
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<tr>
<td>(b) in any other case, the licence shall be amended to take account of the abandonment.</td>
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<tr>
<td>(5) The abandonment of any land does not affect any liability incurred before the date on which the abandonment has effect in respect of the land, and any legal proceedings that might have been commenced or continued in respect of any liability against the applicant for the certificate may be commenced or continue against that applicant.</td>
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**NOTE:** This Document is part of a multi-part document, Parts A – E
## 26.13. Example 2:

**Article [__]: Surrender of a mineral right**

1. A holder of a mineral right who wishes to surrender all or a part of the land subject to the mineral right shall apply to the [Regulating Authority] for a certificate of surrender not later than two months before the date on which the holder wishes the surrender to take effect.

2. An application under subsection (1) shall be in accordance with prescribed Regulations.

3. Subject to subsection (4), upon an application duly made under subsection (1), the [Regulating Authority] shall issue a certificate of surrender in respect of the land to which the application relates.

4. The [Regulating Authority] shall not issue a certificate of surrender
   - (a) to an applicant who is in default,
   - (b) to an applicant who fails to give records and reports in relation to the applicant’s mineral operations,
   - (c) where the [Regulating Authority] is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice, or
   - (d) in respect of land, if the remaining area of the land after the surrender would not be less than one block.

5. Where a certificate of surrender is issued under this section, the [Regulating Authority] shall, where only part of the land subject to the mineral right is surrendered, amend the relevant licence accordingly or cancel the mineral right where the surrender is in respect of the whole area.

### Annotation

Drawn from Ghana’s mining law (1999), this provision, though similar to the previous example, goes further in several areas. In particular, it details conditions under which the Regulating Authority may not permit surrender of a mineral right and also provides for amendment of the area size under any relevant licence where surrender has occurred over some, but not all land under the licence.
(6) Land in respect of which a certificate of surrender is issued, shall be treated as having been surrendered with effect from the date on which the certificate of surrender is issued under subsection (3).

(7) The surrender of land under this section shall not affect a liability incurred by a person in respect of that land before the date on which the surrender took effect.

26. Large Scale Exploitation Licensing

26.14 Transfer/Assignment of Rights

Transfer and assignment of rights refers to provisions that deal with whether a licence holder may hand over, sell, rent (either part or the whole) or in any way encumber/place a lien or mortgage on the licence for the benefit of another person or entity. Mining companies generally need the ability to transfer their licence rights either (1) conditionally, in the form of a mortgage or other form of security interest in order to obtain necessary financing, or (2) in whole or in part, in the event of a sale of assets to another company, or (3) in whole in the case of a merger into a new entity. Provisions in the mining law that facilitate transfers of and security interests in exploitation licences are significant components of an investment promotion strategy.

If the licence rights are not transferable (and even if they are transferable), then the investor may seek to achieve the same result as a transfer of the licence by transferring the ownership of the company that holds the licence – often indirectly through the sale of an offshore holding company that is the sole shareholder of the company that holds the licence. Accordingly, the drafters may wish to consider language that reaches indirect as well as direct transfers.

The key issue for the licensing authority with respect to transfers is to assure that the transferee possesses, or will possess at the time when the transfer becomes effective, the capability to conduct the mining operations pursuant to the large scale exploitation licence, in accordance with the applicable law and regulations. The law should also specify that the transferee must assume all of the obligations of the transferor under the

covered by the mineral right.
licensure, and also specify whether the transferor continues to be responsible under the licence after the transfer.

Provisions on the transfer of licence rights should deal with the consequences of securitization of these rights and the requirement for the transferee, in the event of default by the licence holder, to meet the same eligibility requirements as were applicable for original allocation of the licence, subject to the need to contemplate that financial institutions holding a mortgage (if possible under the mining law) or other form of security interest in the licence may meet the eligibility requirements either by substituting a qualified operator for a licence holder in default or by transferring the licence to an eligible and qualified mining company within a specified period of time. Such provisions should involve a procedure for the approval of a proposed mortgage or other negotiated lien at the time when it is entered into in order to enable financing of large scale exploitation projects.

The mining law should specifically require the registration of all mortgages or other liens on the books maintained by the mining cadastre service or licence registry in order for such conditional transfers to be enforceable against third parties, including the State.

Another form of transfer that may be contemplated by the mining law is a sublease (“amodiation” in French) pursuant to which a third party conducts operations under the exploitation licence and shares the benefits with the licence holder. Provisions approving such practices generally require proof of the eligibility of the sublessee as a condition for required administrative approval of the sublease, continuing responsibility of the licence holder for all obligations and potential liabilities under the licence, and registration of the approved sublease on the books of the mining cadastre or licence registry.

26.14. Example 1:

Article [__]
(1) No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the [Regulating Authority].

(2) In any application to the [Regulating Authority] for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a mining licence.

(3) Subject to section [__] (requiring the negotiation with the Government of the terms and conditions of a diamond mining licence, including Government

Annotation
Drawn from Botswana’s mining law (1999), this provision provides for transfer but only with the approval of the Regulating Authority, which is based on a review by the Regulating Authority of the particulars concerning the transferee as would be required in an application for a mining licence. Except in the case of diamond mining, the Regulating Authority must approve the transfer if the transferee is not a disqualified person or entity and the Regulating Authority is satisfied as to all of the criteria for the grant of an initial mining licence.

In the case of the proposed transfer of a licence to mine diamonds, approval of the transfer is subject to the conclusion of a successful negotiating process between the transferee and the Government on issues such as technical, financial and commercial aspects related to the project, including Government
participation), the [Regulating Authority] shall grant approval to the transfer, assignment, encumbrance or other dealing with any mining licence or interest therein provided the transferee is not disqualified under any provision of this [Act][Code][Law] from holding a mining licence and the [Regulating Authority] is satisfied in accordance with section [__] (stating the grounds on which the [Regulating Authority] must be satisfied in order to grant a mining licence).

(4) For the purposes of this section, “interest” in a mining licence shall mean in the case of a holder who is a private company, a controlling interest in such holder.

(5) Any application for the issue, renewal, transfer or amendment of a licence to mine diamonds shall initiate a negotiating process, in good faith, between Government and the applicant covering all technical, financial and commercial aspects of the proposed project including Government participation.

(6) Should the negotiations not lead to agreement within six months or such extended period as the [Regulating Authority] may allow, the application shall fail.

(7) Upon successful conclusion of the negotiation under subsection (1), the [Regulating Authority] shall issue a licence reflecting the terms and conditions agreed.

<table>
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<tr>
<th>26.14. Example 2:</th>
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<tbody>
<tr>
<td>Article [__] Assignment and Transfer of Mineral Rights</td>
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<tr>
<td>Mineral rights may be assigned only upon the approval of the Government, except for an assignment to an affiliate of the holder of the mineral right. Any purported assignment in contravention of this section shall be null and void, and shall constitute a material violation of the [Law][Act][Code]. The death of an individual holder of a mineral right, or dissociation or termination of existence of any holder, shall result in the termination of the mineral right participation. This provision protects Botswana’s privileged state participation interest in the diamond mining industry, which is a situation particular to that country. Note that this provision explicitly applies to transfers of a controlling interest in the licence holder. The term “controlling interest” is not defined in this provision, but it is clear that the intent is to require disclosure of the transferees and approval of the transfer by the Regulating Authority in the case of offshore transfers of the shares of the licence holder (the situation described in the introduction to this section).</td>
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<th>Annotation</th>
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<tr>
<td>Drawn from Liberia’s mining law (2000), in this provision the Regulating Authority requires approval by the Government for all transfers of the licence, except transfers to an affiliate of the licence holder, which are allowed without approval of the Regulating Authority. In contrast to Botswana’s provision above, the provision in this example does not state the grounds for approval or denial of such transfers and in that sense does not provide any assurance of the</td>
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</table>
unless, within a reasonable period of time to be prescribed in the regulations, an assignment of those mineral rights is made to a person who is an eligible applicant.

Article [...] Assignment as Security
Mineral rights may be assigned to a creditor as security for an obligation or indebtedness, upon notice to the [Regulating Authority] and pursuant to the laws of [Country]. The holder’s right in any such mineral right thus assigned shall terminate upon any foreclosure thereof pursuant to judgement of a court having competent jurisdiction over the persons and the subject matter, or otherwise pursuant to the laws of [Country], provided that the judgement creditor or lien creditor shall have no right to conduct operations under any such mineral right unless, within one hundred and twenty (120) days after such foreclosure or other judgement in its favour, the judgement creditor or lien creditor either demonstrates the [Regulating Authority] that it is an eligible applicant for that mineral right under this [Law][Act][Code], in which case the [Regulating Authority] shall grant the judgement appropriate mineral right for its remaining term, or assigns that mineral right to another person that is an eligible applicant, in which case the [Regulating Authority] shall grant the mineral right to that person.

Article [...] Condition for Transfer
Where there is more than one Holder of Mineral Right, all the Holders thereof must agree to assignment or transfer of the Mineral Right.

26. Large Scale Exploitation Licensing

26.15 Specific Violations and Penalties

In addition to the general Offenses and Penalties described in Part A of this Guiding Template, the common specific violations and penalties that apply to large scale exploitation licences are (1) conducting exploitation activities in an area for which the operator does not hold a licence, (2) not meeting the work and expenditure requirements, and (3) failing to secure the site under the licence both during and after the licence has approval of such transfers.

On the other hand, for transfers of security interests, the Liberian provision provides a very good example of the type of provision necessary to facilitate financing of a large scale exploitation project, as described in the Introduction to this Section 26.14. It allows for the creation of security interests in the mineral licence to secure debt; and only requires notice of such security interests to the Regulating Authority. If a security interest is enforced in accordance with the relevant statutory procedures governing security interests, the Liberian provision states that the Regulating Authority will transfer the licence to the judgment creditor if it is eligible to hold the licence. If the judgment creditor is not eligible to hold the mineral right, it may assign its rights to another person who is eligible, in which case the Regulating Authority will transfer the licence to that eligible person.

This provision does not go as far as the preceding Botswana provision in that it does not attempt to apply to indirect transfers of interests in the exploitation licence by transfers of share interests in the licence holder or in the offshore holding company that owns the latter.
terminated. It is therefore of critical importance to clearly define in one place obligations for large scale mining licence holders. Typical penalties include fines, suspension of the mineral right, and seizure of minerals (that are mined illegally).

### 26.15. Example 1:

<table>
<thead>
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<th>Article</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>(1) No holder of a mining licence shall engage in wasteful mining or treatment practices or conduct his operations otherwise than in accordance with good mining practice.</td>
<td>Drawn from Botswana’s mining law (1999), while Botswana’s mining law has a general “Offenses and Penalties” section applicable to all mineral rights holders, the law specifically prohibits wasteful mining or treatment practices on the part of the mineral rights holder. It is of value to place this specific obligation apart from the general offense section due to the larger impact (and larger range of mining activities) that typically take place uniquely under mining licences.</td>
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<td>(2) If the [Regulating Authority] considers that the holder of a mining licence is in breach of subsection (1), he may notify him accordingly and require him to show cause why he should not discontinue such breach.</td>
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<tr>
<td>(3) If, within the time specified in any notice issued under subsection (2), the holder of a mining licence fails to discontinue the breach or to satisfy the [Regulating Authority] that he is not in breach, the [Regulating Authority] may direct the holder to discontinue the breach and the holder shall comply with such direction.</td>
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### 26.15. Example 2:

<table>
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<th>Article</th>
<th>Annotation</th>
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<tr>
<td>(1) In addition to the cases referred to in Article [__] (concerning the withdrawal of an operating licence due to the development work for the mining site not commencing within twelve months from the date the licence is allocated), any mining title holder, after notice has been given, may lose:</td>
<td>Drawn from the Republic of Congo’s mining law (2005). This law includes a general chapter on offenses and penalties, but also contains a chapter that lays out specific types of licence holder violations that can lead to revocation of mining rights. This provision addresses holders of research permits as well as large scale exploitation licence holders, and applies equally to those who have mining rights under a valid lease agreement.</td>
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<td>(i) their title, in one of the following cases:</td>
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<tr>
<td>(a) their title, in one of the following cases:</td>
<td></td>
</tr>
<tr>
<td>(i) failure to pay the mining fees due to the State and to the local authorities, according to the tax regime which is in force;</td>
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<tr>
<td>(ii) any cession, assignment or subleasing which does not comply with the rules established in the present [Code][Act][Law];</td>
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<tr>
<td>(iii) any serious breach of the regulations of the central mining department as regards law and order, health and safety, or in the event that the measures</td>
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imposed in application of Article [] (on holders whose applications for mining titles will be refused for a period of five years due to the fact that they were sentenced to a period of imprisonment or they failed to fulfil their rehabilitation obligations) are not complied with;

(b) their operating license, due to:
   (i) the fact that, for an extended time, operations have not been undertaken or have been undertaken to an insufficient degree, which is clearly contrary to the potential for the deposit or the interests of consumers, and not justified by the state of the market;
   (ii) operations have been carried out under conditions which seriously compromise the economic value, conservation and subsequent use of the deposits;
   (iii) failure to comply with the terms laid down in Article [] (on the obligation to apply methods which have been confirmed as the most suitable, enabling optimal output) and failure to fulfil the commitments referred to in Article [] (on the content of the Agreement signed between the Holder and the State) and Article [] (on the commitments of the recipient under the Agreement) of the present [Law][Act][Code].

26. Large Scale Exploitation Licensing

26.16 Closure (plan, certificate etc.) and Reclamation

Mine closure and site reclamation or rehabilitation may be a distinct phase of a large scale exploitation project at the end of commercial production of a copper or gold mine, for example, or it may be an ongoing process in the case of exploitation of minerals sands, phosphates and other minerals that are mined progressively across a horizontal plane, with site fill and rehabilitation being performed on the previously mined area as each new area is mined. In either case, site closure and rehabilitation is considered an essential phase or component of the exploitation project for which the licence holder is required to plan and make financial arrangements.

Site rehabilitation plans are generally required as part of the environmental and social impact study and mitigation planning process under modern
mining laws or the related environmental laws, which also generally require the licence holder to establish a security in the form of a bond, bank guarantee, insurance policy or funded escrow account to provide adequate funding for the completion of site closure and rehabilitation at the conclusion of production activity. The surety must be available to the Government to pay for site restoration in the event that the licence holder fails to meet its obligations. These obligations are covered as part of the environmental topics in Part D of the Guiding Template.
27. Small Scale Licencing

Artisanal mining (AM) and small scale mining (SSM) are terms used to define the sub-sectors of the mining industry in Africa within which individuals, groups, cooperatives and local or small regional/international companies other than state-owned enterprises operate, using methods that are labour intensive rather than capital and technology intensive. The mining activities of these subsectors generally focus on precious metals and gemstones, semi-precious gemstones, decorative stones and rock collections, and industrial or quarrying minerals but can also include metallic minerals such as cobalt, coltan, tungsten. They supply, among other markets, the national jewellery, craft and construction industries. The definitions of artisanal mining and small scale mining in African mining laws vary widely, as do the practices associated with both such sub-sectors. Indeed, some mining laws distinguish among “artisanal” mining, “mechanized artisanal mining” (e.g., Mali 2012), “lightly mechanized mining” (e.g. Cameroon, 2014 Regulation) or “semi-industrial mining” (Côte d’Ivoire 2014) and “small scale” mining (e.g., Ghana, 2006).

Whether and how much to distinguish among different gradations of artisanal and small scale mining (ASM) depends on the types of activity taking place in a given jurisdiction, the degree of homogeneity or differentiation among the policy objectives with respect to the different types of activity, and an assessment of the need for differentiation in treatment of them in order to achieve the policy objectives. It is recommended that in all cases, the title of a licence or authorization be clearly associated with well-defined and readily recognizable activities. Where a mining law addresses one or multiple types of ASM, the type of activity and the related licence or authorizations should be defined clearly and used consistently throughout the law to avoid confusion.

This Section addresses the elements of a legal regime for small scale mining, while Section 28 addresses the elements of a legal regime for artisanal mining. In this Section, SSM is defined as mineral exploitation that has the following characteristics:

(a) it takes place at a fixed site,
(b) partially mechanized processes are utilized for the extraction - with or without processing - of minerals and the production and marketing of mineral products,
(c) the deposit that is the subject of SSM is not suitable for large scale exploitation, and
(d) either -
   (i) the production volumes do not exceed a specified maximum amount, or
   (ii) the investment in the SSM project does not exceed a specified maximum amount.

The general policy objective for SSM is usually to provide preferential access into the sector to nationals and to support the development of local mining entrepreneurs by facilitating national investment in reasonably capitalized domestic ventures that have the capacity to grow.
27. Small Scale Licencing

27.1 Eligibility

When a mining law addresses small-scale mining, it usually identifies who may or may not engage in the activity. Eligibility in this case may sometimes simply be limited to the eligibility to engage in the activity rather than the specific eligibility to apply for a license. For example, some laws explicitly bar certain large companies from engaging in small scale activities, restrict eligibility to resident country nationals, or restrict eligibility to cooperatives.

The section should indicate whether the licence to engage in SSM is reserved for nationals or allows for joint ventures with foreign entities. In some instances, a law may allow full ownership of SSM ventures by foreign entities. This may be in circumstances where there is an absence of local capacity to engage at that level. In such circumstances, allowing foreign entities to engage in SSM can result in knowledge, skills and technology transfer, provided that conditions are applied to encourage such transfer.

When non-nationals are eligible, it is important to outline in what capacity they are permitted to apply for the license. It is also important to indicate if there are special permissions for nationals from neighbouring countries with which there are reciprocal arrangements, for example for members of economic communities or customs unions. Other general limitations include whether individuals are eligible for SSM licenses and, if so, the age of majority for that purpose; and what entities and/or individuals are excluded from eligibility due to the pendency of bankruptcy and/or liquidation proceedings or criminal charges against them, a prior licence revocation, a prior conviction for fraud, or status as a member of the mining administration or the government, for example.

Under some mining laws, only the holder of a valid exploration licence covering the area applied for is eligible for a small-scale mining licence for that area. Under others, holding a valid exploration licence for the area is not required for eligibility to obtain the SSM license. Consideration should be given to whether or not to make this distinction. Given the requirement to provide a detailed work plan or feasibility study and some form of environmental assessment and site rehabilitation plan with an application for a SSM licence under most mining laws, applicants may find it necessary to obtain an exploration licence for the area in order to reserve it while preparing the required assessment and plans. Alternatively, if the SSM licence is for exploration (“prospecting”) and exploitation, the mining law may provide that such assessment and plans can be prepared during the exploration phase once the SSM licence has been issued, but will be required to be submitted and accepted in order to obtain permission to commence exploitation operations under the SSM license.

27.1. Example 1:

| Annotation |
**AMLMA GUIDING TEMPLATE**

**PART B-4: Small Scale Licencing**

<table>
<thead>
<tr>
<th>Article [__]</th>
<th>Drawn from Sierra Leone’s mining law (2009), this provision addresses only SSM licenses. Eligibility for such licenses is limited to entities. Under Sierra Leone’s mining law, SSM licenses cannot be issued to individuals. To be eligible, an entity must be either a company that is incorporated or registered in Sierra Leone or a co-operative society that is registered in Sierra Leone. In both cases, the entity must be owned 25% by nationals. Thus, foreign participation in SSM is permitted, provided that the foreign participants act through a company or co-operative society that is at least 25% owned by citizens of Sierra Leone and registered there. An entity is not required to be the holder of an exploration licence for the area applied for, but it may be such a holder. It probably will be one, in order to preserve the availability of the area while preparing the necessary work plan, environmental permitting requirements and other preparatory work. The eligible entities must register with the Regulating Authority and provide documentation as required by the Regulating Authority.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Any person who wishes to carry out small-scale mining operations shall apply for a small-scale mining licence.</td>
<td>27.1. Example 2:</td>
</tr>
<tr>
<td>(2) A small-scale mining licence shall be granted to—</td>
<td></td>
</tr>
<tr>
<td>(a) a body corporate that is incorporated or registered in [Country] and having a minimum of twenty-five percent of its shares held by citizens of [Country]; or</td>
<td>Article [__]</td>
</tr>
<tr>
<td>(b) a co-operative society registered in [Country] having a minimum of twenty-five percent of its member being citizens of [Country].</td>
<td>(1) A mining right or non-mining right shall not be granted to any person except in accordance with the provisions of this [Act][Code][Law].</td>
</tr>
<tr>
<td>(3) All such co-operatives and bodies corporate shall register with the Director and shall provide such documentation as the [Regulating Authority] may require.</td>
<td>(2) A mining right or non-mining right shall not be granted to or held by—</td>
</tr>
<tr>
<td></td>
<td>(a) an individual who—</td>
</tr>
<tr>
<td></td>
<td>(i) is under the age of eighteen years;</td>
</tr>
<tr>
<td></td>
<td>(ii) is or becomes an undercharged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any agreement or scheme of composition with creditors, or takes advantage of any legal process for the relief of bankrupt or insolvent debtors; or</td>
</tr>
<tr>
<td></td>
<td>(iii) has been convicted, within the previous ten years, of an offence involving fraud or dishonesty, or of any offence under this</td>
</tr>
<tr>
<td></td>
<td>Annotation</td>
</tr>
<tr>
<td></td>
<td>Drawn from Zambia’s mining law (2007), this provision describes the persons who are ineligible to hold mining rights in general and SSM licenses in particular. By eliminating from consideration the persons stated to be ineligible, the provision results in the following persons being the only ones eligible to receive a SSM licenses: individual citizens of Zambia or Zambian citizen-owned companies, provided that they are not rendered ineligible by the other terms of the provision that apply to all individuals, whether or not they are Zambian citizens, and to all companies, whether or not they are citizen-owned. Foreigners, foreign-owned companies and even joint ventures involving foreigners are therefore excluded from SSM under Zambia’s mining law.</td>
</tr>
<tr>
<td></td>
<td>Zambia’s mining law also provides for a small scale gemstone license, for which the applicant licence must meet the same nationality requirements as apply in the case of the SSM license.</td>
</tr>
</tbody>
</table>
27. Small Scale Licencing

27.2 Requirements for Licence Applications

[Act][Code][Law] or any other law within or outside [Country], and been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding fifty thousand [penalty units]; or

(b) a company—
   (i) which is in liquidation, other than liquidation which forms part of a scheme for the reconstruction of the company or for its amalgamation with another company;
   (ii) unless the company is incorporated under [the Companies Act].
   (iii) which has not established an office in [Country]; or
   (iv) which has among its directors or shareholders any person who would be disqualified under sub-paragraphs (ii) or (iii) of paragraph (a).

(3) A prospecting permit, small-scale mining licence, small-scale gemstone licence and an artisan’s mining right shall not be granted to a person who is not a citizen of [Country] or a company which is not a citizen-owned company.

(4) A mining right for industrial minerals shall only be granted to a citizen of [the country] and a citizen-owned company.

(5) Any document or transaction purporting to grant a mining right to any person not entitled to hold the right shall be void and of no effect.

(6) For the purposes of this [Act][Code][Law], “citizen of [Country]” means

(a) in relation to an individual, an individual who is a citizen of [Country]; and

(b) in relation to a partnership, a partnership which is composed exclusively of persons who are citizens of [Country].
Unlike the requirements for other licenses, the requirements for a licence Application for small scale mining activities are typically fewer. Some laws may have no requirements beyond those related to eligibility, leaving the definition of the application requirements to the implementing regulations. Where there are specific requirements in the law, these may include specifications on the form of the application, required supporting documents, and the need to meet certain criteria before the issuing authority will grant mining rights. Best practice encourages that the application include a survey map showing the coordinates indicating the area covered by the application, which may be a polygon with a minimum and maximum number of sides prescribed or a cadastre unit as set out in the mining law.

Requirements may also specify: (1) Where the application will be lodged; (2) what evidence of technical capacity and financial capacity should be provided and (3) evidence of the consent of the rightful owner occupier of land to potentially use the land for mining purposes may be required at the time of lodging the application. The application will need to indicate if the applicant holds other mineral licenses in the country.

Exploration may be required to have been conducted under an exploration licence covering the area that is the subject of a SSM application. Where such a process is followed then the application may need to be accompanied by a mining work program, an environmental impact assessment and environment management plan and the prescribed environmental financial guarantees.

### 27.2. Example 1:

<table>
<thead>
<tr>
<th>Article</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ ]</td>
<td>Drawn from Tanzania’s mining law (2010), this provision addresses small-scale mining activities under the mining licence referred to as the primary mining license, which is for mining projects involving an investment of less than US$100,000. Investment beyond that limit means the operation exceeds the SSM scale; and the law requires that it be subject to a mining license, the next category in terms of scale (for investments of $100,000 to $ 100,000,000).</td>
</tr>
</tbody>
</table>

**Article [ ]**

"Primary mining licence" means a licence for small scale mining operations, whose capital investment is less than US$100,000 or its equivalent in [national currency];

**Article [ ]**

(1) Any person not disqualified under section 8 (listing categories of persons who are ineligible for mining licenses), may apply to the [local Regulating authority] for the grant of a primary mining licence.

(2) Every such application shall-

(a) be in the prescribed form and accompanied by the prescribed fee; and
(b) describe the area not exceeding the maximum area prescribed by regulation

(1) The applicant. He/she/it must not -
A primary mining licence shall confer on the holder the right to prospect for and mine minerals as provided for in this Division of this Part.

Article [ ]
(1) The [local Regulating Authority] of the respective [Zone] shall grant an application for a primary mining licence which has been properly made under section 54 (on the persons eligible to file and the contents of the application) unless:

(a) the applicant is or was in default in respect of any other mineral right and has failed to rectify such default;

(b) the area for which application has been made or part of it covers or includes an area which is:

(i) subject to another mineral right or an area which the [Regulating Authority] has approved in writing as a source of building materials for the construction of tunnels, roads, dams, aerodromes and similar public works of an engineering nature;

(ii) an area designated by the [Regulating Authority] under section 16 as an area reserved for prospecting and mining operations by persons holding primary mining licence s, to be allocated in accordance with a scheme of allocation provided for by the regulations;

(iii) an area designated by the [Regulating Authority] as an area in respect of which applications for the grant of a mineral right have been, or will be, invited by tender.

(2) The application. It must:

- be in the form prescribed by regulation, and
- be accompanied by the fee prescribed by regulation;

(3) The area (for which the licence is sought). It must –

- Be described in the application;
- Not exceed the applicable size limitation set in the regulations;
- Not be subject to another mineral right; and
- Not be set aside or reserved by the Minister (a) as a source of building materials for infrastructure projects, or (b) for allocation among primary licence holders in accordance with the regulations, or (c) for tender.

27.2. Example 2:

Article [ ]
(1) Subject to the provisions of this Part, a person wishing to conduct small scale mining operations may apply for a minerals permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km² per permit.

Annotation

Drawn from Botswana’s mining law (1999), this single article and the related schedule succinctly describe the application requirements for a “minerals permit” to conduct small scale mining operations. The application form is well adapted to the policy objective of facilitating access to small scale mining for national entrepreneurs, provided that they present a serious work program including...
(2) A person wishing to obtain a minerals permit shall apply to the [Regulating Authority] by completing [Form xxx of the First Schedule], which requires:

a) Identification of the applicant and its partners/directors/members/shareholders,
b) Description of the area applied for (including a map and coordinates),
c) Particulars of the minerals for which the permit is sought,
d) The period for which the permit is sought, and
e) The proposed programs of work, including –
   (i) Details of the mineral deposit,
   (ii) estimated date by which applicant intends to work for profit,
   (iii) estimated capacity of production and scale of operations,
   (iv) nature of product,
   (v) envisaged marketing arrangements for sale of mineral product(s),
   (vi) Brief environmental impact assessment study and
   (vii) Brief environmental reclamation program.

(3) An application for a minerals permit relating to—

(a) any area in respect of which consent is required under any written law shall be accompanied by evidence that such consent has been obtained;

(b) land of which the applicant is not the owner shall be accompanied by evidence that the consent of the owner, or, in the case of tribal territory, the consent of the appropriate land board, has been obtained; or

(c) a prospecting area, retention area or mining area or part thereof shall be accompanied by evidence that the consent of the holder of the prospecting licence, retention licence or mining licence has been given, unless such holder will not be prejudiced by the issue of a minerals permit.

environmental protections and that they obtain the consent of the owners of the land or any existing mineral licence holders in the area applied for.

This provision requires identification of the applicant company as well as the persons behind the company in order that the Regulating authority can determine whether the applicant is eligible.

It requires a map and coordinates of the area applied for in order that the Regulating authority can determine whether the area is available for such a mineral permit or whether an existing mineral licence holder’s consent is required.

It requires particulars of the minerals sought in order that the Regulating authority can determine that the law authorizes the grant of a mineral permit for such minerals. (For example, a mineral permit may not be issued for diamonds.)

It requires a comprehensive work program rather than a costly feasibility study, and a “brief” environmental impact assessment study together with a “brief” environmental reclamation program rather than a full-blown EIS and rehabilitation plan. These are simplified versions of the more strenuous application requirements for a large scale exploitation license.

The Botswana application requirements demonstrate a sensitivity to the rights of landowners or tribal land boards and existing mineral licence holders in the area applied for by requiring their written consent to be provided with the application, except – in the case of the existing mineral right holders – if they will not be prejudiced by the issue of a minerals permit, which determination is made by the Regulating Authority. Written consent is similarly required from the relevant authority if the area applied for is subject to such a requirement under any written law.

27. Small Scale Licencing
## 27.3. Licence Refusal Appeal Process

In detailing the licence refusal appeals process, a mining law may include: Why a licence may be refused and the due process to be followed by the regulator. The reasons for refusal may also include non-eligibility and/or failure to meet the “requirements of the application.” The process of refusal must indicate the format in which refusal will be communicated, the days that are allowed to lapse before the communication is made, informing the applicant of their right to appeal the application refusal. The refusal process may also address what process the applicant can follow to appeal the refusal. Consideration should be given to provision of an expedited administrative appeal of any refusal to grant a small scale exploitation license, as a prerequisite to a subsequent judicial appeal if the administrative appeal is unsuccessful. In countries that have a Minerals Commission, Advisory Board or Minerals Consultative Body (the latter including representatives of Government, industry, civil society and mining communities, for example), it could be effective and efficient for appeals of refusals to grant small scale mining licence applications to be made to an adjudicative arm of such Commission, Board or Body, and for the decision of that institution on appeal to be binding except in very limited circumstances: e.g., misconduct, corruption or conflict of interest on the part of the adjudicatory panel, or a decision exceeding its review powers (i.e., similar to the typical grounds for vacating an arbitration award).

### 27.3. Example 1:

<table>
<thead>
<tr>
<th>Article [__]</th>
<th>The granting of or refusal to grant an Operating Licence for Small-Scale Mining shall be governed by the provisions of Articles [__] of the present [Code][Act][Law] (on the granting of and justification for refusing to grant an Operating Licence).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [__]</td>
<td>Reasons are to be given in writing for the refusal of an operating license and gives the right to appeal as provided for in the provisions of Articles [__] of the present [Code][Act][Law] (on arbitration appeal).</td>
</tr>
<tr>
<td>Article [__] (1)</td>
<td>An Operating Licence may be refused only if:</td>
</tr>
<tr>
<td>(a)</td>
<td>the feasibility study has been rejected;</td>
</tr>
<tr>
<td>(b)</td>
<td>the applicant lacks sufficient financial ability;</td>
</tr>
<tr>
<td>(c)</td>
<td>the EIA has been rejected in a final decision, in accordance with the below</td>
</tr>
</tbody>
</table>

### Annotation

Drawn from the DRC’s mining law (2002), these provisions explicitly provide for a judicial appeal of the decision to refuse a SSM permit, through a series of cross references.

The first article provides that the issuance or refusal of a SSM permit is subject to the same articles 72 and 73 that apply to large scale mining permits. Article 72 establishes that the refusal to issue the permit gives rise to the appeals provided for in Articles 317 to 320 of the mining law. Article 73 limits the grounds on which the permit may be refused by the Regulating Authority.

Article 317 provides that arbitration is available for the resolution of disputes as to the interpretation or implementation of any provisions of the mining law, but that this is subject to the provisions on administrative and judicial appeals.

Article 313 is the general provision on such appeals. It provides that appeals of any administrative act by the administrative authorities in implementing the mining law are governed by the general law on judicial authority; and it goes on to specify the
PART B-4: Small Scale Licencing

<table>
<thead>
<tr>
<th>Provisions.</th>
<th>Applicable articles of the relevant law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) A feasibility study may only be rejected for the following reasons:</td>
<td>Thus, the DRC mining law both specifies the grounds on which an application for a SSM permit may be denied and explicitly provides a right of appeal of the denial under the general statutes on judicial procedure, rather than leaving it up to the applicant, its counsel and the courts to determine whether an appeal is available and on what terms. This is, however, a rare provision among African mining laws. Most African mining laws do not specifically provide for an appeal of the refusal to grant a SSM permit. In those cases, whether and where an appeal would lie must be determined under the applicable general administrative procedures act.</td>
</tr>
<tr>
<td>(a) it does not comply with the directive from [the Regulatory Authority] specifying its content in accordance with generally recognised international practices;</td>
<td></td>
</tr>
<tr>
<td>(b) the study contains an obvious error;</td>
<td></td>
</tr>
<tr>
<td>(c) it does not comply with the EIA.</td>
<td></td>
</tr>
<tr>
<td>(3) Proof of the applicant's financial capacity may only be rejected for one of the following reasons:</td>
<td></td>
</tr>
<tr>
<td>(a) the financing plan does not comply with the feasibility study;</td>
<td></td>
</tr>
<tr>
<td>(b) there is clearly insufficient proof of the likely availability of the financing which is to be obtained from the sources identified by the applicant.</td>
<td></td>
</tr>
<tr>
<td>(4) Proof of financial capacity may not be rejected if, in the case of external funding, the applicant has produced proof from the financial sources which were identified, demonstrating the feasibility of the financing within the parameters considered by the applicant, and, in the case of internal financing, the financial statements of the person or company certified by a Chartered Accountant or a Public Accountant recognised by the courts, demonstrating their self-financing capacity.</td>
<td></td>
</tr>
<tr>
<td>Article [...] Subject to the provisions relating to appeals to a higher administrative authority and appeal proceedings, penalties and punishments provided for by the present [Code][Act][Law], disputes which may result from the interpretation or application of the provisions of the present [Code][Act][Law], may be settled through arbitration as provided for in Articles [...] of the present [Code][Act][Law] (on the terms for arbitration).</td>
<td></td>
</tr>
<tr>
<td>Article [...] Subject to the provisions of Article [...] (on the registration of a mining right applicable articles of the relevant law.</td>
<td></td>
</tr>
</tbody>
</table>
27.3. Example 2:

Article [___]

(1) Subject to previous articles, the [Regulating Authority] shall grant or refuse to grant a small-scale mining licence.

(2) The [Regulating Authority] shall cause the applicant for a small-scale mining licence to be notified in writing of his decision on the application, and if the application is refused, the [Regulating Authority] shall give reasons for such refusal.

(3) Any person aggrieved by the refusal of the [Regulating Authority] to grant that person a small-scale mining licence may appeal to the Court, whose decision shall be final.

(4) The [Regulating Authority] shall not refuse to grant a small-scale mining licence on any ground referred to in subsection (3) unless he has-

(a) given to the applicant, notice of his intention not to grant the small-scale mining licence giving full particulars of the ground for refusal; or

(b) specified in the notice a date before which the applicant may make appropriate proposals to remove the ground for refusal, and the applicant has not, after that date made any such proposals.

Annotation

Drawn from Sierra Leone’s mining law (2009), this article provides a right to a judicial appeal of the refusal to grant a SSM licence similar to that provided by the articles of the DRC mining law set forth in Example 1, but in more succinct terms. The Sierra Leone article does not limit the grounds for refusal of the SSM licence as the DRC provisions do; but it offers the possibility that the Regulating Authority will inform the applicant of deficiencies in its application and provide an opportunity for the applicant to correct them.
## AMLA GUIDING TEMPLATE
### PART B-4: Small Scale Licencing

### 27.4. Area

Provisions discussing the area of small scale licensing should provide for spatial limits that respond to: what mineral is being exploited; the location, concentration and continuity of the deposit, as defined by exploration work carried out; the relation to other licence categories; and whether or not contiguous licence areas are permitted. The shape of the area should conform to the standard shape requirements of the mining cadastre, which may be a polygon with a minimum and maximum number and length of sides prescribed or one composed of uniform cadastral units, as set out in the law. This section may also provide for the creation of special designated areas set aside for SSM operations in which the issuance of other mining rights will not be permitted.

Since small scale mining is generally defined by limits as to the minerals that can be exploited and the amount of investment or production involved, SSM licence areas are generally restricted to a size significantly smaller than areas for large scale exploitation. Due to these limitations, SSM is not suitable for the exploitation of widely disseminated mineralization requiring removal of very large tonnage of overburden and extensive processing of relatively low grade ore deposits. SSM is suited to the exploitation of relatively high grade deposits that are too small for large scale exploitation and that can be effectively mined out within a short term of a few years. On the other hand, if the targeted minerals are phosphates, salt, sand or gravel located near the surface in a dense concentration extending over a large area that can be mined effectively by a small scale mining operation, a larger licence area may be justified. Hence, it is desirable for the mining law to contain enough flexibility to accommodate these various scenarios.

### 27.4. Example 1:

Article [...]

(1) Subject to the provisions of this Part, a person wishing to conduct small scale mining operations may apply for a minerals permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km² per permit.

(2) The holder of a minerals permit shall, within three months of the issue thereof, demarcate the area covered by such permit in such manner as may be prescribed.

Article [...]

(1) The [Regulating Authority] may make regulations for the better carrying into effect of this [Act][Code][Law] and, in particular and without prejudice to the generality of the foregoing, regulations may provide for the following

<table>
<thead>
<tr>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drawn from Botswana’s mining law (1999), this provision limits the size of a SSM licence (“minerals permit”) area to half of a square kilometre (i.e., 50 hectares.) It does not permit any exceptions, but it also does not limit the number of SSM licenses that can be held by a single holder.</td>
</tr>
</tbody>
</table>

The provision also requires the permit holder to demarcate the SSM permit area within three (3) months of the issuance of the permit “in such manner as may be prescribed”.

The general article on REGULATIONS clarifies that the rules on the shape of areas and how their boundaries are to be demarcated are to be established by the Regulating Authority.
### AMLA GUIDING TEMPLATE

#### PART B-4: Small Scale Licenceing

**matters or purposes—**

(a) prescribing anything which in terms of this [Act][Code][Law] is to or may be prescribed;  
(b) for making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;  
(c) the shape of the areas over which mineral concessions may be granted;  
(d) the manner in which areas and boundaries shall be marked, beaconed and surveyed;  
(e) the gathering of fuel wood and the cutting and use of timber for the purposes of carrying on prospecting and mining operations;  
(f) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral concessions;  
(g) the fees to be paid in respect of any matter or thing done under this [Act][Code][Law]; and  
(h) the protection of the environment.

#### 27.4. Example 2:

**Article [__]**  
(1) No small-scale mining licence shall be granted to an applicant in an area designated under section 30 for artisanal mining operations.

(2) No person other than the holder of an exploration licence shall be granted a small-scale mining licence in respect of land which constitutes the exploration licence area or part of the exploration area.

(3) Where the [Regulating Authority] considers that it is in the public interest to encourage exploration and mining of minerals in any area by methods not involving substantial expenditure or the use of specialised technology, [it] may by notice in [the Gazette], declare that area for licensing of artisanal or small-scale mining operations and Part [__] and Part [__] shall apply.

(4) A notice by the [Regulating Authority] under subsection (1) may prescribe that particular minerals or all minerals in the declared area are subject to the

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**Annotation**

Drawn from Sierra Leone’s mining law (2009), these provisions:

1) prohibit the grant of a SSM licence in an area that has been reserved for AM;  
2) establish that only the holder of the exploration licence can obtain a SSM licence for any part of the area covered by the exploration license;  
3) authorize the Regulating Authority to designate certain areas as reserved for the licensing of SSM operations;  
4) permit a SSM licence area of up to 100 hectares (but not less than one hectare);  
5) require the marking of the boundaries of the SSM licence area by an authorized officer; and  
6) delegate the power to set by regulations the rules on the shape and size of licence areas.

These terms with respect to SSM licence areas are similar to, but somewhat more
(5) The [Regulating Authority] may, by notice in [the Gazette] vary or revoke any notice published under subsection (2).

(6) A small-scale mining licence area shall not be less than one hectare and not more than one hundred hectares.

(7) Every small-scale mining area shall be demarcated by an authorised officer in such manner as may be prescribed or as the authorised officer may, in the circumstances consider appropriate.

(8) The [Regulating Authority] may make regulations for the conservation and development of mines and minerals and for the purpose of giving effect to the provisions of this [Act][Code][Law].

(9) Without prejudice to the generality of subsection (1) regulations may provide for or with respect to-

(a) prescribing anything which in terms of this [Act][Code][Law] is to or may be prescribed;

(b) the manner in which applications under this [Act][Code][Law] shall be made, form of documents required and information to be supplied by applicants;

(c) the shape and size of blocks and areas over which mineral rights may be granted;

(d) the mining cadastre; ...etc.

The Sierra Leone mining law does not specify a limit on the number of SSM licenses that a single person is permitted to hold – similar to Botswana’s mining law.

The Sierra Leone’s provisions allow for a licence area that is twice as large as that permitted under Botswana’s mining law, despite Sierra Leone’s territory being only about one eighth the size of Botswana.
As a general matter, the obligations of holders of small scale mining licences are the same as those of the holders of large scale exploitation licences, except that certain environmental, social, labour and reporting obligations are often lighter for SSM licence holders for the reason that their operations are smaller in size and therefore in impact, the term of their licenses is shorter than the term of large scale exploitation licenses, and their projects involve a much smaller investment. SSM licence holders may also benefit from lower royalty rates and more favourable tax treatment in countries that have policies of promoting local mining entrepreneurship.

The obligations of SSM licence holders may include the responsibility or duty to undertake certain actions, or restrictions from undertaking certain actions or causing certain effects. The provisions setting forth such obligations may occur in articles specific to the license, in general provisions that apply to all licenses, and sometimes in other miscellaneous parts of a mining law. Some of the provisions may cross reference other laws such as Land and Environment for purposes of harmonizing multiple uses of the surface and subsurface of land, and meeting national commitments on climate control, for example, among other issues that are multi-sectoral in nature. In any event, all of the provisions or references to provisions on the obligations of SSM licence holders should be grouped in a single chapter of the mining law, for clarity and avoidance of misinterpretation. The provisions on obligations may include:

- management of the impact on the environment, and site rehabilitation,
- provision of a surety to guarantee environmental compliance,
- health, safety and security practices,
- employment conditions,
- social obligations including local hiring, training and promotion; local procurement; and contribution to sustainable local development;
- requirement to follow prescribed land access procedures, which may include the consent and compensation of rightful owners or lawful occupiers of land for disturbance of their rights,
- observing the rights of other land users and mining right holders, as well as prohibitions or restrictions on mining operations within a certain distance of roads, power lines, railways, buildings, cemeteries and parks or nature reserves,
- human rights issues including prohibitions on child labour,
- compliance with regulations on certification of origin of minerals sold,
- reporting requirements as to production, shipments, sales, payments to the Government, etc.,
- payment of annual fees per surface area held under the license, and
- payment of royalties and applicable taxes.

Whereas the provisions on obligations of the holder of a small-scale mining exploitation licence may include fewer reporting requirements than those that apply to other types of licenses, such provisions will often forbid or limit the use of explosives or heavy machinery as a condition of remaining within the definition of a small scale mining operation.
27.5. Example 1:

Article […] 
The holder of a small-scale mining licence shall—

(a) within the limits of its competence and resources, carry on in good faith, in the licensed area, exploration or mining operations;

(b) furnish the [Regulating Authority] with such information relating to its exploration or mining operations as the Director may reasonably require or as may be prescribed;

(c) carry out promptly any directives relating to its exploration or mining operations which may be given to the holder by the [Regulating Authority] for the purposes of ensuring safety or good mining practices;

(d) if not personally supervising the exploration or mining operations under the licence, employ a Mines Manager for the purpose of supervising its exploration or mining operations provided that all such Mines Managers must be approved by the Director and shall carry with them such means of identification as the [Regulating Authority] may direct;

(e) before beginning or ceasing any exploration or mining operations notify the appropriate local government authority or local authority and an authorised officer, of the intention to begin or cease exploration or mining, as the case may be;

(f) substantially comply with any community development agreement required under this [Act][Code][Law];

(g) sell the minerals obtained in the mining area as prescribed;

(h) carry out rehabilitation and reclamation of mined out areas;

(i) keep accurate records of winnings from the mining area and such records shall

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision includes the following key obligations:
- carrying out exploration and mining in a reasonable within the required competence.
- furnishing the required information to the Director of Mines
- carrying directives promptly to ensure safe and good practices
- Appoint manager to supervise operations
- notifying appropriate local authorities when beginning or ceasing operations
- keeping accurate records and submitting required reports
- selling minerals in prescribed manner
- complying with community development agreements
- carrying out required rehabilitation and reclamation of land

In addition, a SSM licence holder should also have a scheme in place for employing and training local people.
be produced for inspection on demand by the [Regulating Authority] or a duly authorised officer; and

(j) submit all reports as prescribed.

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<tr>
<th>27.5. Example 2:</th>
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<tr>
<td>Article [...]. Registration of small scale licensees (1) A person engaged in or wishing to undertake a type of small scale mining operation shall register with the [cadastral registry] of the designated area where the person operates or intends to operate (2) A person shall not be granted a licence under article [...] unless the person is registered under this article.</td>
</tr>
<tr>
<td>Article [...]. Operations of small scale miners A person licensed under section [...] shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment during mining operations</td>
</tr>
<tr>
<td>Article [...]. Compensation for use of land Where a licence is granted in a designated area to a person other than the owner of the land, the licensee shall pay compensation for the use of the land and destruction of crops to the owner of the land that the [Regulating Authority] in consultation with the [relevant government agencies] with responsibility for valuation of public lands may prescribe</td>
</tr>
<tr>
<td>Article [...]. Use of explosives A small-scale miner shall not without the written permission of the [Regulating Authority] use explosives in the area of operation.</td>
</tr>
<tr>
<td>Article [...]. Amendment of mineral at right to add other minerals (1) Where in the course of exercising a mineral right under this [Act][Code][Law], the holder discovers an indication of a mineral not included in the mineral right.</td>
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</table>

**Annotation**

Drawn from Ghana’s mining law (2006), this provision includes many of the obligations in the previous example, but goes further to address compensation for the use of land, the use of explosives and the process for adding additional minerals to the license.
(2) The notification given under subsection (1) shall

(a) contain particulars of the discovery, and

(b) the site and circumstances of the discovery.

(3) The holder of the mineral right may in the prescribed form, apply for the mineral right to be amended to

(a) include an additional mineral, or

(b) exclude a mineral.

(4) Subject to this [Act][Code][Law] and unless the land which is the subject of the mineral right, is subject to another mineral right in respect of the mineral applied for under subsection (3), the [Regulating Authority] shall amend the mineral right on the terms and conditions that may be prescribed.

(5) A mineral right shall not be granted for another mineral over the same area of land subject to an existing mineral right unless the holder of the existing right is notified and given the first option of applying for the right.

(6) A notification given under subsection (5) shall contain

(a) particulars of the mineral applied for and

(b) the area applied for.

Article \[\_\]. Obligations of holders of mineral rights

(1) The holder of a mineral right shall at all times appoint a manager with the requisite qualification and experience to be in charge of that holder’s mineral operations.
(2) The holder of a mineral right shall notify the [Regulating Authority] in writing of the appointment of a manager and on each change of the manager.

Section [...]. Records of and reports by mineral right holders

(1) A holder of a mineral right shall maintain, at an address in [country] notified to the [Regulating Authority] for the purposes of this section, the documents and records that may be prescribed and shall permit an authorized officer of the [Regulating Authority] at a reasonable time to inspect the documents and records and take copies of them.

(2) A holder of a mineral right shall furnish the [Regulating Authority] and other persons prescribed, with such reports on the mineral operations of and geological information attained by or on behalf of the holder.

<table>
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<th>27. Small Scale Licensing</th>
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<tr>
<td><strong>27.6. Rights of a Licence Holder</strong></td>
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</table>

Provisions that address what possession of a small scale licence allows the licence holder to do or what the licence holder may be entitled to are collectively treated as rights. Similar to obligations, the rights of a licence holder are usually addressed in articles specific to the licence in question, and occasionally in general provisions applying to all licenses. These rights are generally subject to conditions specified in the mining law and regulations or other laws and regulations, and may include:
- the exclusive right to extract the specified minerals in the area applied for,
- the right to obtain an extension of the licence to cover additional mineral substances subsequently discovered in commercial quantities within the licence area,
- the right to access and occupy the land in the licence area for mining (if ownership of the land or consent of the landowner or lawful occupier/user was required as an element of the licence application, or alternatively the right to obtain such access in accordance with procedures for negotiation/mediation/arbitration and compensation of such owners/occupiers/users specified in the mining law),
- the right to erect structures and a base camp necessary for the exploitation of the resource in the licensed area,
- the right to process the extracted mineral substances in order to produce marketable mineral products,
- the right to use other natural resources such as water and timber,
- the right to use industrial or quarrying minerals located within the licence area as building materials for necessary facilities at the site or as
inputs for processing of the targeted minerals,
- the right to use or sell the mineral products derived from operations under the SSM license, and
- the right to grant security interests in the license, to sublease operations under the license, and to transfer the licence to another eligible holder.

As noted in subsection 27.1 above, a mining law may confer the right to explore for and exploit mineral substances in the licensed area. This may cover initial exploration to discover a deposit, in which case authorization to proceed to the exploitation phase will normally require submission and acceptance of findings, a work plan or feasibility study, an environmental impact assessment and mitigation/rehabilitation plan and other elements. Alternatively, the exploration rights granted may be limited to continuing exploration at the site of exploitation in order to determine and evaluate the extent of continuation of the identified deposit within the licence area.

As a general matter, the rights of a SSM licence holder within the licensed area are similar to those of a large-scale exploitation licence holder within its licence area, except that the SSM licence holder’s right may be limited to a certain maximum amount of production or investment. In order to exceed that limit, the SSM licence holder must convert the SSM licence to the type of exploitation licence under which the projected higher level of production or investment is authorized.

27.6. Example 1:

Article [...] (1) A small scale mining licence to mine minerals granted under this section shall confer on the holder the exclusive right, subject to this [Act][Code][Law] and the Regulations including the Regulations applicable to safety and the protection of the environment, to carry on exploration and mining operations in the mining area, and for that purpose the holder, his servants and agents (being persons not disqualified under subsection (x) of section [...] from holding a small scale mining licence (which is reserved for citizens of [Country], partnerships of [Country citizen] and [Country citizen]-owned companies) may, in particular-

(a) enter on the mining area and take all reasonable measures on or under the surface for the purpose of mining operations;

(b) erect the necessary equipment, plant and buildings for the purpose of mining, transporting, dressing or treating the minerals recovered by him in the course of

Annotation

Drawn from Tanzania’s mining law (2010), the first section in the example provides for exclusive rights to carry on both exploration (called prospecting in Tanzania’s mining law) and exploitation of minerals within the licensed area. The right is not limited to specific minerals. The exploration right is for initial exploration to identify and evaluate a deposit. The Tanzanian mining law does not require any prior exploration work to have been carried out under an exploration license as a precondition for the grant of a small scale mining licence (called a “primary mining licence” in Tanzania’s mining law). By contrast, prior work to define the grade and extent of a mineral deposit under an exploration license is required in order to meet the application requirements for an industrial mining license or a large scale exploitation licence under the Tanzanian mining law. Thus, Tanzania’s mining law makes it relatively easy for an applicant (which must be a Tanzanian national or a wholly Tanzanian partnership or Tanzanian-owned company) to obtain a small scale mining license.
mining operations;
(c) subject to payment of royalties in accordance with this [Act][Code][Law] and the regulations dispose of any mineral recovered;
(d) stack or dump any mineral or waste product in compliance with the applicable regulations;
(e) carry on prospecting operations in the mining area.

Article [__]
(1) The holder of one or more primary mining licences may-

(a) at any time before the licences expire;
(b) if the holder has tendered the prescribed fee, is not in default and has provided particulars which would be required in an application for a mining licence under article [__], apply to the [Regulating Authority] to convert the SSM licence or licences to a mining licence.

(2) An application made in accordance with subsection (1) shall be granted by the [Regulating Authority] and the mining licence shall be issued within the period of thirty days from the date of receipt of the application.

(3) When granting the licence under this section the remaining period of the former licence s shall not be taken into account.

Essentially, Tanzania’s mining law removes barriers to entry into small scale mining for Tanzanian nationals and Tanzanian-owned companies; and it relies on regulating their activity by application of the Regulations under the mining law, rather than requiring them to submit studies, plans and work programs in order to obtain the small scale mining licence.

Thus, in subsection (1) of the first section, all rights under the small scale mining licence are subject to the Regulations under the mining law, with special mention of the Regulations on safety and protection of the environment. Compliance with the regulations under the mining law is reiterated as a condition of two of the enumerated rights granted by the SSM licence: (c) the right to dispose of minerals recovered, and (d) the right to stack or dump any mineral or waste product. By contrast, holders of large scale exploitation licences are also required to comply with their environmental management plans as a condition of the right to stack or dump minerals and waste products. No environmental management plan is required of SSM licence holders.

Under the second article in the example, the holder of the SSM licence also has the right to apply for the conversion of the SSM licence into a mining licence for industrial exploitation. This enables the SSM licence holder to graduate to a licence for exploitation based on a higher maximum amount of investment, if the target deposit warrants a greater investment and the licence holder is capable of mobilizing the necessary capital.

27.6. Example 2:

Article [__]
(1) A "PRE" licence is a prospecting and small-scale mining licence, and, within the area under the licence and for the period during which the licence is valid, it confers on the holder an exclusive right to carry out prospecting work and mine the material or materials for which the licence was issued, in accordance with the commitments in the Plan annexed to the application, a template of which shall be

Annotation

Drawn from Madagascar’s mining law (2005), this example specifies the rights of an SSM licence holder in a single article. The SSM licence in Madagascar is called the Exploration and Exploitation Permit (“PRE”). Similar to the SSM licence in Tanzania, the PRE under Madagascar’s law grants an exclusive right to conduct prospecting, exploration and exploitation of minerals within the licence area. This contrasts with the general exploration licence and exploitation licence, which are separate licences for the distinct exploration.
(2) However, before prospecting and operating work may commence, the commitments in the environmental commitment plan, which is to be submitted to the department in charge of the mining environment for the [Regulatory Authority], must be approved by the relevant authorities in accordance with the regulations relating to environmental protection.

(3) Nevertheless, an environmental impact assessment, the terms for which shall be specified in the regulations, may be required in the event that there are numerous applications for "PRE" licences in one area.

(4) Subject to prior consent from the landowner, should the need arise, the right conferred by an "PRE" licence includes the right to build the necessary infrastructure and to use the wood and water located in the area in accordance with the laws and regulations in force.

(5) Should a small-scale operator cease to use only artisanal techniques when carrying out prospecting and mining work, this shall result in them being required to apply to have their "PRE" licence converted to a standard licence.

The rights conferred by the PRE licence under Madagascar’s mining law include the rights to construct necessary infrastructure and to utilize wood and water resources found within the licence area. These rights are subject to (a) obtaining the consent of the landowner, if there is one, and (b) compliance with applicable laws and regulations.

All of the rights under the PRE license in this example are subject to several conditions that do not apply in the previous example. They are as follows:

1) The rights are granted with respect to specific minerals.
2) The rights granted under the PRE in this example are subject to the commitments made in the plan attached to the licence holder’s application.
3) The commencement of exploration and exploitation activities under the PRE licence in the example is subject to obtaining the approval by the competent environmental regulatory authority of an environmental commitment plan that must be submitted to the sectoral environmental regulatory service.
4) An Environmental Impact Study may be required in the event of concentration of PRE licences in a particular area.
5) If the PRE licence holder utilizes techniques that are not within the definition of “artisanal techniques”, he must request the transformation of his PRE licence into a standard licence.

In conclusion, this example provides for a more carefully circumscribed set of SSM rights in general, and in particular with respect to protection of the environment. This more cautious approach to SSM may be more appropriate in jurisdictions where nature and wildlife conservation and related tourism are important concerns.

### 27. Small Scale Licensing

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<th>27.7. Term of License</th>
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### NOTE: This Document is part of a multi-part document, Parts A – E
The term of the licence is the period of time during which it is valid. The mining law or regulation should establish the length of time or the maximum length of time for which a licence is granted. The licence itself should specify the start date and the end date of its period of validity (subject to possible early termination).

The mining law may specify the exact term of a SSM licence or it may specify the maximum term of a SSM licence and authorize the Regulating Authority to set the term of each SSM licence individually within that limit, based on the technical information about the deposit and the technical exploitation plan submitted by the applicant.

The terms of SSM licenses are generally much shorter than the terms of large scale exploitation licenses because by definition SSM is limited to the exploitation of small scale deposits involving limited amounts of investment and/or production. Some mining laws that provide for SSM licenses also contemplate a process for a SSM licence to be transformed into an industrial mining licence with a longer term if justified by the nature of the deposit and the technical operations during the course of operations under the SSM license.

There is considerable variety in the terms of SSM licenses under mining laws. They may be for a term as short as three years, with unlimited renewals, or for as long as ten years with no renewals.

Factors to be considered in setting the term of SSM licenses include:

- whether the SSM licence covers the exploration and exploitation phases or only the exploitation phase (if the former, a longer term is probably justified);
- whether the SSM licence is preceded by work of the applicant under an exploration licence (in which case, a shorter term may be appropriate);
- whether to set a fixed term or a maximum term length and allow the Regulating Authority to set the exact term of the licence subject to that maximum (depending on the enforcement capability of the Regulating Authority to terminate SSM licenses under which work has been abandoned);
- whether to set the term length in the law or in the regulations (security of title in the law versus flexibility to adjust to subsector conditions by regulation);
- the extent of the information about the deposit and the work program required to be submitted with an application for the SSM licence (more information available would suggest greater confidence in a relatively short term); and
- the definition of SSM in the mining law and the ability to transform the SSM licence into an industrial mining licence with a longer term.

27.7. Example 1:

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<th>Article [ ]</th>
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<td>Drawn from Botswana’s mining law (1999), this provision sets a maximum</td>
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</table>
(1) Subject to the provisions of subsection (2), a minerals permit shall be valid for such period, not exceeding five years, as the [Regulating Authority] may determine and may, on application made to the [Regulating Authority], be renewed for further periods not exceeding five years at a time.

(2) Without prejudice to Article [__] (on the Regulating Authority’s power to suspend or cancel a mineral concession), the [Regulating Authority] may terminate a minerals permit issued to exploit industrial minerals if he is satisfied that the holder thereof has ceased to be a citizen of Botswana or has entered into an arrangement with a person who is not a citizen of Botswana, as defined in Article [__], which arrangement has the effect of transferring to that person any interest in such permit.

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<tr>
<th>27.7. Example 2:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>Article [__] Duration of small-scale mining licence</td>
<td>Drawn from Zambia’s mining law (2008), these provisions provide flexibility</td>
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</table>
A small-scale mining licence shall be granted for a period not exceeding ten years.

Article [] Duration of small-scale gemstone mining licence
A small-scale gemstone licence shall be granted for a period not exceeding ten years.

to the Regulating Authority to set the term of each individual SSM license, up to a maximum of ten years. The provisions are similar to Botswana’s in providing Regulating flexibility, but with a longer maximum term.

Unlike Botswana’s mining law, Zambia requires that a SSM licence applicant be the holder of a SSM exploration licence (prospecting permit). However, that is not required as a prerequisite for a small-scale gemstone license.

Whereas SSM is defined in Botswana’s mining law by reference to limits on annual production and total investment, there are no such limits on small-scale mining in Zambia. Rather, the key distinctions in Zambia are that (a) SSM licenses are reserved exclusively for Zambian citizens and Zambian citizen-owned companies, and (b) a SSM licence is for a smaller area and a shorter term than a large scale exploitation license. The potentially longer SSM licence term provides greater security of title to a Zambian mining entrepreneur who may invest substantially more than the holder of a SSM licence in Botswana.

In light of the potentially longer term of the SSM licence under Zambia’s mining law, it includes a provision that authorizes the Regulating Authority to cancel the licence if production for three years or more is less than 50% of the estimated recovery rate for the mine.

### 27. Small Scale Licensing

#### 27.8. Renewal of License

Renewal of licence provisions provide for the minimum and maximum duration of the licence renewal period and the number of renewals permitted. The limitations should be guided by consideration that there will be different sizes and types of mineral deposits available, and the capacity to exploit it in the time allowed.

Conditions are set under which renewal will be permitted and granted; and these may include:
- Having met all the requirements of the licence during the preceding term such as fees, management of the environment, health, safety and
mine development;
- Submission of an updated environmental impact assessment and mitigation and rehabilitation plan;
- Submission of an updated work program, if necessary;
- There being enough resource to be exploited in the renewal period.

Renewal provisions typically require that an application for renewal be filed at least three months or more before the expiration of the initial term of the licence (or the prior term, where multiple renewals are allowed), so that the decision on renewal can be issued before the licence expires. The best renewal provisions provide for automatic extension of the licence until the decision on renewal is issued. Consideration should be given to even earlier deadlines for the filing of renewal applications, so that the licence holder has sufficient time to close operations, remove equipment, perform necessary site rehabilitation and vacate the site before the expiration of the licence if the renewal is denied.

### Example 1:

Article [__]

Subject to the provisions of subsection (2), a minerals permit shall be valid for such period, not exceeding five years, as the [Regulating Authority] may determine and may, on application made to the [Regulating Authority], be renewed for further periods not exceeding five years at a time.

(2) An application for renewal of the minerals permit shall be submitted no later than such period of time prior to the expiration date of the minerals permit as the [Regulating Authority] shall establish by regulation.

(3) The application for renewal shall provide the information and accompanying documents required by Form [__] of the First Schedule, which requires:

- Identification of the applicant and its partners/directors/members/shareholders,
- Description of the area applied for (including a map and coordinates),
- Particulars of the minerals for which the permit is sought,
- The period for which the permit is sought, and
- The proposed programs of work, including –
  - Details of the mineral deposit,
  - Estimated date by which applicant intends to work for profit,
  - Estimated capacity of production and scale of operations,

### Annotation

Drawn from Botswana’s mining law (1999), this provision enables the Regulating Authority to grant multiple renewals of a SSM licence for renewal terms of up to five years. This provides flexibility in light of the fairly short term (5 years) of the SSM license. However, in light of the definition of SSM in Botswana’s mining law, which includes limits on annual production and investment, it seems unlikely that a SSM licence holder will be able to obtain multiple renewals while retaining SSM status. Nevertheless, the potential availability of unlimited renewals enables very small scale subsistence miners to maintain their rights for as long as they can continue to profitably produce marketable mineral products from their licensed areas while remaining within the definition of SSM. This reflects, in part, a poverty reduction strategy.

The renewal application is the same as the initial licence application, thus assuring that a renewal is justified by the nature of the deposit and the planned work program, and adjusting the related environmental protection measures accordingly.

The deadline for submitting a renewal application, if any, is set in the regulations. Unfortunately, the mining law does not contain a provision that automatically extends the validity of the SSM licence until the final administrative decision on a renewal application is issued.
### 27.8. Example 2:

Article [__], Renewal of small-scale mining licence  
(1) A holder of a small-scale mining licence may apply to the [Regulating Authority] at least sixty days before the expiry of the small-scale mining licence, for the renewal of the licence in the prescribed manner and form upon payment of the prescribed fee.

(2) Subject to subsection (3), the [Regulating Authority] shall, where an application for the renewal of a small-scale mining licence complies with the requirements of this [Act][Code][Law], renew the small-scale mining licence for a period not exceeding ten years, on such terms and conditions as the [Regulating Authority] may determine.

(3) The [Regulating Authority] shall reject an application for the renewal of a small-scale mining licence where-

(a) the development of the mining area has not proceeded with reasonable diligence;

(b) minerals in the workable quantities do not remain to be produced;

(c) the programme of the intended mining operations will not ensure the proper conservation and use in the national interest of the mineral resources of the mining area; or

(d) the applicant is in breach of any condition of the licence or any provision of this [Act][Code][Law].

(4) The [Regulating Authority] shall not reject an application on any ground

### Annotation

Drawn from Zambia’s mining law (2008), these provisions provide for a single renewal of a SSM or small-scale gemstone mining licence for a renewal term of up to ten years. As in the preceding example, the Regulating Authority is given the discretion to set the renewal term shorter than the maximum period established in the law. However, under Zambia’s mining law only a single renewal is contemplated, rather than multiple renewals. As in the preceding example, the renewal term is the same as the initial term of the license, but the term under Zambia’s law is twice as long as the term in Botswana.

The longer initial and renewal terms for both SSM and small scale gemstone mining (SSGM) reflect the Zambian policy orientation of creating special subsectors for SSM and SSGM reserved for Zambian citizens, in order to promote local mining entrepreneurship. (SSM and SSGM are not defined by production or investment limitations under Zambia’s mining law.)

In contrast to Botswana’s law, the Zambian mining law limits the grounds on which the Regulating Authority can reject a renewal application, and further requires the Regulating Authority to provide the licence holder with notice and an opportunity to remedy three of the four potential grounds for non-renewal. This provides some security of tenure to small scale miners. There is, however, a significant gap in this protection by omitting a requirement of notice and opportunity to remedy a “breach of any condition of the licence or any provision of” the mining law. Nonrenewal for a temporary breach of a minor condition under the act, with no opportunity to cure the breach, is a potentially harsh penalty. SSM licence holders in Zambia are vulnerable to nonrenewal on such grounds because the Regulating Authority has the discretion to deny renewal on any such breach.
(a) paragraph (a) of subsection (3), unless the [Regulating Authority] has given the applicant the details of the default and the applicant has failed to remedy the default within three months of the notification;

(b) paragraph (b) of subsection (3), unless the [Regulating Authority] has given the applicant reasonable opportunity to make written representations thereon to the [Regulating Authority] or (c) paragraph (c) of subsection (3), unless the [Regulating Authority] has notified the applicant and the applicant has failed to propose amendments to the operations within three months of the notification.

(5) The [Regulating Authority] shall, on the renewal of a small-scale mining licence, attach to the licence the approved program of mining operations to be carried out in the period of renewal.

Zambia maintains parallel licensing regimes for SSM and small-scale gemstone mining. The former requires the applicant for a SSM licence to possess an exploration licence (prospecting permit) for the area as a prerequisite to obtaining a SSM license. That is not required for a small-scale gemstone mining license. Small scale gemstone mining is often characterized by “rushes” of small scale miners to sites where someone else has made an initial discovery, so the lack of a prospecting permit requirement matches that reality with the objective of formalizing small scale gemstone mining activity as much as possible.

The provisions of Zambia’s mining law on the term and renewals of SSM licenses and small scale gemstone licenses are identical, however. In both cases the Regulating Authority is directed to attach the approved work program to the renewed license, such that it becomes a condition of the license.

Article [__]. Renewal of small-scale gemstone licence

(1) A holder of a small-scale gemstone licence may apply to the [Regulating Authority] at least sixty days before the expiry of the licence, for the renewal of the licence in the prescribed manner and form upon payment of the prescribed fee.

(2) Subject to subsection (3), the [Regulating Authority] shall, where an application for the renewal of a small-scale gemstone licence complies with the requirements of this [Act][Code][Law], renew the small-scale gemstone licence for a period not exceeding ten years, on such terms and conditions as the [Regulating Authority] may determine.

(3) The [Regulating Authority] shall reject an application for renewal of a small-scale gemstone licence where—

(a) the development of the mining area has not proceeded with reasonable diligence;

(b) minerals in workable quantities do not remain to be produced;
(c) the programme of the intended mining operations will not ensure the proper conservation and use in the national interest of the mineral resources of the mining area; or

(d) the applicant is in breach of any condition of the licence or any provision of this [Act][Code][Law].

(4) The [Regulating Authority] shall not reject an application on any ground referred to in—

a) paragraph (a) of subsection (3), unless the [Regulating Authority] has given the applicant the details of the default and the applicant has failed to remedy the default within three months of the notification;

b) paragraph (b) of subsection (3), unless the [Regulating Authority] has given the applicant reasonable opportunity to make written representations thereon to the [Regulating Authority] or

c) paragraph (c) of subsection (3), unless the [Regulating Authority] has notified the applicant and the applicant has failed to propose amendments to the operations within three months of the notification.

(5) The [Regulating Authority] shall, on the renewal of a small-scale gemstone licence, attach to the licence the program of mining operations to be carried out in the period of renewal.

<table>
<thead>
<tr>
<th>27. Small Scale Licensing</th>
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<tbody>
<tr>
<td>27.9. Suspension of License</td>
</tr>
</tbody>
</table>

This section provides for when a licence may be suspended and the conditions under which the suspension may be lifted. Suspension remedies may be triggered when the conditions under which the licence was issued have changed or are no longer being observed. This may include such circumstances as revelation of fraudulently acquired license ownership as required by the eligibility provisions, failure to rectify operational contraventions of provisions in the law such as false record keeping, use of child labour, breach of health and safety or environmental obligations.
The conditions and procedure under which suspension may be lifted should be specified. The procedure to appeal the suspension should also be provided for.

### 27.9. Example 1:

**Article [...]**

1. The [Regulating Authority], or any person authorised by the [Regulating Authority], may, in writing, order reconnaissance, exploration or mining operations to be temporarily suspended on an emergency basis, regardless of whether such operations are authorized by a mineral right, until such arrangements are made that are in [Regulating Authority]’s opinion necessary to prevent danger to life, property or the environment or to comply with this [Act][Code][Law].

2. The [Regulating Authority] may cancel or vary the terms of any temporary suspension order.

3. The [Regulating Authority] shall have the power to confirm a temporary suspension order made by the [Regulating Authority] and may not delegate this power.

4. A temporary suspension order shall lapse after twenty-one days of its issuance, unless it is confirmed, in writing, by the [Regulating Authority].

**Article [...]**

1. The [Regulating Authority] after consultation with the [Advisory Board] may suspend or cancel a mineral right if the holder-

(a) fails to make any of the payments required by or under this [Act][Code][Law] on the date due;

(b) fails to meet any prescribed minimum annual programme of work or work expenditure requirement;

**Annotation**

Drawn from Sierra Leone’s mining law (2009), these provisions on suspension are extensive. They contemplate both:

- Temporary suspensions pending the remediation of dangerous or potentially harmful conditions or compliance failures; and
- Suspensions during notice of violations which, if not remedied during the suspension period, will culminate in the cancellation of the license.

The provisions include both general provisions applicable to multiple types of mineral rights and specific provisions applicable to SSM licenses.

Temporary suspensions are issued when necessary to prevent danger to life, property or the environment, or to comply with the mining law. Such suspensions lapse after 21 days unless confirmed by the authority supervising the Regulating Authority.

Suspensions that may lead to cancellation are pronounced by the Regulating Authority for the various reasons specified. Prior to pronouncing the suspension, the Regulating Authority must give notice of the grounds for the suspension to the licence holder and afford the holder the possibility to correct the situation within 30 days. If the grounds for suspension are either (i) gross violation of health and safety requirements or causing environmental harm, (ii) child labour, or (iii) ineligibility of the licence holder, and in each case if the violation is not cured within the thirty-day notice period, then the Regulating Authority may either suspend or cancel the mineral right. In the case of other violations that are not remedied, the authority may suspend the license.
(c) grossly violates health and safety regulations or causes environmental harm;

(d) employs or makes use of child labourers;

(e) fails to submit reports required by this [Act][Code][Law];

(f) contravenes any of the provisions of this [Act][Code][law] or the conditions of the mineral right or the provisions of any other enactment relating to mines and minerals;

(g) dies and his heir or successor in title is not qualified under this [Act][Code][Law] to hold the mineral right, unless an application is received from the heir or successor within ninety days of the death to transfer the right to a third party who is so qualified and accepts all duties under the right;

(h) becomes an un-discharged bankrupt or becomes of unsound mind;

(i) makes any statement to the [Regulating Authority] in connection with his mineral right which he knows or ought to have known to be false;

(j) fails to substantially comply with the terms of a community development agreement when required by this [Act][Code][Law] to do so;

(k) for any reason becomes ineligible to apply for a mineral right under article [_] (on restrictions on grants of mineral rights).

(2) The [Regulating Authority] shall, before suspending or cancelling any mineral right give notice to the holder in such a manner as shall be prescribed and shall, in such a notice require the holder to remedy in not less than thirty calendar days any breach of the conditions of the mineral right.

(3) If the holder of a mineral right fails to remedy any failure or contravention specified in paragraphs (c), (d) and (k) of subsection (1), the [Regulating Authority] may, by notice to the holder thereof, suspend or cancel the mineral right.
(4) On cancellation of a mineral right under this section the rights of the holder shall cease but without prejudice to any liabilities or obligation incurred in relation thereto prior to the date of cancellation.

(5) The [Regulating Authority] shall not later than seven calendar days after cancellation of a mineral right under this section, cause the cancellation to be recorded in the mining cadastre.

**Article [__]**

(1) Where an authorised officer considers any mining operation under a small-scale mining licence or anything, matter or practice in or connected with any such mining operation to be so dangerous or defective as in his opinion to be likely to cause bodily injury to any person, he may give notice in writing of it to the holder of the licence.

(2) A notice issued pursuant to subsection (1) may require the danger or defect to be remedied or removed, either immediately or within such time as may be specified, and if the authorised officer considers it necessary, order the mining operations to be suspended until the danger is removed or the defect remedied to his satisfaction.

(3) The holder of a licence to whom notice has been given under subsection (1), shall comply with the notice.

(4) If the holder of a licence intends to object to any requirement or order given by the authorised officer, he shall forthwith cease the mining operations or that part of the operations affected by the notice and appeal to the [Regulating Authority] against the order.

(5) On an appeal made to the [Regulating Authority] pursuant to subsection (4), the [Regulating Authority] shall inquire into the matter and his decision thereon shall be final.
Article [__]
(1) Any mining licence -holder who is required to prepare an environmental management programme shall in each calendar year after the first year in which commercial production first occurs submit in triplicate to the [Regulating Authority] an “Environmental Management Programme Report” covering each of the items listed in paragraph (b) of subsection (1) of article [__] indicating their current status.

(2) An Environmental Management Programme Report shall be sufficiently detailed so that the [Regulating Authority] can determine whether the environmental management programme is succeeding, and if the [Regulating Authority] determines that the plan is not succeeding, the [Regulating Authority] may suspend the licence until such time as measures are taken to insure its success.

Article [__]
(1) A holder of a mineral right shall not employ or in any way use child labour.

(2) A holder of a small-scale mining licence or large-scale mining licence shall carry out a scheme of training and employment of local employees in each phase and level of operations taking into account the requirements of safety and the need to maintain acceptable standards of efficiency in the conduct of the operations.

(3) The training programme shall provide appropriate instruction and training to ensure the advancement of [Country citizen] employees in the skilled technical, supervisory, administrative and managerial categories.

(3) Failure by a holder of a mineral right to comply with the provisions of subsection (1), (2) or (3) shall be regarded as a material breach and if such person is the holder of a small-scale mining licence or large-scale mining licence, the licence may be suspended or cancelled.

27.9. Example 2:

Article [__]
(1) Subject to this section, the [Regulating Authority] shall cancel a mining right or

Annotation
Drawn from Zambia’s mining law (2008), these provisions apply suspension only as an intermediate penalty that is subject to prior notice to the licence.
non-mining right where the holder of the mining right or non-mining right—

(a) contravenes a condition of the mining right or non-mining right;

(b) fails to comply with any requirement of this [Act][Code][Law] relating to the mining right or non-mining right;

(c) fails to comply with a direction lawfully given under this [Act][Code][Law];

(d) fails to comply with a condition on which any certificate of abandonment is issued or on which any exemption or consent is given under this [Act][Code][Law];

(e) is convicted on account of safety, health or environmental matters;

(f) in the case of a large-scale mining licence or large-scale gemstone licence, the holder has failed to carry on mining operations in accordance with the proposed plan of mining operations and the gross proceeds of sale of minerals from an area subject to such licence in each of any three successive years is less than half of the deemed turnover application to that licence in each of those years; and;

(g) is convicted on giving of false information on recovery of ores and mineral products, production costs or sales.

(2) The [Regulating Authority] may, before cancelling a mining right or non-mining right, suspend the mining right or non-mining right on such terms and conditions as the [Regulating Authority] may determine.

(3) The [Regulating Authority] shall not suspend or cancel a mining right or non-mining right on grounds referred to in any of paragraphs (a) to (c) of subsection (1) unless—

(a) the [Regulating Authority], as the case may be; has first served on the holder a default notice specifying the grounds on which the mining right or non-mining right may be suspended or cancelled; and
(b) the holder has failed within a period of sixty days from the date on which the default notice was served, or such longer period as the [Regulating Authority] may allow, to remedy the default specified, or where such default is not capable of being remedied, has failed to pay such compensation therefor as the [Regulating Authority] may determine.

(4) The [Regulating Authority] shall not suspend or cancel a mining right or non-mining right on the ground referred to in paragraph (d) of subsection (1) if, within a period of sixty days from the date on which the default upon which the default notice was served, or such longer period as the [Regulating Authority] may allow the holder, in addition to paying the amount overdue, pays interest on that amount at the prescribed rate.

(5) The [Regulating Authority] may, by notice in writing to a holder of a mining right or non-mining right, cancel the mining right or non-mining right on the occurrence of an event which, as provided by section seven renders the holder ineligible to hold a mining right or non-mining right.

(6) On the cancellation of a mining right or non-mining right under this section, the rights of the holder thereunder cease, but the cancellation does not affect any liability incurred before cancellation, and any legal proceedings that might have been commenced or continued against the holder may be commenced or continued against that holder.

Article [...] (1) The [Regulating Authority and Regulating Authority] shall, prior to exercising any power conferred upon them under this [Act][Code][Law]—

(a) to terminate, suspend or cancel a licence or permit;
(b) refer the matter to the Mining Advisory Committee for its advice.

(2) The Mining Advisory Committee, shall in considering a matter submitted to it under subsection (3), consult any person, party or other stakeholder in the area to
### Article [__] (3) Where the Mining Advisory Committee advises the [Regulating Authority] pursuant to subsection (3) and the [Regulating Authority] proposes to dispose of that matter other than in accordance with the advice of the Committee, [Regulating Authority] shall before disposing of the application, furnish the Committee with a statement in writing of the [Regulating Authority’s] reasons for doing so.

### Article [__] (1) Any person aggrieved by the decision of the [Regulating Authority]—

(a) to cancel or suspend any licence or permit held by the person;
(b) may appeal to the [Regulating Authority], who shall determine the appeal, consistent with the provisions of this [Act][Code][Law] and the circumstances of the case.

(2) A determination of the [Regulating Authority] under this section may include such directions to the [Regulating Authority] as the [Regulating Authority] considers appropriate for the disposal of the matter, and the [Regulating Authority] shall give effect to the directions.

### Article [__] (1) Any person aggrieved by the decision of the [Regulating Authority] may appeal to [Judicial Reviewer], which shall determine the appeal, having regard to the provisions of this [Act][Code][Law] and the circumstances of the case.

(2) A determination of [Judicial Reviewer] under this section may include such directions to the [Regulating Authority] as the Court considers appropriate for the disposal of the matter, and the [Regulating Authority] shall give effect to the directions.

## 27. Small Scale Licencing

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**NOTE:** This Document is part of a multi-part document, Parts A – E
The validity of a small scale mining licence typically terminates in the same way that a large scale exploitation terminates, i.e. in one of the following ways:

- Upon its expiration date, unless and to the extent it is renewed or automatically extended by law; or
- Upon nullification (e.g., if issued to an ineligible holder, or for mineral substances for which such licenses are not authorized, or over an area that is not available for a SSM licence under the law, or if obtained by fraud); or
- Upon revocation due to abandonment or breach of conditions that constitute grounds for revocation of the license; or
- Upon relinquishment or surrender of the licence by the holder prior to its expiration date.

In addition, the mining law may provide that a SSM licence must be transformed into an industrial or large scale exploitation licence if the mining operations exceed the parameters of SSM as defined in the law; and the law may authorize the Regulating Authority to monitor the SSM activity and terminate non-performing licenses in order to avoid excessive areas being tied up by non-productive SSM licence holders.

It is important for termination provisions to specify the obligations of the licence holder in connection with termination of the license. In addition, many mining laws provide the Government with a right to either acquire equipment and installations at the mine site upon termination or require their removal by the licence holder. The holder’s environmental rehabilitation obligation should apply regardless of the type of termination. It is best practice to require the licence holder to provide a bank guarantee and/or environmental escrow account to which the Government has access in order to pay for necessary environmental restoration if the licence holder abandons the mine without performing the necessary clean-up in the case of termination by revocation.

27.10. Example 1:

**Article [ ]**

“Termination” means the lapse of a mineral right by expiry of time, surrender or cancellation; and where the surrender or cancellation is in respect of part only of the area covered by the mineral right, then the mineral right shall be deemed to have been surrendered or cancelled in respect of that surrendered or cancelled area;

**Article [ ] For All Mineral Rights**

(1) Where the holder of a mineral right intends to cease operations either during

**Annotation**

Drawn from Sierra Leone’s mining law (2009), these provisions include a definition of “termination” of a mineral right as including its expiration, cancelation or surrender, which may be total or partial.

Under Sierra Leone’s mining law, SSM licenses are subject to general provisions that apply to termination of all mineral rights and specific provisions that apply to termination of SSM licenses.

There are two general provisions on termination. The first governs (a) the
the period of or on termination of his mineral right, he shall, not less than ninety calendar days or such other period as the [Regulating Authority] may allow before such cessation or termination, furnish to the [Regulating Authority], a full register of assets showing those assets which he intends to remove and those which he intends to leave in the area covered by the mineral right, and shall further notify the [Regulating Authority] of any potentially hazardous substances, erections or excavations in that area.

(2) On receipt of a notice in terms of subsection (1), the [Regulating Authority] may, if he deems it necessary-

(a) certify that specified items of fixed machinery are necessary for the care and maintenance of the area covered by the mineral right and such items and machinery shall not be removed;

(b) require that specified buildings and other items of fixed machinery shall be removed;

(c) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.

(3) If removal of specified assets which the holder has indicated that he wishes to remove is prohibited under paragraph (a) of subsection (2), the [Regulating Authority] shall pay reasonable compensation to the holder for such assets and any person who acquires a mineral right over the area concerned shall reimburse the sum equal to the compensation so paid.

(4) Upon cessation of operations by the holder of a mineral right, the area covered by the mineral right shall revert to the owner thereof provided that if the [Regulating Authority] determines that the area should be retained, it shall be so retained by the [Regulating Authority] subject to payment of fair compensation to the owner for such retention.

(5) Any fresh water dam and the waters impounded thereby shall be left intact on cessation of operations or termination of a mineral right.
(1) Upon termination of any mineral right, the holder thereof shall deliver to the [Regulating Authority]-

(a) all records which the holder is obliged under this [Act][Code][Law]to maintain including full and detailed reports as prescribed containing all information, results, interpretation, data and other related information pertaining to the exploration and mining of minerals under the mineral right;

(b) all plans or maps of the area subject to the mineral right prepared by the holder or at his instructions; and

(c) except for the holder of an artisanal mining licence, a final report which shall be a summary of previous annual reports plus a detailed report on containing all information, results, interpretation and data relating to all activities carried out in the final period of the licence since the previous annual report.

(2) Where the former holder of a mineral right fails to deliver any document required to be delivered under subsection (1), the [Regulating Authority] shall call upon such former holder to comply with subsection (1).

Article [...] For SSM licenses

The holder of a small-scale mining licence shall–

(a) before beginning or ceasing any exploration or mining operations notify the appropriate local government authority or local authority and an authorised officer, of the intention to begin or cease exploration or mining, as the case may be;

(b) carry out rehabilitation and reclamation of mined out areas.

27.10. Example 2:

Article [...]. Termination of Mining Rights

Annotation

Drawn from Ethiopia’s mining law (2010), these provisions, like those in the
**AMLA GUIDING TEMPLATE**  
**PART B-4: Small Scale Licencing**

<table>
<thead>
<tr>
<th>1) Mining rights shall terminate if:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) a licensee relinquishes the whole area or surrenders the licence;</td>
</tr>
<tr>
<td>b) a licence is revoked by the Licensing Authority pursuant to the provisions of this Proclamation,</td>
</tr>
<tr>
<td>regulations and directives;</td>
</tr>
<tr>
<td>c) a licence expires without being renewed; or</td>
</tr>
<tr>
<td>d) without prejudice to the rights of heirs, a licensee dies, or where the licensee is a juridical</td>
</tr>
<tr>
<td>person, it is liquidated or declared bankrupt.</td>
</tr>
</tbody>
</table>

2) Upon termination of mining rights of the holder of a small scale or large scale mining license, the government may, unless an agreement specifies otherwise, acquire all of the immovable and movable property used in the mining operations at a price equal to the then unamortized value of such assets, as shown in the financial book of accounts of the licensee. If the government does not exercise such right, the licensee shall be free to dispose such assets to another person in accordance with the applicable laws, or otherwise he shall be obliged to remove them as required by his environmental obligations.

3) The licensee shall be required on termination of a small scale or large scale mining license, to fence and safeguard to the satisfaction of the Regulating Authority, any pits and such other works in the licence or lease area so that the health, life and property of persons may not be endangered.

**Article [__]. General Obligations of Licensees**

In addition to the obligations under other relevant provisions of this Proclamation, a licensee shall have the obligations to remove constructions in the licence area and lease area upon termination of the licence or relinquishment of the licence area.

**Article [__]. Mine Closure**

1) The holder of a small scale or large scale mining licence shall apply to the Licensing Authority for a mine closure certificate upon:

   a) revocation of the license;
   b) termination of the mining operations;

   preceding example, specify what constitutes termination of a mining right, including a SSM license, and include both general provisions of all mineral right holders and specific provisions of holders of SSM licenses.

   Similar to Sierra Leone’s mining law, the Ethiopian mining law includes relinquishment, revocation and expiration without renewal as events of termination. It also provides for termination in the event of the death of the individual licence holder or bankruptcy or liquidation of an entity licence holder.

   The general provisions on expiration of all mineral licenses establish the Government’s right to acquire the movable and immovable property used in the mining operations, at its book value, or alternatively to decline to do so and instead require the licence holder to remove them. The provisions also require all licence holders to fence and safeguard any open pits or other works in the licence area in order to protect the safety of other persons.

   The specific provisions on expiration of SSM licenses require the holder to apply for a mine closure certificate within 180 days from a licence revocation, termination of mining operations, total or partial relinquishment, or abandonment of the mine. (Greater clarity is needed as to how this would apply in a case of revocation.) In order for the certificate to be issued, the provisions pertaining to health, safety and the environment must have been addressed.
### 27. Small Scale Licencing

#### 27.11. Revocation of License

This section provides for when a licence may be revoked (or cancelled or withdrawn). This may happen if the conditions under which the licence was issued have changed (for example, the licence holding entity is no longer wholly owned by nationals, as required) or are no longer being observed (for example, limits on investment or production have been exceeded). This may include failure to rectify noncompliance with provisions in the law such as record keeping requirements, a prohibition against using child labour, and mandatory health, safety and environmental management obligations.

Because licence revocation is the ultimate civil penalty for noncompliance with conditions or obligations of the SSM licence, the implementation of that sanction should be subject to due process protections. These should include:

1. Notice in writing to the licence holder stating the grounds for a proposed revocation;
2. A reasonable opportunity for the licence holder to present arguments and evidence of compliance or of a force majeure event that temporarily excused noncompliance; and
3. A reasonable opportunity to rectify a correctable violation of a condition or failure to meet an obligation and a decision as whether the cause for revocation has been rectified, as a condition prior to revocation.

These protections should essentially mirror those that apply in the case of revocations of large scale exploitation licences.

<table>
<thead>
<tr>
<th>27.11. Example 1:</th>
<th>Annotation</th>
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</thead>
<tbody>
<tr>
<td>Article [...]</td>
<td>Drawn from Sierra Leone’s mining law (2009), this example provides only two grounds for revocation that are specific to a SSM licence: failure to commence...</td>
</tr>
</tbody>
</table>

A SSM licence may be revoked by the [Regulating Authority] if the mining activities...
| have not commenced within 180 calendar days from the date of issuance or renewal of the licence or if the share ownership of [Country citizens] in the licensed entity is less than 25%. | activities under the licence in a timely fashion and failure to comply with the minimum national ownership requirement. Although these are the only two grounds for revocation of the SSM licence, holders are also subject to the general provisions on licence cancellation that apply to all mineral rights under Sierra Leone’s mining law. Thus, this example adds specific grounds for revocation of the SSM licence to the generally applicable grounds for revocation/cancellation of all types of mineral licences. This specific provision is necessary in order to enforce the national ownership condition for the SSM licence and to prevent holders from using licences to block others from accessing certain sites rather than performing work on the site themselves. |

27.11. Example 2:

Article [__]. Revocation of licence

(1) The [Regulating Authority] may revoke a SSM licence granted under the terms of this [Act][Code][Law] where,

(a) the [Regulating Authority] is satisfied that the licensee has contravened or failed to comply with a term or condition of the licence or a requirement applicable to the licensee,

(b) the licensee is convicted of any offence relating to the smuggling or illegal sale or dealing in minerals, or

(c) the [Regulating Authority] is satisfied that it is in the public interest to do so.

Annotation

Drawn from Ghana’s mining law (2006), this example provides three alternative grounds for the revocation of a SSM license. These grounds are broader than the grounds in the preceding example because they constitute all of the grounds for revocation or cancellation of a SSM licence under Ghana’s mining law. The SSM licence is not within the definition of the term “mineral right” under Ghana’s mining law and is therefore not subject to the general provisions on cancellation of mineral rights. Thus, this is an example of an inclusive revocation provision for SSM licences.

27. Small Scale Licencing

27.12. Surrender of License

This section provides for when a licence holder gives up the mining right voluntarily before the duration of the licence has run out. Surrender can be by way of partial or whole relinquishment. Certain conditions would need to be satisfied for this to be permitted, and include environmental
requirements being met.

Not all mining laws provide for surrender of SSM licences. Under mining laws in which the maximum surface area of a SSM licence is very limited and the term of the licence is rather short, such provisions may obviate the need for a surrender provision. Surrender provisions are important primarily for exploration licences under which the licensed area is very large and the goal of the licensee is to gradually narrow and focus the exploration effort, by process of elimination, and for exploration or exploitation licences that have terms longer than that which is necessary for the completion of the exploration or mining operations. In mining laws that provide for partial or total surrender of licence areas under a SSM licence, the applicable provisions are those that apply to surrender of area under any type of mineral right.

<table>
<thead>
<tr>
<th>27.12. Example 1:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>Article [...]</td>
<td>Drawn from Sierra Leone’s mining law (2009), this provision applies to SSM licences because they are “mineral rights” under the mining law. There is no specific surrender provision for SSM licences.</td>
</tr>
<tr>
<td>1) Subject to this [Act][Code][Law] and any condition of his mineral right, the holder of a mineral right may surrender the area covered by his mineral right or part of it by-</td>
<td>The surrender section in this example includes provisions that cover the following principles:</td>
</tr>
<tr>
<td>(a) giving the [Regulating Authority], not less than ninety calendar days’ notice of his intention to surrender the whole or part of the area concerned; and</td>
<td>1) Surrender is not automatic and self-executing. It requires the issuance of a certificate of approval by the Regulating Authority, which in turn requires advance notice.</td>
</tr>
<tr>
<td>(b) complying with such conditions as may be prescribed or stated in the mineral right.</td>
<td>2) Surrender cannot be used as a way to avoid compliance with any conditions of the mineral right. Neither does it enable the licence holder to avoid any liability or obligations incurred prior to the date when the surrender becomes effective due to the issuance of the certificate by the Regulating Entity.</td>
</tr>
<tr>
<td>(2) Upon compliance with paragraphs (a) and (b) of subsection (1), the [Regulating Authority] shall issue a certificate of surrender to the holder.</td>
<td>3) In the case of partial surrender, the license holder must submit an acceptable map of the area to be surrendered, together with technical reports of the work performed on that area, and mark off the remaining area retained, once the surrender has been approved.</td>
</tr>
<tr>
<td>(3) If the application for a certificate of surrender is in respect of part only of the area covered by the mineral right, the holder shall-</td>
<td></td>
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<tr>
<td>(a) in his application-</td>
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<tr>
<td>(i) provide a reliable plan in a form and substance acceptable to the [Regulating Authority], of the area to be relinquished; and</td>
<td></td>
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<tr>
<td>(ii) submit detailed technical reports as prescribed containing all information, results, interpretation and data relating to the surrendered area from the commencement of the mineral right;</td>
<td></td>
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</tbody>
</table>
(b) if the application is approved, demarcate the remaining area in the prescribed manner.

(4) No surrender of any area covered by a mineral right shall be effective until the [Regulating Authority] has issued a certificate of surrender in respect of that area upon payment of the prescribed fee by the holder.

(5) A surrender of an area covered by a mineral right shall be without prejudice to any liabilities or obligations incurred by the holder in relation to the area surrendered prior to the date of surrender.

(6) On the issue of a certificate of surrender the [Regulating Authority] shall-

(a) if the surrender is in relation to the whole area covered by a mineral right, cancel such right; or

(b) if the surrender is in relation to part only of the area covered by a mineral right, amend the mineral right accordingly.

If the surrender was partial, then the remaining mineral right will be amended to reflect the change.

27.12. Example 2:

Article [ ]

(1) The holder of a small-scale or large-scale mining license or a lease may, without prejudice to the rights of persons claiming under the license, surrender any such license or lease by giving to the [Regulating Authority], unless otherwise agreed, at least 12 months advance written notice.

(2) Any person who surrenders his license or lease right, pursuant to sub-article (1) of this Article, shall not be released from the liability of performing the duties imposed upon him and due to be performed during the term of the license or lease.

<table>
<thead>
<tr>
<th>Annotation</th>
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<tbody>
<tr>
<td>Drawn from Ethiopia’s mining law (2010), this example refers specifically to the surrender of areas under SSM licences, although the provision applies equally to large scale exploitation licences. This example differs from the preceding example in the following ways:</td>
</tr>
</tbody>
</table>

1) It appears to be automatic and self-executing, when the required advance notice is given to the Regulating Authority.

2) The required advance of 12 months is much longer than the 90 days’ notice required in the preceding example.

3) It only provides for surrender of the licence. The provision does not...
## Part B-4: Small Scale Licensing

### 27.13. Transfer/Assignment of Rights

This section should provide for whether a SSM licence holder may hand over, sell, rent (either part or the whole) or in any way encumber/place a lien on the licence for the benefit of another person or entity as well as under what conditions this transfer may take place. The transfer should be aligned with the eligibility provisions. Transfer/assignment may be partial or whole.

#### 27.13. Example 1:

**Article [__]. Mineral rights transferable**

(1) The holder of a SSM licence, or where the holder is more than one person, every person who constitutes the holder of that SSM licence, shall be entitled to assign the mineral right or, as the case may be, an undivided proportionate part thereof to another person.

(2) A SSM licence may not be assigned to a person to whom that SSM licence could not have been granted under this [Act][Code][Law].

(3) Application for assignment or transfer of SSM licences shall be made in a prescribed form and accompanied by a prescribed fee.

**Annotation**

Drawn from Tanzania’s mining law (2010) - from which inapplicable subsections have been deleted – this liberal provision authorizes transfers of SSM licences in whole or in part, provided that the transferee is eligible to hold a SSM licence (i.e., a Tanzanian citizen, a partnership of Tanzanian citizens or a company wholly owned and controlled by Tanzanians).

Although the Section in the example provides that an application for the transfer must be filed, the consent of the Regulating Authority to the transfer of an SSM licence is not required under the Tanzanian mining law. All that is required is that the transfer be made to one or more eligible Tanzanian persons or entities, and that an application for the transfer (in the form prescribed in the regulations) be filed, accompanied by the prescribed fee.

#### 27.13. Example 2:

**Article [__]**

(1) No SSM licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the [Regulating

**Annotation**

Drawn from Botswana’s mining law (1999), this example differs from the preceding example in the following ways:

1) The approval of the Regulating Authority is required for any transfer
27. Small Scale Licensing

### 27.14. Specific Violations and Penalties

This section provides for what are considered violations that are specific to small scale mining activities, and which will result in penalties in the form of fines and/or imprisonment. Small scale mining is subject to the general provisions of the mining law on violations and penalties, as well. These specific violations should relate to the unique features of small scale mining, for example: (a) it is limited as to investment, or degree of mechanization, or production volume, and (b) it is reserved exclusively for nationals and national-owned entities.

#### 27.14. Example 1:

**Article [__]. Unlawful possession of precious minerals.**

1) Any person who is in possession of any precious mineral and who fails to prove that he is in lawful possession of such mineral commits an offence.

2) For the purpose of subsection (1)-

<table>
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<th>Annotation</th>
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| Drawn from Sierra Leone’s mining law (2009), this provision makes it an offence for any employee of a small scale mining licence holder to be in possession of precious minerals except at the work site within the licence area. It also makes it an offence for the SSM licence holder to be in possession of precious minerals unless the holder is at the above-mentioned work site, at the holder’s registered place of business, or at any other place “used to exercise the
(a) a labourer or tributer employed by the holder of a small-scale mining licence shall not be deemed to be in lawful possession of a precious mineral unless such mineral is in his possession within the actual workings in the mineral right area;

(b) the holder of a small-scale licence or its duly authorized agent as the case may be, shall not be deemed to be in lawful possession of the precious mineral unless such mineral is in its possession-
   (i) within the actual workings of its mineral right area;
   (ii) within its registered place of business; or
   (iii) any other place used to exercise the rights vested in it in respect of such minerals by virtue of the licence.

(3) Subject to article [_] and this article, no other person shall be deemed to be in lawful possession of a precious mineral unless such mineral is in his possession under and in accordance with the terms of a valid mineral right or minerals licence issued under this [Act][Code][Law].

(4) Any person who commits an offence under this section shall be liable on conviction to imprisonment for a term not less than [_] years.

(5) In addition to the penalty imposed in subsection (4) for an offence committed under this section, any precious minerals in connection with which the offence was committed shall be forfeited to the State.

### 27.14. Example 2:

**Article [_]**

(1) Any holder of a small scale mining licence who knowingly engages in mining operations within the licensed area that exceed the limits of scale, mechanization, investment or production applicable to the holder’s licence for more than two days without having first obtained the approval of the [Regulating Authority] or the transformation of the SSM license into a standard exploitation licence shall be guilty of an offence and shall be liable upon conviction for the payment of a fine of not less than [_] [national currency] and not more than [_] [national currency] or to imprisonment for not less than [_] days nor more than [_] year(s), or to both

**Annotation**

This example makes it a criminal offence for the holder of a SSM licence to knowingly engage in activity that exceeds the limits of scale, mechanization, investment or production that apply to the SSM licence for more than a very short period of time without either obtaining the consent of the Regulating Authority or transforming the SSM license into a standard exploitation licence. The example also makes it a criminal offence to front for non-nationals in obtaining or acting under a SSM licence.
28. Artisanal Mining

Considerations that can help to determine whether an activity is Small Scale Mining (SSM) or Artisanal Mining (AM) include: types of deposits, depth of excavation, use of explosives, use of chemicals, participants, number of employees, level of investment. In some countries, AM is consolidated with SSM and generally referred to as Artisanal and Small Scale Mining (ASM) within the mining law. In other countries, such activities and the respective related licences or authorizations are treated separately. Yet in others, the mining law addresses one and not the other while in still others, a set of activities can be solely titled small scale mining and nevertheless include artisanal activities.

In this Section, AM is treated as an activity distinct from SSM; with AM defined as mineral extraction and rudimentary processing that is:

(a) continuous or seasonal,
(b) carried out by individuals or groups of individuals,
(c) conducted using primarily or exclusively manual labour and manual tools,
(d) carried out at a single site or multiple sites, and
(e) focused on producing mineral products that are primarily delivered or sold to
   (i) traders in those mineral products,
   (ii) local artists and craftsmen, or
   (iii) builders acting within the national economy.

The primary rationale for regulating AM is to formalize the sector. AM activities are usually already in existence and there is interest in ensuring that these activities are carried out according to state and national policies addressing poverty alleviation. Other goals in regulating AM include: to curb abuses such as forced labour, child labour, and vices related to gender discrimination; to eliminate or diminish unsafe or unhealthy practices by
artisanal miners; to ameliorate AM practices with respect to safety, security and environmental protection and social relations with local communities; to eliminate or minimize clandestine trade in a nation’s non-renewable mineral resources; and to improve the collection of tax revenue from the subsector.

There are multiple considerations that determine the choices that states make in the naming of the licence or authorization to be issued for artisanal mining. In most cases, it is not considered to be a mineral right; and it therefore does not have the same rights or obligations as the licenses that are mineral rights. It is recommended that in all cases, the title of the licence or authorization be consistent with the activities that it authorizes.

Legal engagement in AM can be based on:

1) authorizations (restricted to nationals) which allow the automatic right to conduct the activity, subject to complying with obligations for the proper conduct of the activity (e.g., Madagascar (2005) – gold digging authorization; DRC (2002) – artisanal miner card), OR
2) use of a permit system which allows for identification without an onerous licence application process before the conduct of AM activities (e.g., Zambia (2005) – artisan’s mining right), OR
3) applications for licenses, which requires steps that are more extensive than the acquisition of an identifying permit, also before engaging in the AM activity (e.g., Burkina Faso (2015), Côte d’Ivoire (2014) – artisanal exploitation authorization; Sierra Leone (2009) – artisanal mining licence).

28. Artisanal Mining

28.1 Eligibility

In most laws where AM is provided for separately from SSM, depending on whether the law provides for an authorization system, a permit system or a licence system (as described in the Introduction section above), the eligibility for engaging in the activity is restricted to either:

1) nationals (i.e., individuals who are citizens of the host country),
2) nationals and cooperatives of nationals, or
3) nationals, cooperatives composed of nationals and companies wholly owned by nationals.

The rationale behind this restriction is to support local livelihood and traditional mining activities, particularly in countries where there is a culture of
mining. It may also be seen as a lenient point of entry into the mining sector to allow the development of local mining entrepreneurs.

In laws where SSM and AM are addressed in a consolidated manner as ASM, a clear legal regime would isolate the issue of eligibility and indicate whether foreign nationals are eligible or not for AM authorization. In this regard, it is important to indicate if there is special permission for nationals from neighbouring countries with which there are reciprocal arrangements. Other general limitations include age of majority, exclusion due to bankruptcy or criminal charges etc.

28.1. Example 1:

Article [__]. Eligibility for artisanal mining licences.

(1) Any person who wishes to carry out artisanal mining operations shall apply for an artisanal mining licence

(2) An artisanal licence shall be granted to-

(a) an individual person who is a citizen of [Country];

(b) a co-operative society registered in [Country]comprising citizens of [Country]exclusively;

(c) a joint-venture or partnership registered in [Country]comprising citizens of [Country]exclusively; or

(d) a body corporate that is incorporated or registered in [Country] having one hundred percent of its shares held by citizens of [Country].

(3) All such co-operatives and partnerships shall register with the [Regulating Authority] and shall provide such documentation as the [Regulating Authority] may require.

Article [__]. Persons ineligible for artisanal mining rights

(1) No artisanal mining right shall be granted to an individual who:

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision – which involves an application process for an artisanal mining licence - permits only citizens of Sierra Leone or registered cooperatives, partnerships joint ventures and corporates that are wholly owned and controlled by citizens of Sierra Leone to be eligible for a license.

Individuals who are legally insolvent are ineligible, as are individuals who are underage or have been convicted of fraud or dishonesty. Similarly, corporate entities that are legally insolvent or who have among their managers or directors an ineligible individual are similarly ineligible.

The restriction of eligibility for artisanal mining rights to national citizens or entities wholly owned and controlled by such citizens is typical among mining laws. The reason for this is that artisanal mining is generally a poverty-driven phenomenon among segments of the local population; and the goal of the law is to formalize it. Artisanal mining by definition is labour intensive and not capital intensive. No foreign investment is necessary or desirable in AM. If AM were open to foreign individuals and entities, that could encourage migration to AM sites that would likely create social problems. On the other hand, existing informal AM activity, particularly in border areas, often involves a mixture of nationals and visitors from the neighbouring country. In those areas, it may be difficult to impossible to formalize the activity without including those foreign participants.
(a) is under the age of 18 years;

(b) is not a citizen of [Country] or has not been ordinarily resident in [Country] for a period of ten years immediately preceding the application for a mineral right;

(c) is an un-discharged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any arrangement or scheme of composition with creditors; or

(d) has been convicted of an offence involving fraud or dishonesty;

(2) No artisanal mining right shall be granted to a co-operative society which is not registered in accordance with the laws of [Country].

(3) No artisanal mining right shall be granted to a body corporate:

(a) which is not registered or incorporated under [the Companies Act]; or

(b) which is in liquidation other than a liquidation which forms part of a scheme for the reconstruction or amalgamation of such body corporate;
(c) in respect of which an order has been made by a court of competent jurisdiction for its winding up or dissolution;

(d) which has made a composition or arrangement with its creditors;

(e) which has among its shareholders any shareholder who holds at least a ten percent share of the company or a director, who would be disqualified in terms of subparagraphs (a) or (d) of paragraph (1).

28.1 Example 2:

Article [__]
(1) The artisanal exploitation authorization is granted to:
(a) individuals of [Country] nationality;
(b) corporate entities organized under [Country] law; and
(c) nationals of countries that extend reciprocity to [Country citizens].

(2) The mechanized artisanal exploitation authorization is granted to:
(a) individuals of [Country] nationality; and
(b) corporate entities whose share capital is held exclusively by [Country citizens].

Annotation

Drawn from Mali’s mining law (2012), this example refers to two types of artisanal mining authorization that exist under the law: the standard AM authorization and the mechanized AM authorization. The eligibility requirements for the mechanized AM authorization are more restrictive than those for the standard AM authorization.

Individuals are eligible for both types of authorization if they are citizens of Mali. Individual citizens of other countries that extend reciprocity to Malians are also eligible for the standard AM authorization, but not for the mechanized AM authorization. Corporate entities organized under Malian law are eligible to receive standard AM authorizations without regard to the nationality of the shareholders. For mechanized AM authorizations, only corporate entities (wherever organized) whose share capital is entirely owned by Malians are eligible.

Thus, this example leaves the door open to some foreign participation in AM that is not mechanized, but reserves mechanized AM exclusively for Malians and companies wholly owned by Malians. The reason for the distinction is probably the historic participation of nationals of neighbouring countries in artisanal mining in
28. Artisanal Mining

28.2. Requirements for Licence Applications

As a general matter, it must be kept in mind that AM is fundamentally a poverty alleviation activity engaged in largely by individuals in rural areas who are poor and illiterate. They often lack the capacity to read instructions and to complete applications in writing; and they often live and work in areas far from urban centres where offices of the Regulating Authority are located, without the means to travel to those offices.

The requirements for AM licence applications depend on which type of regime applies to AM under a country’s mining law, and whether AM is authorized in and restricted to designated zones or is authorized in a site specific to each permit or licence.

If the mining law establishes a simple authorization system that allows the artisanal miner to work in a designated artisanal mining zone, very little may be required beyond proof of identity, nationality and address; agreement to abide by certain rules as to security, health, safety and environmental protection and rehabilitation; and payment of a fee. Often the responsibility to grant the AM authorizations under this simplified approach is delegated to the local authorities in the communities where AM zones are established.

If the mining law establishes a simple permit system that allocates specific individual sites to each permit holder, it is also necessary to require the submission of a map or the cadastral coordinates of the area for which the permit is requested. This requires more sophistication on the part of the applicant, and verification by the cadastral authority as to whether the requested site is available. The permit issuing function may be delegated by the mining law to the heads of the provincial/state/zonal offices of the Regulating Authority because of their relative proximity to the sites of AM activity.

If the mining law provides for an AM licensing regime, then the application requirements are likely to closely resemble those for a SSM licence, the difference between the AM and SSM licences being essentially the lower limit on investment and/or production applicable to the AM licence and the ability to utilize mechanized exploitation techniques under the SSM license.

As a general matter, prior exploration to identify and evaluate a mineral deposit under an exploration licence is not required in connection with an
application for an AM licence (whether it be an authorization, a permit or a licence).

Where the applicants are cooperatives, partnerships and companies, these must register with the Regulating Authority and present certified copies of their organizational documents, as well as evidence that they are wholly owned by nationals if that is a requirement.

If an AM permit or licence on a specific site is requested, it may be required to show evidence of consultation with the traditional authorities under whose jurisdiction the area that is subject of the application falls and that permission to access the land for the purpose of AM has been granted.

Fees are typically payable either with the AM application or as a condition for the grant of the AM authorization/permit/license.

<table>
<thead>
<tr>
<th>28.2. Example 1:</th>
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<tbody>
<tr>
<td>Article [__]</td>
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<tr>
<td>(1) An application for the grant of an artisanal mining licence shall be made to the [Regulating Authority] in such form as may be prescribed.</td>
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<tr>
<td>(2) An application for the grant of an artisanal mining licence shall—</td>
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<tr>
<td>(a) be accompanied by a statement giving particulars of the capital and experience available to the applicant to conduct exploration and mining operations of the mineral efficiently and effectively;</td>
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<tr>
<td>(b) be accompanied by a plan of the area over which the licence is sought drawn in such manner as the [Regulating Authority] may require;</td>
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<tr>
<td>(c) be accompanied by documentary evidence that consent to use the land for mining purposes has been given to the applicant by the [applicable traditional authority] or rightful occupiers or owners of the land for mining purposes;</td>
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<tr>
<td>(d) shall state the period applied for;</td>
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<tr>
<td>(e) give or be accompanied by a statement giving particulars of the programme of proposed mining operations, including a statement of—</td>
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<tr>
<td>(i) the likely effects of the proposed mining operations on the environment and on</td>
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</tbody>
</table>

**Annotation**

Drawn from Sierra Leone’s mining law (2009), this example describes the comprehensive application requirements for an AM licence that are similar to the requirements for a SSM licence. The level of sophistication required to comply with this licence application requirement is way beyond the capability of the typical AM practitioner working at the mine site. This application requirement is suitable for a situation in which sophisticated entrepreneurs obtain AM licences to specific sites and hire as employees the workers who will conduct the operations at the AM site.

This is evidently a response to the reality that AM in Sierra Leone is focused largely on diamonds, as to which the imposition of a certain order and control is deemed necessary. This approach represents the most rigorous end of the spectrum of application requirements for AM licences. It would not work as a method of formalizing seasonal itinerant miners seeking to supplement their meagre incomes by finding and selling precious stones and/or metals.
The local population and proposals for mitigation and compensation measures;

(ii) any particular risks (whether to health or otherwise) involved in mining the minerals, particularly radioactive minerals, and proposals for their control or elimination;

(iii) the proposed marketing arrangements for the sale of the mineral production; and

(f) set out any other matter which the applicant wishes the Director to consider.

### 28.2. Example 2:

**Article [\_]**

1. In areas for artisanal mining, only those who hold currently valid artisanal miner's cards for the area concerned shall be authorised to mine gold, diamonds, or any other mineral substance which may be mined using artisanal methods.

2. Artisanal miner's cards shall be issued, by the Head of the Provincial Mining Division with jurisdiction, to those who are eligible, who apply for them, and who undertake to comply with the regulations relating to environmental protection and health and safety, in artisanal mining areas, in accordance with the rules laid down in the Mining Regulations, after they have examined said regulations.

3. When each card is issued, a set fee shall be collected, the total amount of which shall be determined in the regulations.

4. The Mining Regulations shall lay down the terms for obtaining an artisanal miner's card.

**Annotation**

Drawn from DRC’s mining law (2002), this article is an example of a provision from the other end of the spectrum, in comparison to the preceding example. DRC uses a simple authorization regime that enables access to designated AM zones. The authority to issue the artisanal miner cards is delegated to the Chief of the Provincial Division of Mines (the decentralized office of the Regulating Authority).

The only requirements for obtaining an AM card are as follows:

1) Make a request for the card to the Chief of the Provincial Division of Mines;

2) Commit to respect the regulations with respect to protection of the environment, hygiene and security in the AM zones, in accordance with the measures set in the mining regulation after having learned them; and

3) Payment of a fixed fee.

This simple system is designed to facilitate formalization by often illiterate artisanal miners who will be authorized to working in designated zones. It assumes that officials of the Regulating Authority will explain the regulatory requirement concerning environmental protection, hygiene and security in the AM zones to applicants.
28. Artisanal Mining

28.3. Licence Refusal Appeal Process

Provisions outlining the licence refusal appeal process should address:

- Why a licence may be refused and the due process to be followed by the regulator. The reasons for refusal may include non-eligibility or a failure to meet a specific “requirements of the application”. The process of refusal must indicate the format in which refusal will be communicated, the dates that days that are allowed to lapse before the communication is made, informing the applicant of his right to appeal the application refusal, and

- The process that the applicant can follow to appeal the refusal.

These provisions are often deferred to the regulations in light of the fact that the process of granting authorizations/permits for artisanal mining is often decentralized to a local level which may be subject to changes in organization of administration. In countries where artisanal mining is a major activity, the principles of the licence refusal appeal process might best be set out in the mining law. They are part of or cross referenced with the section that sets out the process of disposition of the application. Where a formal application is required, that includes where the application will be lodged, how it will be processed, the duration of the processing period, how the applicant will be informed of the regulator’s decision on the application, the option for which are: a) refusal, b) acceptance or c) requesting provision of additional information. In cases of authorization to work in designated artisanal mining zones, where no formal application is required, the processing is greatly simplified and the appeal process should also be simplified and avoid the necessity of formal writing.

28.3. Example 1:

Article [__]. Disposition of applications for artisanal mining licences

(1) The [Regulating Authority] may grant or refuse to grant an artisanal mining licence

(2) The [Regulating Authority] shall issue its decision on an application for an artisanal mining licence within [] days of the filing of an application that is

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision provides for the licence to be obtained at the level of the Regulating Authority, whilst the appeal is handled at the Ministerial level, both of which are within the same administrative structure.

This detailed appeal provision is designed for the more formal artisanal mining licence application procedure that is administered by the Regulating Authority, as
(3) If an application that has been submitted is lacking in any essential information, the [Regulating Authority] shall, within [_] days of the submission of the application request the applicant to provide the missing information. The applicant must provide the requested additional information within [_] days of receipt of the request, failing which the application will be deemed withdrawn. The process will be repeated if necessary until the application is complete.

(4) A decision refusing to grant the artisanal mining licence shall be issued in writing stating the reasons for the refusal in accordance with the terms of this [Act][Code][Law]. The decision will be delivered to the applicant by the means stated in this [Act][Code][Law] within [_] days of the issuance of the decision and will inform the applicant of his or her right to appeal the decision, the authority to which any appeal is to be made, and the timeframe within which the appeal must be filed.

Article [__]. Appeals of a refusal to grant artisanal mining licence
(1) Any person aggrieved by the refusal of the [Regulating Authority] to grant that person an artisanal mining licence may appeal to [the Reviewing Authority].

(2) Any appeal under subsection (1) shall be in writing stating the reasons why the decision refusing the artisanal mining licence should be overturned, and shall be lodged with the [Reviewing Authority] within [_] days of the delivery of the decision of refusal to the applicant.

(3) The Reviewing Authority may decide the appeal on the basis of the written submission or may, within [_] days of the submission of the appeal, convolve a hearing on the appeal which shall take place within [_] days of delivery of notice to the applicant by the means stated in this [Act][Code][Law].

(4) The decision of the [Reviewing Authority] shall be issued in writing within [_] days of the date when the appeal was lodged or the date of the conclusion of the hearing, whichever is later, stating the reasons for the decision to uphold, overturn opposed to a less formal authorization/permitting regime administered at the local level. Thus, decisions and appeals in writing are required, and strict timeframes for the processing of the application, the issuance and delivery of decisions and the lodging of appeals must be observed.

The procedure assumes that the application requirements are such that additional information may be required before the Regulating Authority considers the application to be complete; so provision is made for that contingency.

The example also assumes that a general provision elsewhere in the mining law specifies the means by which decisions are to be delivered to the applicant for a licence which could be either by regular mail, by electronic mail, by posting in a public information room, or by some other means that is appropriate to the context.

In this example, the possibility but not the necessity of a hearing on appeal is provided for. It is assumed that most appeals can be disposed of based on the written submission alone; but a hearing could be necessary if clarification is needed or if necessary to establish the identity and nationality of the applicant.

The decision of the Reviewing Authority on appeal is final in this example because it is unlikely that the applicant has the means to challenge the decision in court, and the applicant has not lost any investment due to the decision. If the refusal and denial on appeal are the result of corruption or misconduct on the part of the Regulating Authority and/or the Administrative Reviewer, those grounds for a judicial challenge should be available under another statute or under a general appeal provision in the mining law.
or modify the decision of refusal to grant the artisanal mining licence. The decision of the Reviewing Authority shall be final and not subject to further appeal.

### 28.3. Example 2:

Article [__]

(1) Any decision by [the local permitting authority] refusing to grant an artisanal mining authorization/permit shall be issued in writing stating the reasons for the refusal in accordance with the terms of this [Act][Code][Law]. The decision will be delivered to the applicant by the means required for the delivery of administrative acts by such [local permitting authority] as stated in the applicable law and regulations. Such delivery shall be made within [__] days of the issuance of the decision and will inform the applicant of his or her right to appeal the decision, the authority to which any appeal is to be made, and the timeframe within which the appeal must be filed.

(2) Any person aggrieved by the refusal of the [local permitting authority] to grant that person an artisanal mining authorization/permit may appeal to [the appeal board of the Regional Mining Commission, a consultative body composed of representatives of Government, the mining industry, local communities and civil society].

(3) A request for appeal under this Section shall be made to the appeal board of the Regional Mining Commission within [__] days of the delivery of the decision of refusal to the applicant. The request need not be in writing.

(4) The appeal board of the Regional Mining Commission shall, within [__] days of the request for appeal, convocate a hearing on the appeal which shall take place within [__] days of delivery of notice to the applicant by the means required for the delivery of acts of the local permitting authority.

(4) The decision of the appeal board of the Regional Mining Commission shall be issued in writing within [__] days of the date of the conclusion of the hearing, stating the reasons for the decision to uphold, overturn or modify the decision of

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### Annotation

The above example provides for appeals of decisions of the Regulating Authority responsible for mines. This example provides for decentralisation of the appeal process, i.e. a local authority that reviews decisions of the local permitting authority. The reviewing authority should be independent of the permitting authority. In this case, the existence of a Regional Mining Commission composed of representatives of Government, industry, local communities and civil society is assumed, and that said commission has an appeal board. This provides artisanal miners with the assurance that they can appeal to an entity that is representative of various stakeholders concerned with mining and that is independent of the local permitting authority. It also provides a check on the power of the local permitting entity.

The example provides timeframes for decisions and actions; and it requires decisions of the local permitting authority and the appeal board to be in writing. It does not assume, however, that any application in writing was required for the artisanal mining authorization or permit; nor does the filing of a written appeal. This approach is designed for the case of simplified authorization or permitting of artisanal miners to work in designated artisanal mining zones.
refusal to grant the artisanal mining authorization/permit. The decision of the appeal board shall be final and not subject to further appeal. It shall be implemented by [the local permitting authority] within [_] days.

28. Artisanal Mining

28.4. Area

The section on area should provide for the spatial limits within which the artisanal mining is authorized. If a specific site is designated for the AM licence, the mining law should establish the minimum and maximum size (which may vary depending on the mineral to be exploited), the shape and orientation of the area, whether or not contiguous license areas are permitted, and whether under certain conditions overlapping licence areas with other types of mineral licenses are permitted. The area should be a polygon with a minimum and maximum number of sides prescribed by the general rules for mineral licence areas or composed of cadastral units as set out in the mining law.

Alternatively, the mining law may provide for the creation of special designated areas set aside for artisanal mining operations in which the issuance of other mining rights will not be permitted.

28.4. Example 1:

Article [_]

(1) Subject to this section, the [Regulating Authority] shall, within [thirty] days of receipt of an application under article [_], and on the recommendation of the Mining Cadastre Office, grant an artisan’s mining right to the applicant, to explore and mine the deposit referred to in the application.

(2) An artisan’s mining right shall—

(a) identify the minerals in respect of which it is granted; and

(b) be granted over an area not exceeding two cadastre units, not being an area that is already subject to a mining right, which shall be delineated on a plan

Annotation

Drawn from Zambia’s mining law (2008), this is an example of a provision for individual AM licence areas. It provides for a review of the area for which the AM licence is to be issued by the Mining Cadastre Office in order to verify that the licence area is not within an existing licence area of any other mining right (i.e., no overlaps whatsoever are permitted).

By making the grant of the AM licence subject to the recommendation of the Mining Cadastre Office, the example assures that the shape, orientation and size of the licence area conform to the applicable cadastre rules for all licence areas.

The spatial limit of two cadastre units for the licence area translates to an average of
### AMLA GUIDING TEMPLATE

**PART B-4: Small Scale Licencing**

2 x 3.34 hectares = 6.68 ha per licence. The mining law does not limit the number of AM licences that a person may hold; nor does it prohibit the grant of licences over contiguous areas to the same person. Therefore, a person could potentially secure access to a larger area by obtaining more than one AM licence. However, the AM licence is intended to authorize exploitation of a deposit that can be efficiently exploited within a short time frame (1-3 years) using artisanal (i.e., non-mechanized) methods. If a person has identified a deposit larger than what can be exploited within 6 2/3 has mechanized exploitation will probably be appropriate and the person should apply for a SSM licence rather than an AM licence.

<table>
<thead>
<tr>
<th>28.4. Example 2:</th>
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<tr>
<td><strong>Article []</strong>. Establishing an area for artisanal mining</td>
</tr>
<tr>
<td>(1) When, due to the features of certain deposits of gold, diamonds or any other mineral substance, technical and economic factors do not allow for industrial or semi-industrial operations, but do allow for artisanal operations, such deposits shall be established as an artisanal mining area, within the limits of a set geographic area.</td>
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<tr>
<td>(2) The establishment of an artisanal exploitation zone shall be carried out by [the decision of the Regulatory Authority] after consultation with [the Mines Directorate] and [the Governor of the Province] concerned.</td>
</tr>
<tr>
<td>(3) A mining perimeter with a valid mining title cannot be converted into an artisanal mining area. Such a perimeter is expressly excluded from artisanal zones established in accordance with the provisions of this [chapter].</td>
</tr>
<tr>
<td>(4) The establishment of an artisanal mining area is addressed to the Mining Cadastre, which deals with mining rights maps. As long as an artisanal mining area exists, no mining title can be granted, except for a research permit requested by a group of artisanal miners working in the zone.</td>
</tr>
<tr>
<td>(5) However, [the Geology Department] may at any time carry out prospecting and research in artisanal areas.</td>
</tr>
</tbody>
</table>

**Annotation**

Drawn from DRC’s mining law (2002), this is an example of the establishment of an artisanal mining zone in which all mining will be reserved for holders of AM authorizations to work in the area. This approach limits AM to certain designated zones instead of assigning specific areas to AM licence holders.

In order for an area to be designated as an AM zone, it must contain deposits of minerals that are suitable for AM but not for industrial exploitation. Advice of the geological service and the provincial governor is required to be considered by the Regulating Authority before it takes a decision to establish an AM zone. Furthermore, an AM zone may not be created over an area where a mineral licence already exists.

The Mining Cadastre records the newly established AM zone on its cadastre maps, thereby assuring that the area is available and that the shape, orientation and alignment of the zone corresponds to the cadastre rules on licence areas. No new mineral licence is allowed to be granted within the AM zone, with the exception of an exploration licence that may only be granted to a grouping of the AM authorization holders operating in the zone. However, the geological service is authorized to conduct exploration activities in the zone.
The Mining Regulations set the conditions for the exceptional granting of the Research Permit to the grouping of artisanal miners.

28. Artisanal Mining

28.5. Specific Obligations of a Licence Holder

The nature and extent of the obligations of AM license holders vary considerably, depending on a country’s type of AM licensing. In countries that authorize or permit AM only in designated zones under a locally administered permitting regime, the obligations of the holders of AM authorizations or permits tend to be quite limited to observance of rules regarding protection of the environment including site rehabilitation, security, health and safety. They may be required to contribute to a common fund to be used for site rehabilitation. Alternatively, a portion of the royalties paid in respect of the minerals that they extract and sell may be allocated for that purpose. In this context, the AM authorization holders are generally poor and illiterate individuals working in remote areas.

In some cases, holders of AM authorizations in a region may operate within the licence area of the holder of a large scale exploitation licence who consents to that. In such case the LSE licence holder is responsible to the State for the environmental consequences of the allowed AM activity and the obligations of the holders of the AM authorizations vis-à-vis the LSE licence holder are the subject of an agreement negotiated between the parties.

In countries that grant AM licences over specific licence areas under a more sophisticated application procedure administered by the Regulating Entity, the obligations of AM licence holders tend to more closely resemble those of SSM licence holders. In such cases, specific obligations of a licence holder often cross reference other laws such as Land and Environment, and may include:

- management of the environmental impacts and site rehabilitation,
- health and safety practices,
- employment conditions,
- social obligations,
- prescribed land access procedures which may include compensation of rightful owners or occupiers of land for disturbance of their rights,
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PART B-4: Small Scale Licensing

- traceability of origin of the minerals,
- observing the rights of other land users and mining right holders, and
- human rights issues including prohibitions on child labour, forced labour, gender discrimination and money laundering.

In addition, the mineral production of artisanal miners is subject to an obligation to pay royalties and may be subject to an obligation to make local tribute payments. That payment obligation may be an obligation of the AM licensee or of the trader who purchases the AM production for resale. AM licensees are generally subject to other tax obligations as well. This section deals only with non-fiscal obligations, however.

28.5. Example 1:

Article [__]
(1) The holder of an artisanal mining licence shall—

(a) within the limits of its competence and resources, carry on in good faith, in the licensed area, exploration or mining operations;

(b) furnish the [Regulating Authority] with such information relating to its exploration or mining operations as the [Regulating Authority] may reasonably require or as may be prescribed;

(c) carry out promptly any directives relating to its exploration or mining operations which may be given to the holder by the [Regulating Authority] for the purposes of ensuring safety or good mining practices;

(d) if not personally supervising the exploration or mining operations under the licence, employ a Mines Manager for the purpose of supervising its exploration or mining operations provided that all such Mines Managers must be approved by the [Regulating Authority] and shall carry with them such means of identification as the [Regulating Authority] may direct;

(e) employ in the area in respect of which the licence is issued not more than fifty labourers or tributers per artisanal mining licence;

Annotation

Drawn from Sierra Leone’s mining law (2009) this example pertains to an AM licensing regime administered by the Regulating Authority, as opposed to an authorization regime delegated to local authorities. The obligations of AM licence holders under this example are rather comprehensive and resemble those of SSM licence holders. However, the section is drafted with some sensitivity to the limitations of even the relatively sophisticated AM license holder to which this section applies. Operations are to be carried on in good faith within the limits of the competence and resources of the licence holder, rather than based on state of the art or best practice standards.

The example contemplates that the AM licence holder may not personally supervise the mining operations. This reflects the phenomenon that AM facilitators tend to be urban merchants with capital available to hire, equip and pay workers to carry out the AM work within their licensed area. In such cases, an on-site Mines Manager with appropriate identification is required. A limit of 50 labourers or “tributers” at the mine site is imposed; and the licence holder is required to promptly carry out any directives of the Regulating Authority to ensure safety or good mining practices.

With respect to record-keeping and reporting, the obligations in the example are comprehensive but not inflexible:

- Licence holders are to furnish “such information relating to its exploration
PART B-4: Small Scale Licensing

(f) sell the minerals obtained in the artisanal mining licence area as prescribed;

(g) carry out rehabilitation and reclamation of mined out areas;

(h) keep accurate records of winnings from the artisanal mining licence area and such records shall be produced for inspection on demand by the [Regulating Authority] or a duly authorized officer; and

(i) submit such reports are may be prescribed.

or mining operations as the [Regulating Authority] may reasonably require or as may be prescribed”.

- They must keep accurate records of their production and making those records available for inspection on demand by an authorized officer.
- And they must furnish such reports as are prescribed.

These obligations may be reasonable and necessary from AM licence holders who are sophisticated business people; but they far exceed the capability of the often illiterate workers who work as itinerant artisanal miners to alleviate their poverty.

28.5. Example 2:

Article [__]
The Decentralised Territorial Administrative Division which issues artisanal miner's permits shall ensure that the artisanal miners concerned abide by the measures for health, safety and environmental protection which shall be defined in the regulations.

Article [__]
An Extension Office shall be responsible for providing technical assistance and training to artisanal miners and Decentralised Territorial Administrative Divisions, as regards artisanal mining and prospecting for precious and semi-precious materials, health and safety measures for mines, environmental protection, as well as on procedures to be followed in order to obtain artisanal mining permits.

Article [__]
The Extension Office shall be authorised to carry out any operation which is for the purpose of collecting the required information to control artisanal mining activities.

Article [__]
Holders of artisanal mining permits are to carry out their work in compliance with the specific environmental obligations specified in the regulations.

Annotation

Drawn from Madagascar’s mining law (2005) this example is geared toward a decentralized system of AM regulation where local authorities grant AM authorizations and the AM authorization holders work in designated zones.

In this context, the local territorial administration that delivers the AM authorizations is responsible for ensuring that the miners to whom it has granted authorizations respect the rules on security, hygiene and environmental protection that are set for them in regulations.

The national Extension Agency is given the responsibility for providing technical assistance and training to artisanal miners and local authorities with respect to exploration and exploitation of precious and semi-precious substances; mine security and hygiene; protection of the environment; and the procedures for the issuance of AM authorizations. The Extension Agency is also authorized to collect whatever information is necessary to increase understanding of artisanal mining.

The holders of AM authorizations have the explicit obligation to conduct their activities in accordance with specific environmental protection measures set for them in regulations. The fee that they must pay in order to obtain their AM authorization includes a contribution to an environmental clean-up fund; and they must agree to take prevention measures against environmental damage and carry out site rehabilitation in accordance with programs established by the local territorial
All artisanal mining permit holders shall pay the Decentralised Territorial Administrative Division which issued the permit an environmental contribution which shall be included in the granting fee, and shall undertake to carry out environmental rehabilitation and prevention work at the gold panning sites in accordance with the programmes established by the Decentralised Territorial Administrative Division.

These provisions offer an example of a pragmatic approach to improving the practices of widespread and sometimes chaotic AM activity in an environment of extreme poverty and isolation.

28. Artisanal Mining

28.6. Rights of a Licence Holder

As is the case with respect to their obligations, the rights of AM licensees depend on the type of authorization/permit/licensing regime that applies to them.

If the “licence” is a simple authorization to engage in AM in a designated AM zone, granted by a local authority, the rights of the AM authorization holder tend to be limited to a non-exclusive right to work in that zone and to sell the authorized mineral products extracted. Because the AM zone has been pre-established by the mining administration, the licensee is assured of access to the site without the need to obtain other consents.

If the licence is granted as to a specific licence area, the rights granted are likely to be exclusive and also include the rights to erect necessary structures on the land, subject to the consent of the landowner or lawful users, if any, as well as the right to utilize water and timber resources within the licence area. Because the licence area is selected by the licence applicant and is not pre-established, access to the site by the licensee may be subject to obtaining the consent of any landowners or lawful users.

The right to sell the mineral output of the licensee’s labours is inherent in all types of AM authorization/permit/licence although this is sometimes not made explicit. As a matter of best practice, the right should be specified. Some mining laws regulate the buyers to whom the AM licensees can sell their mineral products.

Other issues that are treated variably by mining laws are: (a) whether the licensee has the right to process the minerals extracted pursuant to the AM license, and (b) whether the license holder has the right or a priority to obtain the transformation of the AM licence into a SSM licence or a standard
### 28.6. Example 1:

**Article ...**

An artisanal mining permit relating to mining materials confers on the recipient an exclusive right to carry out artisanal mining and to dispose of the specified mineral substances they find there on the open market and for own account, within the area determined in the permit, under the conditions defined therein, and to a depth which is compatible with workers’ safety as established in the regulations.

**Article ...**

(1) The recipient of an artisanal mining permit relating to mining materials is to mine mineral substances in a rational manner, complying with the standards for public health and safety for work, environmental preservation and the marketing of mined products in accordance with the regulations in force.

(2) Subject to the provisions of Articles ... (on the relationship between mining operators and landowners and other occupants of the land, and relationships between mining operators) in the present Code, the recipient of an artisanal mining permit may not, except with the prior consent of the farmers, engage in work on cultivated land, nor may they obstruct the normal irrigation of land under cultivation. In the event that damage is caused, the Holder shall be required to compensate the farmers for the loss suffered.

**Article ...**

(1) An artisanal mining permit relating to mining materials does not confer on the holder any particular right to obtain a subsequent mining title.

(2) An artisanal mining permit relating to mining materials supersedes prospecting activities on the surface area covered by said permit. In the event that an industrial operating title covering the same surface area is granted the permit shall not be renewed, but the recipient shall have the right to indemnification from the new operator.

**Article ...**

(1) An artisanal mining permit relating to mining materials is a right which may...

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**Annotation**

Drawn from Burkina Faso’s mining law (2015), the articles in the example provide the following details as to the rights conferred by the AM licence (called “artisanal mining authorization” in the Mining Code of Burkina Faso), which is not a mining title under that law:

1. The right to exploit specified minerals within the specified licence area is exclusive.
2. The AM right is spatially limited not only by the borders of the licence area, but also as to depth. The limit on the depth of an artisanal mine is set in the regulations, based on what is considered compatible with the security of the mineworkers.
3. The AM right is subject to conditions specified in the licence.
4. The AM right is also subject to regulations as to rational exploitation, public health, mine safety, environmental protection and marketing of mineral products. The AM licence holder may not conduct operations on agricultural land without the agreement of the local farmers and may not interfere with the normal irrigation of crops. The holder is responsible to pay for any damages caused to farmers.
5. The AM right is not a mining title and does not include any right or preference to obtain a mining title. Although the AM right is exclusive within the licence area, an exploration licence may be superimposed on the same area. Furthermore, if an industrial exploitation licence is subsequently granted to a party other than the AM licence holder, the latter licence will not be renewed. However, the licence holder will be entitled to compensation by the new industrial exploitation licence holder.
6. The AM licence is not a right that can be pledged. It can however be sublet, upon authorization by the Regulating Authority. The AM licence cannot be transferred, except in the case of death or disability of the licence holder.

This is an example of a comprehensive statement of the rights of AM licence...
not be used as security. It may be subleased with authorisation from [the Regulatory Authority].

(2) Artisanal mining permits may not be assigned. They may be transferred in the event of the death or personal incapacity of the operator, subject to prior approval from [the Regulatory Authority], and subject to payment of the duties and taxes provided for in the Tax Code with regard to succession.

28.6. Example 2:

Article [__]
(1) Subject to the provisions of this [Act][Code][Law] or any other law and any condition of an artisanal mining licence, the holder of an artisanal licence shall have the exclusive right to carry on exploration and mining operations in the licensed area.

(2) The holder of an artisanal mining licence may, in the exercise of the right conferred under subsection (1), enter the licensed area and remove minerals from the area and dispose of the mineral in respect of which the licence was issued.

Annotation
Drawn from Sierra Leone’s mining law (2009), this example provides an exclusive right to the holder of an AM licence granted with respect to a specified mineral and a specified licence area. The right includes the right to enter the specified area and to carry on both exploration and exploitation, and to remove and dispose of the specified minerals, which encompasses the right to sell the minerals. The right may be subject to conditions specified in the licence, which may address other issues referenced above.

28. Artisanal Mining

28.7. Term of License

The Term of license the AM licence provisions provide for the minimum and maximum duration of the initial period of validity of the license licence, that can be valid for. The time allowed should consider that different the types and sizes of mineral deposit available, and the capacity to exploit it in the time allowable. For a variety of reasons, the term of the AM licence tends to be short: one or two years in most cases. By definition, AM licences are only granted as to small deposits that are not suitable for industrial exploitation. Also by definition, AM is only conducted using traditional manual labour and tools, without mechanization. Since little or no capital investment is required, a substantial term within which to recover capital is not necessary. Moreover, AM has generally been an informal or illegal activity, with artisanal miners moving to a new site as recovery of minerals diminishes at the old site. In this context, the State has an interest in retaining the ability to closely monitor and restrict artisanal mining at a site in...
order to prevent or limit environmental damage, forced labour, child labour, unhealthy and/or unsafe working conditions, money laundering or other illegal, unsafe or unhealthy practices. In short, the deposit should be one that can be effectively exploited without mechanization in a year or two, there is no substantial investment that necessitates a longer recovery period, and the State has an interest in closely monitoring the activity and restricting it if necessary to prevent abuses.

On the other hand, artisanal miners have argued that the short term of AM licences, coupled with the possibility of an exploration licence and ultimately an exploitation licence being superimposed on their licence area, resulting in the termination or non-renewal of their licences leaves them excessively vulnerable and thwarts their aspirations to evolve into SSM operators and eventually form strategic relationships with larger international mining companies. This suggests that some flexibility in the terms of AM licenses may be desirable, particularly in the case of licence holders who demonstrate or have demonstrated their ability to follow best practices in health, safety and environmental protection.

28.7. Example 1:

Article [__]
An artisanal mining license shall be valid for the period specified in the license; provided however, that such period shall not exceed three years.

Annotation
Drawn from Ethiopia’s mining law (2010) this example provides the licensing authority with some flexibility to set the initial term of the licence, depending on the term requested, the conditions of the deposit and the capability of the applicant. The maximum term allowed is longer than the typical term allowed for AM licences in Africa. Thus, this example reflects some sensitivity to the desire and need of AM licensees for a potentially longer period of quiet enjoyment of the right to exploit a small deposit manually.

28.7. Example 2:

Article [__]
The term of an artisanal mining licence shall be one year.

Annotation
Drawn from the mining laws of Liberia (2000), the DRC (2002), Madagascar (2005) and Sierra Leone (2009), this provision is one of the more restrictive limits on the initial period of validity of an AM licence. Liberia and Sierra Leone grant AM licences for exclusive licence areas, whereas the DRC and Madagascar license individuals or groups of individuals to engage in AM within AM zones designated by the mining administration. These short terms for AM licences reflect a State concern with oversight of the AM subsector in which a very significant number of individuals engage in each of those jurisdictions.
28. Artisanal Mining

28.8. Renewal of License

Renewal of AM licence provisions establish the duration of the licence renewal period, the number of times renewal is permitted and the conditions for renewals. As noted in the previous section on Term of Licence, the initial period of validity of an AM licence tends to be short (1-3 years) for a variety of reasons. On the other hand, there exist deposits of precious minerals and stones that are suitable for mining by artisanal methods for many years. Historically, artisanal mining has been conducted for many years (and even centuries) at certain sites (e.g., silver at Potosi, Bolivia; emeralds in Colombia; lapis lazuli in Afghanistan; bronze in Nigeria, etc.). Most African mining laws address the longevity issue by not limiting the number of renewals available. However, the renewal periods are kept short like the initial term in the interest of government policing of possible abusive practices and environmental damage; but the need for frequent renewals can be burdensome on licence holders and exposes them to uncertainty about their ability to continue operating from year to year. A counterargument is that if they are not able to graduate to a SSM license that requires some mechanization and greater responsibilities, then the AM licence is not serving the goal of fostering indigenous development of the mining sector and therefore is not a practice that should be encouraged on a long-term basis.

Conditions under which renewal will be granted should be set in the mining law; and these include the following:

- having met all the requirements of the AM licence such as the payment of fees and royalties, and compliance with regulations on environmental, health, safety and mine development practices;
- there being enough resource to be exploited in the renewal period.

28.8. Example 1:

Article [...]

(1) Subject to subsection (2), an artisanal mining licence shall be valid for a period of one year and may be renewed for up to three further periods not exceeding one year at a time

(2) An artisanal mining licence shall not be renewed pursuant to subsection (1)–

Annotation

Drawn from Sierra Leone’s mining law (2009), this example allows up to three renewals for one year each, such that the total duration of the validity of the AM licence could be as long as four years. Each renewal is subject to the conditions specified with respect to continuing recognition of the area and the mineral as being appropriate for AM, and compliance of the licence holder with his various obligations.
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<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) if the artisanal mining licence area has ceased to be an area declared for artisanal mining operations;</td>
<td>This is an example of an AM licensing regime based on a policy of not permitting AM for long, indeterminate periods and forcing AM practitioners to either graduate to SSM in order to keep a site for a longer term or move to another site.</td>
</tr>
<tr>
<td>(b) in respect of any mineral which has ceased to be a mineral prescribed for artisanal mining operations;</td>
<td></td>
</tr>
<tr>
<td>(c) unless the [Regulating Authority] is satisfied that the applicant has carried on, in good faith, within the limits of its competence and resources, mining operations in the artisanal mining licence area and intends to continue doing so;</td>
<td></td>
</tr>
<tr>
<td>(d) if the applicant has not carried out effective rehabilitation and reclamation of the applicant’s mined out areas to the satisfaction of the [Regulating Authority] and authorities responsible for the protection of the environment or paid the prescribed fee;</td>
<td></td>
</tr>
<tr>
<td>(e) if the applicant has not reported diligently on its mining operations; or</td>
<td></td>
</tr>
<tr>
<td>(f) if the applicant is in default and the [Regulating Authority] is not prepared to waive the default.</td>
<td></td>
</tr>
</tbody>
</table>

#### 28.8. Example 2:

**Article [__]**

1. A holder of an artisan's mining right may apply to the [Regulating Authority] at least sixty days before the expiry of the artisan's mining right, for the renewal of the artisan's mining right in the prescribed manner and form upon payment of the prescribed fee.

2. Subject to subsection (3), the [Regulating Authority] shall, where an application for the renewal of an artisan's mining right complies with the requirements of this [Act][Code][Law], renew the artisan's mining right for a period not exceeding two years, on such terms and conditions as the [Regulating Authority] may determine.

3. The [Regulating Authority] shall reject an application for renewal of an...
artisan’s mining right where—

(a) the development of the mining area has not proceeded with reasonable diligence;

(b) minerals in workable quantities do not remain to be produced;

(c) the programme of the intended mining operations will not ensure the proper conservation and use in the national interest of the mineral resources of the mining area; or

(d) the applicant is in breach of any condition of the right or any provision of this [Act][Code][Law].

(4) The [Regulating Authority] shall not reject an application on any ground referred to in—

(a) paragraph (a) of subsection (3), unless the [Regulating Authority] has given the applicant the details of the default and the applicant has failed to remedy the default within three months of the notification;

(b) paragraph (b) of subsection (3) unless the [Regulating Authority] has given the applicant reasonable opportunity to make written representations thereon to the [Regulating Authority]; or

(c) paragraph (c) of subsection (3) unless the [Regulating Authority] has notified the applicant and the applicant has failed to propose amendments to the operations within three months of the notification.

(5) The [Regulating Authority] shall, on the renewal of an artisan’s mining right, attach to the licence the approved program of mining operations to be carried out in the period of renewal.

28. Artisanal Mining
28.9. Suspension of License

Suspension provisions enable the Regulating Authority to temporarily halt operations under an AM licence in order to avert or mitigate risks of damage to public health, safety or the environment believed to be caused by the AM operations, or in order to avoid further negative consequences arising from external events such as conflict, weather events or earthquakes. Suspension is also used as a sanction until an ASM licence holder corrects a failure to meet obligations as set out in the mining law and regulations or related laws and regulations. Ideally, the provisions authorizing suspension should allow for an appeal in situations not involving an emergency and should specify the conditions under which the suspension may be lifted.

28.9. Example 1:
Article [__] Notice to remedy dangerous or defective mining operations.
(1) Where an authorised officer considers any mining operation under an artisanal mining licence or anything, matter or practice in or connected with any such mining operation to be so dangerous or defective as in his opinion to be likely to cause bodily injury to any person, he may give notice in writing of it to the holder of the licence.
(2) A notice issued pursuant to subsection (1) may require the danger or defect to be remedied or removed, either immediately or within such time as may be specified, and if the authorised officer considers it necessary, order the mining operations to be suspended until the danger is removed or the defect remedied to his satisfaction.
(3) The holder of an artisanal mining licence to whom notice has been given under subsection (1), shall comply with the notice.
(4) If the holder of an artisanal mining licence intends to object to any requirement or order given by the authorised officer, he shall forthwith cease the mining operations or that part of the operations affected by the notice and appeal to the [Regulating Authority] against the order.

Annotation
Drawn from Sierra Leone’s mining law (2009), this example provides for suspension only in the case where continued mining operations pose a probable threat of bodily injury to any person, in the opinion of an authorised officer of the Regulating Authority. The example provides for notice to the licence holder and an opportunity for him to appeal the suspension order to the Regulating Authority; but the Regulating Authority’s decision on appeal is not subject to any further review. Because the risk of bodily injury to some person is the standard for justifying the suspension of mining operations, the licence holder is required to comply with the suspension order, even if he is taking an appeal. The suspension will only be lifted when the danger is removed or the defect is remedied to the satisfaction of the authorizing officer.

The role of suspension in the example is more limited in the AM context than it is in the context of industrial exploration and exploitation rights because suspension of AM operations may only be ordered when the authorized officer finds that the mining operation is so dangerous or defective as to be likely to cause bodily injury to some person. In the industrial context, suspension can be applied more broadly as a sanction less severe than revocation of the mining title that is applied in order to motivate licence holders to correct a variety of failures to comply with regulatory
(5) On an appeal made to the [Regulating Authority] pursuant to subsection (4), the [Regulating Authority] shall inquire into the matter and his decision thereon shall be final.

28.9. Example 2:

Article [_] Suspension or cancellation of artisans mining right
(1) The [Regulating Authority] may suspend or cancel an artisan's mining right where—
   (a) the holder of the right has been disqualified under article [__];
   (b) the holder has been convicted of an offence under this [Act][Code][Law]; or
   (c) the holder contravenes this [Act][Code][Law] or any condition of the right.

(3) Before acting under sub-section (1) of this Article, the [Regulating Authority] shall give notice in writing to the Licensee:
   a) setting out the grounds for considering the suspension of the license;
   b) directing the licensee to take specified measures to remedy any contravention, breach or failure; and
   c) specifying a reasonable date of not less than [__] working days, before which the licensee may, in writing, submit any matter for the [Regulating Authority] to consider.

(3) The [Regulating Authority] may lift the notice for suspension of a mineral right where:
   a) the licensee complies with the notice contemplated in sub-section 2(b) of this Article by rectifying, removing, or as appropriate by mitigating the grounds for suspension, or by preventing the recurrence of such grounds within the time specified in the notice; or

Requirements – particularly in the case of health, safety, environmental protection and reporting.

Annotation

Drawn from Zambia’s mining law (2008) and Ethiopia’s mining law (2010), this provision authorizes the Regulating Authority to suspend an AM license for any of the three specified reasons. None of the three reasons refers to an emergency situation as does the preceding example. Therefore, the two examples should be viewed as complementary pieces of a whole, rather than as alternative provisions. They should work together.

The example provides for notice and an opportunity for reconsideration based on information to be provided by the licensee or lifting of the suspension once the licensee has corrected the underlying problem that gave rise to the suspension. If the grounds for the suspension is one of the first two listed in sub-section (1) of the example, the licensee’s only defence would be to show that the alleged grounds for the suspension are not in fact true – i.e., that the holder has not been disqualified or has not been convicted of an offence under the mining law. If the third listed ground for suspension applies, the holder has an opportunity to correct the matter and obtain the lifting of the suspension.
Termination of Licence provisions state the ways in which the validity of a licence may cease. They should also clarify the consequences of termination for (a) the responsibility or liability of the license holder, and (b) the status of the licence area, including any equipment or structures of the licence holder situated within the licence area upon termination.

### 28. Artisanal Mining

#### 28.10. Termination of License

Termination of Licence provisions state the ways in which the validity of a licence may cease. They should also clarify the consequences of termination for (a) the responsibility or liability of the license holder, and (b) the status of the licence area, including any equipment or structures of the licence holder situated within the licence area upon termination.

#### 28.10. Example 1:

**Article [__]**

1. In the event that an artisanal mining permit expires, is surrendered or is revoked, or the recipient forfeits their permit, the area that it covers shall be released of any right resulting from it, from the day after:

   - (a) the expiration date, where a permit expires;
   - (b) the date of notification, where a permit is surrendered or revoked, or the recipient forfeits the permit.

2. The recipient of an artisanal mining permit shall be released from their responsibilities relating to the rehabilitation of the site only once they have fulfilled these responsibilities. The same shall apply for any damage caused by their operations under the permit.

**Annotation**

Drawn from Burkina Faso’s mining law (2015), this provision specifies the three ways in which an AM licence can terminate:

1) By expiration at the end of its Term;
2) By surrender;
3) By revocation; or
4) Upon the death of the licence holder.

The example further provides that the status of the licence area is that it is free of the rights conferred by the licence as of the expiration date, in the case of expiration, or the date of notification in the case of the other three types of termination. It further provides that the licence holder is not released from his responsibility for site rehabilitation or his liability for any damages caused by his operations until he has fulfilled those obligations.

#### 28.10. Example 2:

**Article [__]**

1. An artisanal mining license shall terminate if:

**Annotation**

Drawn from Ethiopia’s mining law (2010), this example lists the events of termination of the artisanal mining license, which are similar to those listed in the
(a) a licensee relinquishes the whole area or surrenders the license;
(b) a license is revoked by the [Regulating Authority] pursuant to the provisions of this [Act][Code][Law] or the regulations and directives issued under this [Act][Code][Law];
(c) a license expires without being renewed; or
(d) without prejudice to the rights of heirs, a licensee dies, or where the licensee is a juridical person, it is liquidated or declared bankrupt.

28. Artisanal Mining

28.11. Revocation of License

Provisions on revocation of the Artisanal Mining licence describe the grounds on which the Regulating Authority can cause the early termination of the licence, as well as the process that it must follow in doing so. Forced early termination of the licence by the Regulatory Authority is called revocation, withdrawal or cancellation, depending on the jurisdiction.

28.11. Example 1:
Article [...] Revocation of artisanal mining licences.
(1) The [Regulating Authority] may revoke an artisanal mining licence if he is satisfied in respect of the licence that—
(a) the holder of the licence, including any member of a cooperative or a partnership or a shareholder of a body corporate, is not a [Country] citizen; or
(b) no mining operations have commenced within a period of one hundred and eighty calendar days from the date of registration or renewal of the licence.

Annotation
Drawn from Sierra Leone’s mining law (2009), this example provides only the following two grounds on which an artisanal mining licence can be revoked by the Regulating Authority:

1) The holder does not meet the eligibility requirement of being a citizen of the host country, or an entity wholly-owned by such citizens; or
2) Mining operations under the licence have not commenced within half a year after the date of registration of the licence or of its renewal.

This provision describes the specific grounds for revocation of an AM licence. That licence is considered to be a mining right under Sierra Leone’s mining law and, as
### 28.11. Example 2:

**Article [_]**

1. An artisanal mining permit may be revoked by the [Provincial Head of the Regulatory Authority] or by its local representative who issued the permit, after a formal notice to comply within thirty days did not result in the card holder remedying the situation, for any failure to comply with the obligations provided for in Article [_] of the present [Code][Act][Law] (on the obligations of the recipient of an artisanal mining permit).

2. Where applicable, the person whose Artisanal Mining Permit has been revoked, shall not be eligible to obtain a new Artisanal Mining Permit for three years, unless they complete a training course in suitable artisanal mining techniques, organised or approved by the Mining Department.

3. An artisanal mining permit being revoked gives the right to appeal as provided for in the provisions of Articles [__] and [__] of the present [Code][Act][Law] (on appeal proceedings).

4. The Mining Regulations shall lay down detailed terms for the organisation of a training course on artisanal mining techniques.

**Annotation**

Drawn from the DRC’s mining law (2002), this is an example of a provision for the revocation of an AM licence granted pursuant to a simple, decentralized license procedure, authorizing AM work within a designated AM zone rather than within an exclusive licence area.

The example contains several notable features. It provides due process safeguards. In this example, the decentralized authority that issued the AM licence is authorized to revoke it only after giving 30 days’ notice of a failure to comply with one or more of the obligations of AM licence holders specified in the cross-referenced articles of the mining law, in the absence of remediation or correction by the licence holder within that time period. Thus, the examples provide for notice and an opportunity to cure the defective performance and thereby avoid the revocation. Furthermore, the example provides a right to appeal the decision to revoke the AM licence to a judicial court.

The example provides that the holder of the revoked licence is disqualified from acquiring another AM licence for the next three years, unless he participates in a training session in artisanal mining techniques, to be organized as provided in the regulations. Thus, the example provides for corrective training to improve AM practices among licence holders who have failed to comply with their obligations in regard to health, safety, environmental protection and mine management.

### 28.12. Surrender of License

Surrender of licence provisions allow the AM licence holder to give up the licence voluntarily before the expiration of the initial or renewal term of the
licensing. Surrender can be partial or total relinquishment of the licence area. Provisions should specify any conditions that need to be satisfied for surrender to be accepted or permitted, and include relevant environmental regulatory requirements that must be met prior to surrender.

### 28.12. Example 1:

Article [ ]. Abandonment of land subject to licence or permit

(1) A holder of a licence or permit who wishes to abandon all or any part of the land subject to the licence or permit shall apply to the [Regulating Authority], as the case may be; not later than ninety days before the date on which the holder wishes the abandonment to have effect, for a certificate of abandonment.

(2) Subject to this section, the [Regulating Authority], as the case may be; shall issue to the applicant a certificate of abandonment either unconditionally or subject to such conditions relating to the abandoned land as the [Regulating Authority] Survey, as the case may be; may determine.

(3) An application under this section—

(a) shall identify the land to be abandoned and, if the application applies to only a part of the land subject to the licence or permit, shall include a plan clearly identifying both the part to be abandoned and the part to be retained;

(b) shall state the date on which the applicant wishes the abandonment to take effect;

(c) shall give particulars of the operations which have been carried on under the licence or permit on the land to be abandoned; and

(d) shall be supported by such records and reports in relation to those operations as the Director or the Director of Geological Survey, as the case may be; may require.

(4) A certificate of abandonment shall take effect on the date on which it is granted to the applicant, and

(a) where the certificate relates to the whole of the land subject to the holder's

---

**Annotation**

Drawn from Zambia’s mining law (2008), this general provision on surrender (called “abandonment of land” under the Zambian mining law) for all licences and permits applies to the AM license because it is a license under that law.

The maximum size of an AM licence under Zambia’s mining law is only about 6 2/3 hectares; and the term is only 2 years, although it is renewable. Given such parameters, it is unlikely that the holder of an AM licence in Zambia would need to surrender the licence in whole or in part during the initial or a renewal term. Thus, Zambia’s mining law, like most mining laws, does not contain a section on surrender of AM licenses in particular. However, this provision is available for the occasional case of surrender by the holder of an AM licence.
### 28.12. Example 2:

**Article [__]**

1. The total or partial surrender of an artisanal mining permit shall be authorised without a penalty or indemnity, subject to [the Regulatory Authority] being notified.
2. Surrender of a permit entails the rehabilitation of the operating site.

**Annotation**

Drawn from Côte d’Ivoire’s mining law (2014), this article facilitates partial or total surrender of the licence area upon simple notification of the Regulating Authority. Permission of the Regulating Authority is not required for surrender under this provision. However, site rehabilitation is required.

### 28. Artisanal Mining

#### 28.13. Transfer/Assignment of Rights

Transfer or assignment of rights provisions provide for whether a licence holder may hand over, sell, rent (either in part or in whole), encumber or place a lien on the licence for the benefit of another person or entity. The transfer should be aligned to the eligibility provisions of artisanal mining licenses.

Most mining laws provide that AM licences are not transferable or assignable in pledge; and they do not constitute real property rights that can be mortgaged (e.g., Burkina Faso, Côte d’Ivoire, DRC, Madagascar, Sierra Leone, Zambia). Since they are reserved for nationals of the host country and local companies wholly-owned by nationals, one concern is not to permit such licences to fall into the hands of non-nationals as a result of transfers,
assignments or pledges. Another consideration is to avoid speculation in AM licences for purposes of trading them. Most governments are of the view that the limited size of the deposits, the short term and small licence area make AM licences unfit for transfer generally. However, in the context of the African Mining Vision objective of strengthening opportunities for national entrepreneurs to graduate from AM to SSM and eventually to medium or large scale exploitation, consideration should be given to creating an appropriate legal framework for such evolution, including opportunities to transform an AM licence into a SSM licence or to transfer an AM licence to a third party who is capable of transforming the licence and the mine to a SSM operation.

28.13. Example 1:

| Article | (1) Any license, other than a reconnaissance or retention licenses, may be transferred with the prior consent of the [Regulating Authority] |
| (2) No license may be transferred to: |
| (a) Any person who is un-rehabilitated insolvent, or is under a scheme of arrangement with creditors; |
| (b) a business organization which is in liquidation, other than a liquidation which forms a part of a scheme for the reconstruction of the business organization or for its amalgamation with another business organization; |
| (c) a non-citizen of [Country] or a group of people who are not registered as a cooperative society in accordance with the relevant law where it is for an artisanal mining license. |
| (3) Any transfer of license shall have no effect unless registered by the [Regulating Authority]. |

**Annotation**

Drawn from Ethiopia’s mining law (2010), this provision allows transfers of AM licences subject to the prior consent of the Regulating Authority. AM licenses can only be transferred to individual citizens of the host country, or groups of such individuals organized as a cooperative.

This example is unusual. Most mining laws provide that AM licenses are not transferable. AM licenses in Ethiopia are for a relatively long term – up to three years, renewable twice for three-year periods – and are not subject to any maximum size of the licence area specified in the law. Since AM licences in Ethiopia may be for larger areas and longer terms than under most mining laws, there may be more interest in transferability so that an artisanal miner who discovers a deposit larger or more complex than what can be mined manually can transfer his licence to a SSM miner who can transform the AM licence into a SSM licence and take the project to the next level.

28.13. Example 2:

| Article | (1) Artisanal mining permits may not be assigned. |

**Annotation**

Drawn from Burkina Faso’s mining law (2015), this provision states, in typical fashion, that an AM licence is not transferrable. However, it goes on to say that the AM licence may be rented or sublet to a third party upon authorization by the Regulating Authority. This provides greater flexibility to the licence holder than
### 28. Artisanal Mining

#### 28.14. Specific Violations and Penalties

This section focuses on violations that are specific to artisanal mining activities, and which will result in criminal penalties in the form of fines and/or imprisonment. This includes the following violations that are considered to present substantial risks in artisanal mining:

- unlawful possession of precious minerals,
- use of explosives, cyanide or mercury to isolate precious minerals, and
- use of child labour.

Holders of AM licences and their agents, employees and tributers are subject as well to other generally applicable provisions on infractions in the mining law.

#### 28.14. Example 1:

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The use of explosives and hazardous chemical substances, including cyanide and mercury, is prohibited in artisanal mining activities.</td>
</tr>
<tr>
<td>(2)</td>
<td>Child labour is also prohibited in artisanal mining activities.</td>
</tr>
</tbody>
</table>

#### Annotation

Drawn from Burkina Faso’s mining law (2015), this example includes the article on prohibitions that are specific to AM and the articles that make violations of those prohibitions subject to criminal penalties of fines or imprisonment or both.

The prohibitions apply against:

- the use of explosives or dangerous chemicals including cyanide and mercury in AM; and
- child labour in AM.

Separate articles establish the penalties for violations of each of those prohibitions. Under Burkina Faso’s mining law, the possible fines and/or prison sentences for
### AMLA GUIDING TEMPLATE

#### PART B-4: Small Scale Licencing

**NOTE:** This Document is part of a multi-part document, Parts A – E

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**confiscation ordered.**

Article [...]  
The following shall be penalised with a fine of between [...] and [...] in [national currency] and a prison sentence of between [...] and [...] years, or only one of these two penalties: any recipient of an artisanal mining permit who tolerates or pretends not to be aware of the fact that minor children or schoolchildren are present on the site, or are working on the site, or any recipient who is aware of this but refrains from alerting the relevant administrative authorities, or from taking action to put an end to child labour.

---

<table>
<thead>
<tr>
<th>violations of the prohibition against the use of explosives and dangerous chemicals are at least twice as large as those for violations of the prohibition against child labour.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The punishable violation of the prohibition against child labour is expansive. It includes the following acts by the holder of an AM licence:</td>
</tr>
<tr>
<td>- toleration or feigned ignorance of the presence or work of minor children or schoolchildren; or</td>
</tr>
<tr>
<td>- having knowledge of their presence, refraining from alerting the administrative authorities or from taking measures to put an end to it.</td>
</tr>
<tr>
<td>Thus, passive indifference by the AM licence holder to the existence of child labour in connection with the work conducted under the licence is a punishable offence. If an AM licence holder is aware of child labour in connection with his activities, he must report it to the authorities or put an end to it.</td>
</tr>
</tbody>
</table>

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### 28.14. Example 2:

**Article [...]**

(1) Any person who is in possession of any precious mineral and who fails to prove that he is in lawful possession of such mineral commits an offence.

(2) For the purpose of subsection (1)-

(a) a labourer or tributer employed by the holder of an artisanal mining licence shall not be deemed to be in lawful possession of a precious mineral unless such mineral is in his possession within the actual workings in the mineral right area;

(b) the holder of an artisanal mining licence or its duly authorized agent as the case may be, shall not be deemed to be in lawful possession of the precious mineral unless such mineral is in its possession-

(i) within the actual workings of its mineral right area;

(ii) within its registered place of business; or

(iii) any other place used to exercise the rights vested in it in respect of such mineral.

---

**Annotation**

Drawn from Sierra Leone’s mining law (2008), this provision on unlawful possession of precious minerals applies to workers in AM licence areas and the holders of AM licences. The workers are in violation of the provision if they have precious minerals in their possession outside of the mine within the AM licence area. The AM licence holders and their agents are in violation if they are in possession of precious minerals unless they are at the mine within the licence area, or their registered place of business, or “any other place used to exercise the rights vested in [them] in respect of the minerals by virtue of the licence.” There would appear to be a need to supplement this exception to allow for transport of precious minerals from the mine site to the licence holder’s registered place of business, or to his storage facility or sales outlet.

The penalty for violation of the provision against unlawful possession of precious minerals is harsh: imprisonment for not less than three years.

In sum, this is an example of a violation specific to widespread AM exploitation of...
<table>
<thead>
<tr>
<th>minerals by virtue of the licence.</th>
<th>precious minerals, which is inherently difficult to police.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) Subject to article [...] (on the duties of persons who find precious minerals) and this section, no other person shall be deemed to be in lawful possession of a precious mineral unless such mineral is in possession under and in accordance with the terms of a valid mineral right or minerals licence issued under this [Act][Code][law].</td>
<td></td>
</tr>
<tr>
<td>(4) Any person who commits an offence under this section shall be liable on conviction to imprisonment for a term not less than three years.</td>
<td></td>
</tr>
<tr>
<td>(5) In addition to the penalty imposed in subsection (4) for an offence committed under this section, any precious minerals in connection with which the offence was committed shall be forfeited to the State.</td>
<td></td>
</tr>
</tbody>
</table>
29. Development Minerals

Although the provisions relating to mineral rights in other parts of the Guiding Template are generally applicable to development minerals, the provisions in this part have been modified to apply exclusively to development minerals. Fundamentally, these provisions are inspired by efforts on the continent to promote development of lesser known minerals (so-called lower value minerals) that have comparative value addition potential to contribute more directly to local or regional development. The Africa Mining Vision (AMV) underscores the importance of such minerals to the industrialization and economic transformation agenda of the continent through their use in local production of consumer and industrial goods. Similarly, other continental bodies like the African Minerals Development Centre (AMDC) and the African Union Commission (AUC) Specialized Technical Committee on Trade, Industry and Minerals (STC-TIM) have highlighted and are working towards realising the local economic and utilization linkages potential of development minerals. Recognising these efforts and the need for new laws to facilitate this vision, the Guiding Template proposes draft legislative provisions that seek to ensure maximization of the value of development minerals to the countries that have them. These include a purposive definition that allows a country to determine which particular minerals within a broad range of minerals are considered strategic or relevant for local utilization or value addition. Other provisions account for the regional value of development minerals and provide opportunities for cooperation among countries towards their development and utilization. Lessons learned from regulating higher value minerals have also informed options for local government or sub-national involvement in licensing of development mineral rights. In a bid to link laws closely to the policies they are derived from (and especially to ensure that regional or continental policies on development minerals are duly recognized and implemented immediately) the practice in civil law jurisdictions of referencing policies in legislations is introduced here. Furthermore, the entire gamut of relevant issues in minerals and mining regulation is modified in this part to account for the nuances associated with development minerals and to cater to countries that may have only such minerals.

29.1 Definition of Development Minerals

This section deals with certain minerals categorized as development minerals. Some of these minerals have been treated under quarrying provisions in the mining laws of most African countries. The minerals consist mainly of non-metallic and non-fuel minerals commonly called industrial minerals such as salt, potash, mica, limestone, kaolin, bentonite, and barite; building and construction materials such as sand, gravel, clay, and slate; and semi-precious stones such as tourmaline, aquamarine, tanzanite, garnet, zircon, and opal. The designation of these minerals as development minerals is consistent with their designation under the Africa Mining Vision (AMV) and by the African Union Commission (AUC) Specialized Technical Committee on Trade, Industry and Minerals (STC-TIM) which emphasize the utilization of such minerals for the economic...
transformation of African economies. Unlike the provisions on quarrying that mainly provided for the exploitation of development minerals without holistically addressing their local economic and utilization linkages potential, the following provisions acknowledge the relevance of these minerals to the development of countries (or even regions or economic clusters) and provide guidelines or possible legislative language to promote their optimization.

It is recognized that some countries define some minerals as strategic and apply unique rules to them to ensure that they are developed in a manner that optimizes their value for the country. Similarly, countries may consider some of these development minerals to be strategic minerals and can use language in this part to facilitate optimization of such minerals.

It is also noted that the AMV recognizes the potential for cross border utilization or joint development of development minerals to maximize economic and utilization linkages and so countries are encouraged to support such developments in accordance with applicable laws and procedures for inter-national or regional cooperation.

### 29.1. Example 1:

**Article []**

For the purpose of this [section], “development mineral” refers to a non-metallic or non-fuel mineral that may be mined, beneficiated and utilized or consumed [principally] in [Country] and includes [list particular minerals] or such other minerals as the [Regulating Authority] may from time to time declare by notice in the [Gazette] to be a development mineral.

**Annotation**

This example defines the scope of a development mineral and specifically requires that development minerals be mined, beneficiated and used locally.

### 29.1. Example 2:

**Article []**

For the purpose of this section, “development mineral” means a mineral that is relevant or strategic to the development needs of [Country] due to its local economic and utilization linkage potential and includes minerals such as [list of particular minerals] as the [Regulating Authority] may from time to time declare by notice in the [Gazette] to be a development mineral.

**Annotation**

This example is stated in more general terms, allowing the regulating entity to determine ‘relevance to national development’ and ‘local economic potential’ in relation to the country’s development or needs at any points in time.

### 29. Development Minerals

#### 29.2 Other Definitions
29.2. Example 1:

Article [...]  
“minimum investment threshold” means [US$28 million] [or specify different amounts for different minerals];  
“Region” means [ECOWAS] [EAC] [ECCAS] [SADC] or [List specific countries];

Annotation  
The minimum investment threshold is the minimum amount a non-citizen must invest to be granted a large scale development minerals exploitation licence. See sections 31.1(d), 31.7 and 31.10. This requirement aims to ensure that non-citizens do not crowd out citizens in the development minerals sector and that investments by non-citizens are substantial enough to incorporate local value addition or utilization projects. Any region or countries mentioned in the definitions are to be exempted or differentiated from the non-citizen minimum investment threshold requirement. See sections 31(1) and 31(7).

29.3 Ownership of Development Minerals

The constitutions of most African countries vest all minerals, including development minerals, in the state or the President on behalf of the citizens. And the Minister responsible for minerals or other authority designated by the President exercises the right to take various actions in relation to the minerals such as negotiations, grants, renewals, termination and providing conditions for dealing with minerals in accordance with applicable laws. However, since most development minerals are most optimally utilized within a limited radius of their production, it is recommended that regulation of such minerals is devolved to the locality where the minerals are produced. Federal governments may also consider vesting the ownership of development minerals in states to facilitate their optimization. It is noted that local government administrations may have little or no capacity to deal with mineral rights issues. But this may be resolved by building local capacity to deal with regulation of the specified development minerals. Alternatively, the local or district office of the regulating entity or ministry may continue to process mineral right applications in accordance with applicable laws but the granting authority could be the local government authority (e.g. district administrator) instead of the Minister or the Commissioner of mines.

29.3. Example 1:

Article [...]  
Notwithstanding section [...] of this [Law][Act][Code] and/or [a law to the

Annotation  
This example vests development minerals in the sub-national authority (e.g. states in a federal system) and empowers the local authority to make decisions...
29.3. Example 2:

Article [\_]  
Notwithstanding section [\_] of this [Law][Act][Code] and/or [a law to the contrary] a [Governor] [District Administrator] of a [State] [District] in which (state applicable minerals) occur may on behalf of the [President] negotiate, grant, revoke, suspend or administer mineral rights in relation to those minerals subject to the recommendation of the [district mining officer] in accordance with the mining [Law][Act][Code].

**Annotation**

In this example the minerals remain the property of the national government but the sub-national or local authority is authorized to make decisions in relation to the minerals on behalf of the owner of the minerals.

### 29. Development Minerals

#### 29.4 Reference to Relevant Policies and Laws

This topic envisages the bringing together in one place (for ease of reference and as a guide to interpretation) all relevant laws that are implied (expressly or otherwise) by the provisions under this part and the policies that inform the provisions. Reference to such documents in a law may also provide guidance to officials in the implementation of the law. Including relevant policies in this part ensures that officials are reminded of the principles to be promoted through the law and the objectives or goals countries seek to achieve through legislation. But only relevant policies adopted through appropriate procedures should be cited in this part (for instance some countries require policies to be published in the national Gazette). And the law ought to be duly amended to remove or replace policies that are spent. Whilst this is not a common practice in Common Law jurisdictions, civil law countries generally incorporate policies in their laws to serve as a guide to implementation of laws. In view of the significance to African governments of the principles being advocated to ensure optimal utilization of development minerals it would be useful to refer to relevant policy documents or parts of them in this part. If these policies have not been sufficiently disseminated in the various countries, it would also be useful to publicize them in this way. If adopted, it is important that the correct versions of the documents referred to be incorporated in the law and that such documents are made available together with the law.

#### 29.4. Example 1:

**Annotation**
Article [__]
Unless otherwise specified in the applicable provision of this [Act][Law][Code], this [Part] [Division] shall be read and applied in conjunction with the following laws:
[__________]
[__________]
[__________]

29.4. Example 2:

Article [__]
The following national policies and international protocols/agreements adopted or executed by [Country] embody the strategies for achievement of the objectives under these policies. The provisions of this Part shall be implemented in a manner that ensures that the objectives they espouse are achieved:
[__________]
[__________]
[__________]

Unless otherwise specifically provided in this [Law][Act][Code] the documents referred to in this provision shall only serve as a guide to interpretation of the provisions of this Part.

29. Development Minerals

29.5 Types of Rights Granted

This provision seeks to highlight all the development mineral rights and related rights that may be granted under the law. This can be done in different ways. A complete list in one provision of the mineral rights granted under the law clearly shows the mineral rights obtainable under the law. The mineral rights may also be listed according to categories determined in the law, i.e. exploration rights, exploitation rights, and processing rights, and trading rights.

29.5. Example 1:

Annotation

This example provides the laws that are relevant to compliance with and implementation of these provisions of the law. Examples of such laws include relevant local government laws or regulations, tax laws, environmental laws, etc. Note that this may also include regional decisions or “legislation” made by regional bodies to which countries belong. For instance, ECOWAS decisions adopted and published by a country in its national Gazette are a secondary source of law.

Annotation

This language refers to the relevant policy documents to the extent that they facilitate understanding or interpretation of the statutory provisions. Where a country wishes to incorporate a policy document into its laws so that its provisions are enforceable this would have to be expressly provided in the law.
### Article [__]  
The following mineral rights may be granted under this Part:  
(a) Development Minerals Exploration Licence  
(b) Artisanal Development Minerals Exploitation Licence  
(c) Small Scale Development Minerals Exploitation Licence  
(d) Large Scale Development Minerals Exploitation Licence  
(e) Development Minerals Processing Licence  
(f) Development Minerals Trader/Dealer Licence  
(g) Development Minerals Transport Licence  
(h) Development Minerals (Export) Licence  
(i) Others Applicable Licences

**29.5. Example 2:**

The following mineral rights may be granted under this Part:  
(a) Under [sub-part A]:  
   (i) Development Minerals Exploration Licence  

(b) Under [sub-part B]:  
   (i) Artisanal Development Minerals Exploitation Licence  
   (ii) Small Scale Development Minerals Exploitation Licence  
   (iii) Large Scale Development Minerals Exploitation Licence

(c) Under [sub-part C]:  
   (i) Development Minerals Processing Licence  
   (ii) Development Minerals Trader/Dealer Licence  
   (iii) Development Minerals Transport Licence  
   (iv) Development Minerals (Export) Licence  
   (v) Others Applicable Licences

**Annotation**

This example draws on Tanzania's mining act (2010), where the various licences granted under the act are categorized according to the type of rights granted, e.g. exploration, exploitation, and value addition or other incidental rights.

**30. Development Minerals Exploration Licence**
AMLGA GUIDING TEMPLATE

PART B-5: Mineral Licences – Development Minerals

Exploration – also called “prospecting” in many Anglophone African jurisdictions (e.g., Botswana, Ghana, Namibia, South Africa, Tanzania, Zambia, Zimbabwe) and “recherche” in Francophone jurisdictions - is the systematic investigation of the surface and subsurface of the Earth in a designated area using geological, geophysical and geochemical methods for the purpose of determining the presence of economic deposits of mineral substances and establishing their nature, chemical composition, shape, grade and estimated quantity within degrees of certainty according to industry norms, as well as the most effective, efficient and appropriate means of extracting, processing and marketing the mineral products derived from the deposits under forecasted conditions of price and cost (including fiscal terms).

Exploration activity proceeds in stages. The results of each stage are evaluated by the explorer and a determination is made to either proceed to the next stage, sell the exploration rights where possible, or abandon the project and relinquish the rights. The first stage of exploration in a geographical area that has not been the subject of extensive prior exploration or mining activity typically commences with wide scale, superficial investigation using primarily geological and geophysical methods. This is the least costly stage of exploration activity.

If the results of that activity are sufficiently promising and the explorer is willing and able, then the second stage of exploration work will typically involve progressively more narrowly targeted investigation of the type, quality, extent and quantity of concentrated mineralization in a specific area by means of drilling and the analysis of core samples taken at various depths from selected points on a grid laid over the targeted surface area, and the completion of at least a preliminary reserve study to quantify the volume of mineralization identified or projected based on the drilling and analysis in accordance with industry norms as to degree of certainty. The second stage of activity may be the first stage of exploration activity in an area that has previously been extensively explored or mined and for which substantial data is available for analysis.

If the results of the drill core analysis and preliminary reserve study are determined to justify a significant investment in evaluating the commercial feasibility of exploiting the identified deposit, the third and most expensive stage of exploration activity will involve conducting the final mineral reserve studies (if one has not already been completed), prefeasibility studies, environmental and social impact assessments and final feasibility studies with the goal of establishing the economic justification for developing the identified deposits.

In some jurisdictions, an exploration licence may be, or must be, preceded by a prospecting/reconnaissance licence as described in the previous part of this Guiding Template (Part B-1). In those jurisdictions, the main difference between prospecting/reconnaissance activity and exploration (or “prospecting”) activity is that the former is limited to the types of activity common to the first stage of “greenfield” exploration, whereas the latter includes drilling, analysis of drill core samples of ore and the conduct of in-depth studies to determine the presence of a commercial deposit of valuable mineral substances.

In other jurisdictions, the activity described under prospecting/reconnaissance licences in Part B-1 of this Guiding Template is considered part of
exploration and there is no separate licensing of prospecting/reconnaissance activity.

Thus, depending on the jurisdiction, an exploration licence may be the right or title that authorizes (a) initial activity to locate and evaluate concentrations of valuable minerals in nature, and/or (b) the second stage of exploration activity following the completion of an initial stage of such activity pursuant to a prospecting/reconnaissance licence. Overall, it is essential for “exploration” (or “prospecting” or “recherche”) to be defined or described in the “definitions” and “types of mineral rights” sections of a mining law to avoid confusion.

### 30. Development Minerals Exploration Licence

#### 30.1 Eligibility

A mining law should define what individuals or legal entities can receive a permit or authorization to conduct exploration activities, either by defining who may or may not apply for the right, or by defining prior conditions that must be met before such an entity can be considered eligible to apply.

Issues to be considered include:

- Whether individuals and legal entities are eligible for exploration rights?
- Whether foreign individuals or entities are eligible, whether there is preference for local entities, and under what conditions? (When distinguishing between foreign and national entities, mining legislation should define what is meant by a foreign entity.)
- Whether and what financial and/or technical capacity is required?
- Which individuals and entities are not eligible for exploration rights?

The eligibility requirements will determine not only who may obtain an exploration licence directly, but also whether and to whom such licence may be transferred in the future.

**30.1. Example 1:**

*Article [__] General rules for exploration licences in development minerals.* (1) As a general principle, all development mineral projects shall be granted a licence and shall have an exploration phase, following the rules of this [Law][Act][Code].

**Annotation**

Inspired by Sierra Leone’s mining law (2009) and partially by DRC’s mining law (2002), these provisions modify the general provision on eligibility for mineral licences. In this example, the possibility of granting mineral licences for development minerals to individuals is eliminated.
(2) In any case can a development mineral project proceed without licence. Only by exception, the exploration phase may be waived, following the rules of this [Law][Act][Code].

Article [_] Eligibility for exploration licence for development minerals in large scale operations.
(1) Only companies duly incorporated or legally incorporated cooperatives of artisanal or small scale miners may apply for the grant of an exploration licence for development minerals in large scale operations under this [Law][Act][Code].

(a) A foreign company can apply for an exploration licence without being incorporated in [Country]. However, if the foreign company is awarded with a licence, it shall incorporate a branch in [Country] before starting operations in the field. This requisite shall be verified by the [Regulating Authority] before the start of the exploration activities.

Article [_] Eligibility for exploration licence for development minerals in artisanal and small scale mining operations.
Only legally incorporated national cooperatives of artisanal or small scale miners may apply for the grant of an exploration licence in artisanal and small scale mining operations under this [Law][Act][Code].

Article [_] Restrictions on grant of mineral rights
(2) No mineral right shall be granted to-

(a) individuals

(b) corporations or cooperatives -
  (i) which is not legally registered or incorporated under the applicable legislation, except for foreign entities, following Article [_] (1) (a);
  (ii) which is in liquidation other than a liquidation which forms part of a scheme for the reconstruction or merger of such body corporate;
  (iii) in respect of which an order has been made by a court of competent entity for its winding up or dissolution;
  (iv) which has among its shareholders any shareholder, directly or

This approach has several advantages: control will be easier, it stimulates individuals for association, higher environmental standards might be demanded and tax collection would be simpler.

However, it is highly likely than government will have to work on helping people to associate and organize entities to be able to get development minerals licences.
indirectly, or a director, that is a government officer, including Police and Army, or a relative following anti-bribery or anticorruption laws.

### 30.1. Example 2:

Article [...] Eligibility for exploration licence for development minerals in large scale operations.

1. Only companies duly incorporated or legally incorporated cooperatives of artisanal or small scale miners may apply for the grant of an exploration licence for development minerals in large scale operations under this [Law][Act][Code].

(a) A foreign company can apply for an exploration licence without being incorporated in [Country]. However, if the foreign company is awarded with a licence, it shall incorporate a branch in [Country] before starting operations in the field. This requisite shall be verified by the [Regulating Authority] before the start of the exploration activities.

Article [...] Eligibility for exploration licence for development minerals in artisanal and small scale mining operations

Individuals and legally incorporated national cooperatives of artisanal or small scale miners may apply for the grant of an exploration licence in artisanal and small scale mining operations under this [Law][Act][Code].

Article [...] Restrictions on grant of mineral rights

1. No mineral right shall be granted to-

(a) individuals –
(i) is under the age of 18 years;
(ii) is not a citizen of [Country] or being a citizen, has not been ordinarily resident in [Country] for a period of three years immediately preceding his application for a mineral right;
(iii) is an un-discharged bankrupt, having been adjudged or otherwise declared bankrupt under any written law, or enters into any arrangement or scheme of composition with his creditors; or
(iv) has been convicted of an offence involving fraud.

(b) corporations or cooperatives –

### Annotation

In this example, individuals can be licence holders. The advantages and disadvantages expressed in the previous annotation should be considering when implementing this provision.
### 30. Development Minerals Exploration Licence

#### 30.2 Requirements for Licence Applications

Regulatory authorities generally require that eligible entities seeking authorization to conduct exploration activities submit particular documents and show proof of certain criteria as part of the authorization application process. Unlike other licences, the requirements for a licence Application for small scale activities are typically fewer. Some laws may have no requirements beyond those related to eligibility, leaving the definition of the application requirements to the implementing regulations.

Several countries have adopted a two-tier approach to the procedure for issuing exploration licences: that is, (1) an application procedure with defined criteria for areas in which significant deposits have not yet been identified (i.e., “greenfields” projects), and (2) a tender procedure for areas containing known deposits that have been explored or worked previously. For those areas put up for bid, the requirements are set out in the bidding terms and specifications, and the tender is conducted in accordance with established rules for transparency and objectivity. A third possibility is to grant exploration rights to known stratoform deposits by an auction procedure (i.e., by offering them to the highest bidder during a specified auction period, without the other more extensive requirements of a tender procedure).

In addition to identification and eligibility of the applicant, the requirements for the grant of an exploration licence will or may contain some or all of the following:

- The availability of the area requested;
- Proof of eligibility and domicile, for the individual applicant and/or the firm seeking authorization;
- The specification of the minerals to be targeted by the exploration project;
- A proposed work program for all or part of the licence term;
A fundamental issue in designing the requirements is whether to (a) restrict access to mineral exploration licences by imposing technical and financial standards as conditions for the grant of rights, or (b) facilitate access to such licences and eliminate non-performing Licensees subsequently based on their failure to meet performance standards under their licences.

In some jurisdictions where the right to a mining licence is attached to the exploration licence, subject to the fulfilment of defined conditions, the signature of a contract between the State and the Licensee may be required at the time of issuance of the exploration licence. The contract sets forth the rights and obligations of the licensee during the term of the exploration licence and the conditions under which a mining licence will be issued. In light of increasing global commitments related to Climate Change and Land Use, it would be prudent for the State to require in such cases the conduct of an initial social, environmental and overall sustainable development assessment of the project at an early stage of contract implementation prior to the completion of the exploration phase and the authorization of mine development. The applicant’s commitment to and proposed plans for the funding and conduct of such a study in collaboration with the national and local environmental authorities and their contractors, as well as local communities, could constitute an essential component of the application.

30.2. Example 1:

Section [__]: Tender for exploration licences

Article [__]: General rules for tenders
(1) All licences for exploration of development minerals shall be granted by tender. The application for such exploration licence shall-

(a) be in the prescribed tender form and accompanied by the prescribed tender fee; and

(b) subject to the terms and conditions of the invitation to tender, include the matters required to be included in applications by this [Law][Act][Code].

Annotation

In this case, there is a tender procedure for all licences of development minerals.

Drawn from Tanzania’s mining law (2010), inspired by Botswana’s mining law (1999) and Tanzania’s mining law (2010), this provision sets forth the requirements for the grant of an exploration licence (called a prospecting licence in the law). The example here provides a tender process for all kinds of licences. It sets out the requirements for the licence in the article describing the required application contents and then refers back to them in the article on the conditions for the grant of the licence.
Applications made under subsection (1) and complying the terms and conditions of the invitation shall be submitted to the [Licensing Authority] for the decision.

The [Licensing Authority] shall consider the competing bids and shall select the bid which is most likely to promote the expeditious and beneficial development of the mineral resources of the area having regard to:

(a) the program of exploration operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;

(b) the financial and technical resources of the applicant;

(c) the investment commitment for the program of exploration; and

(d) the previous experience of the applicant in the conduct of exploration and mining operations.

No bids or tenders can be performed if the mining area overlaps totally or partially with an environment protected area.

Article [__]: Joint exploration/exploitation licence for artisanal and small scale mining.

(1) When a licence has been granted through a tender process, for an artisanal and small scale development minerals exploration project, the licensee shall have the right to begin the exploration phase without the need of a new tender or the subscription of a contract with the [Regulating Authority].

(2) In such case, the obligations and rights of the parties shall be regulated by this [Law][Act][Code] and other applicable laws. No additional regulation shall be enacted creating more burdens to the Licensees.

(3) Prior to start the exploitation phase, the Licensee should in any case obtain, regardless of other legal requirements-
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(a) The environmental licence, following applicable regulation.  
(b) The right of use the necessary land for the project.  
(c) The water use permits, following applicable regulation.

30.2. Example 2:  
Article […]: General rules for tenders  

(1) All licences for large scale exploration of development minerals shall be granted by tender. The application for such exploration licence shall-

(a) be in the prescribed tender form and accompanied by the prescribed tender fee; and  
(b) subject to the terms and conditions of the invitation to tender, include the matters required to be included in applications by this [Law][Act][Code].

(2) Applications made under subsection (1) and complying the terms and conditions of the invitation to tender shall be submitted to the [Regulating Authority] for the decision.

(3) The [Regulating Authority] shall consider the competing bids and shall select the bid which is most likely to promote the expeditious and beneficial development of the mineral resources of the area having regard to

(a) the program of exploration operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;  
(b) the financial and technical resources of the applicant;  
(c) the investment commitment for the program of exploration; and  
(c) the previous experience of the applicant in the conduct of exploration and mining operations.

Annotation  

Drawn from Madagascar’s mining law (1999), this provision provides for the issuance of an exploration licence to the first eligible applicant who submits a complete application for an available area. No proof of technical or financial capacity is required; and no work program is reviewed as a requirement for the grant of the licence.

Madagascar is an example of a jurisdiction that relies on ex-post requirements for maintaining the validity of an exploration licence rather than limiting access to exploration licences by imposing requirements for their issuance.

In this case, there is a different procedure for exploration licensing between large scale and SSM and ASM projects. While keeping tender for large scale (for transparency purposes), this example uses the “first come, first served” system for ASM, which might bring less burdens in the application process for small players in the market.

The one-stop licence (exploration/exploitation) is maintained for ASM.

Article […] Exploration licences for artisanal and small scale development minerals projects
Licences for artisanal and small scale development mineral projects shall be granted under the system “first come, first served”. In that case, the applicant may submit, at any moment, an application for a licence, which shall contain:

(a) Identification of the applicant and its shareholders, if the applicant is an entity, including final beneficiaries of the entity.
(b) Description of the area applied for (including a map and coordinates),
(c) Mention of the minerals for which the licence is requested,
(d) The period for which the licence is requested, which shall be no more than ten years, and
(e) The proposed programs of work, including —
   (i) Details of the mineral deposit,
   (ii) Estimated date by which applicant intends to start the exploration and exploitation phases,
   (iii) Estimated capacity of production and scale of operations,
   (iv) Characteristics of product,
   (v) Envisaged marketing arrangements for sale of mineral product(s).

The [Regulating Authority] shall provide all facilities required for development mineral artisanal mining licence applicants for the application process. Those facilities might include the creation of standardized forms, online application, training and direct help from officers, services that shall be free of charge.

For development minerals artisanal mining applications, the requisite established in Article [__] (1) (e) above shall not be applied.

An application for a minerals permit relating to—

(a) any area in respect of which consent is required under any written law shall be accompanied by evidence that such consent has been obtained;

(b) land of which the applicant is not the owner shall be accompanied by evidence that the consent of the owner, or, in the case of tribal territory, the consent of the appropriate body, has been obtained; or
(c) a prospecting area, retention area or mining area or part thereof shall be accompanied by evidence that the consent of the holder of the prospecting licence, retention licence or mining licence has been given, unless such holder will not be prejudiced by the issue of a minerals permit.

Article [...]. Limitation to denial of granting licences
(1) The [Regulating Authority] shall grant an application for a licence which has been properly made unless-

(c) the applicant is or was in default in respect of any other mineral right and has failed to rectify such default;

(d) the area for which application has been made or part of it covers or includes an area which is:
   (i) subject to another mineral right or
   (ii) an area which the Minister has approved in writing as a source of building materials for the construction of tunnels, roads, dams, aerodromes and similar public works;
   (iii) an area designated by the Minister as an area in respect of which applications for the grant of a mineral right have been, or will be invited by tender.
   (iv) the area requested overlaps totally or partially with an environment protected area.

(2) No additional reasons for rejection of a licence may be included through regulations or administrative decisions.

Article [...]: Joint exploration/exploitation licence for artisanal and small scale mining.
(1) When a licence has been granted through a tender process, for an artisanal and small scale development minerals exploration project, the Licensee shall have the right, at any moment, to begin the exploration phase without the need of a new tender or the subscription of a contract with the [Regulating Authority].

(2) In such case, the obligations and rights of the parties shall be regulated by
(3) Prior to start the exploitation phase, the licensee should in any case obtain, regardless of other legal requirements:

(a) The environmental licence, following applicable regulation.
(b) The right of use the necessary land for the project.
(c) The water use permits, following applicable regulation.

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30.3 Licence Refusal Appeal Process

In order for there to be accountability of the granting authority, there should not only be standards for the grant of licences that limit or eliminate the granting authority’s discretion, but also a procedure for review of the authority’s decision to refuse to issue a licence.

A due process review procedure would include an initial procedure for reconsideration by the granting authority and/or his or her hierarchical superior, followed by a judicial or review of the ultimate decision on reconsideration.

If a competitive bidding procedure is used to award the exploration licence, the bidding rules (either in the Mining law or regulations, or in a separate law and regulations on public contracting) should include a clear statement of the procedure and criteria for challenging any awards of exploration rights. If the bidding procedure involves a two-stage process (i.e., a bidder qualification stage to narrow the field of eligible bidders and a bid evaluation stage to determine the prevailing bid, if any), then the rules should provide separate procedures for challenges of a determination of ineligibility, on the one hand, and challenges of an award of a licence, on the other hand. The grounds for a challenge of a decision in a competitive bidding process should be narrowly defined but should include, for example:

- Conflict of interest or misconduct by one or more members of the bid review commission affecting the outcome;
- Decision of the commission based on criteria or weighting other than those specified in the bidding rules;
- Improper influence on the decision of the commission; and
- Decision of the commission contrary to public policy established by law.

If a procedure other than competitive bidding is used to award the licence (e.g., first-come-first served, auction, or best offer), the licence refusal...
appeal process should be specified in the Mining law. That process should enable appeals of refusals by inaction as well as explicit refusals.

In order to enable appeals of licence refusals to potentially succeed, the licence granting procedure set forth in the Mining law should include clear statements of the following elements:

- The criteria for the grant of the licence;
- A registry and mapping of all applications for exploration licences, accurately recording the name of the applicant, the location of the exploration area sought, the mineral substances targeted and the date and time of filing the application;
- The timeframe within which a decision to grant or refuse the licence must be made; and
- The requirement that the reasons for the refusal of a licence must be provided by the granting authority to the applicant in writing;
- The timeframe within which requests for reconsideration and appeals of refusals must be filed, and with which authority.

In jurisdictions that experience a high volume of applications for mineral rights, and an actual or potential high volume of disputes over mineral rights, it may be desirable and justifiable to establish a special adjudicatory tribunal to resolve such conflicts, including appeals of licence refusals. For example, such appeals could be submitted to a review board composed of members of a mineral resource development advisory commission consisting of representatives of government, industry, artisanal and small scale mining, civil society and authorities and community leaders from the affected areas.

### 30.3. Example 1:

**Article [__] The end of the application assessment**

1. The assessment of an application for mining and/or quarrying rights shall come to an end on the day on which the applicant is notified of the decision to grant the application or the Ministry of Mines is notified of the judge's decision as provided for in Article [__] (on registration through legal channels) of the present [Act]Code[Law].

2. In the event of a decision to refuse the application, and subject to the provisions of Article [__] (on the application of standard legal rules for appeals to a higher administrative authority) and Article [__] (on the shortening of time periods within which appeals may be brought) of the present Code, the assessment of an application for mining and/or quarrying rights shall come to an end on the day on which the applicant is notified of the decision.

**Annotation**

Drawn from DRC’s mining law (2002), this provision provides for an expedited administrative and judicial appeal process in the case of refusal to grant a licence under the general procedures for judicial review of administrative decisions. It includes:

- Filing a request for reconsideration with the granting authority within 30 days of the notification of the decision to refuse the licence.
- Filing a request for judicial reversal within twenty days of the rejection of the request for reconsideration;
- Filing of the briefs in opposition and the administrative record within 15 days of notification of the appeal;
- Limitation of the power of the court to grant filing deadline extensions: 12 days maximum;
- Issuance of the decision of the Supreme Court of Justice within 30 days of closure of the pleadings.
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Article [__]. The application of the common law
Subject to the provisions of Article [__] (on registration through legal channels) and Article [__] (on matters which concern appeal proceedings) of the present Code, an appeal against administrative acts decreed by administrative authorities in application of, or in violation of, the provisions of the present Code, or those of the Mining Regulations shall be governed by the common law, in particular by the provisions of Articles [__] of the Code of Judicial Organisation and Jurisdiction and by the [__] Law relating to procedure before the [Supreme Court of Justice], as amended and supplemented to date.

Article [__]. The shortening of time periods
(1) As an exception to the provisions of the Act mentioned above, the applicant’s preliminary appeal, as a litigant before the Administrative Division of the [Supreme Court of Justice], to the authority which may set aside or amend the act must be brought within thirty days of the date on which the decision undertaken was published or the applicant was personally notified of it. A request to set aside is to be brought within twenty days from the day on which notification was given for the total or partial dismissal of the appeal.

(2) The time limit for filing the answer and the one for the administrative file shall be fifteen working days from the date of notification of the appeal. The same time limit shall apply for the opinion of the Attorney General of the Republic. An extension of the time limits imposed on the parties for sending in the appeal and the reply, which may possibly be decided on by a reasoned order of the President of the Administrative Division of the [Supreme Court of Justice], may not exceed 12 working days.

(3) The shortening of the time limits provided for in the preceding paragraphs of the present Article is only applicable to refusals to grant mining and/or quarrying rights, and of the approval or realisation of a mortgage.

(4) In any case, the judgement of the [Supreme Court of Justice] shall be delivered within thirty working days of the deliberations relating to the case.
30.3. Example 2:

Article [...]  
(1) Any person whose rights or legitimate expectations have been materially and adversely affected or who is aggrieved by any administrative decision in terms of this [Law][Act][Code] may appeal in the prescribed manner to –

(a) the [Regulating Authority], if it is an administrative decision by an officer of the [Regulating Authority]; or

(b) the [Administrative Reviewer], if it is an administrative decision by the [Regulating Authority].

(2) An appeal in terms of subsection (1) does not suspend the administrative decision, unless it is suspended by the [Regulating Authority], as the case may be.

(3) No person may apply to the court for the review of an administrative decision contemplated in subsection (1) until that person has exhausted his or her remedies in terms of that subsection.

(4) Sections [...] of the [Administrative Procedures Act], apply to any court proceedings contemplated in this section.

Annotation

Drawn from South Africa’s mining law (2002), this provision acknowledges a right of appeal under the Promotion of Administrative Justice Act and imposes an obligatory internal administrative appeal (a request for reconsideration) as a prerequisite. It does not establish expedited deadlines in the manner that the DRC provision does.

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30.4 Area

The area refers to the physical boundary marking the space grantable for exploration. Most laws only provide for the maximum size permitted under the exploration licence, but a law may also provide the minimum threshold allowed. Some laws will mandate the licence holder to clearly demarcate the granted space with physical markers (stones, pegs, wooden slats), while others require solely that the size of the property be listed in the licence document itself, in the mining cadastre, and/or in the applicant’s application documents. The area covered by an exploration licence should be subject to the requirements as to form and orientation imposed by the cadastral system.
A licence should indicate the specific area granted to the licence holder, usually by geographic references but preferably official map coordinates. Due to the larger footprint of prospecting/reconnaissance activities relative to exploration activities, the maximum grantable area for exploration is usually smaller in size relative to the maximum grantable area for prospecting/reconnaissance, subject to being reduced over time either by voluntary relinquishment or mandatory size reductions at renewals. Voluntary relinquishment can be encouraged by a system of gradually increasing annual fees payable per unit of surface area.

### 30.4. Example 1:

**Section [__]**

**Article [__]** General principle of no overlapping licences

1. As general rule, no development mineral licence can be granted in the same area over which a licence has been already granted.

2. In exceptional cases, when the [Regulating Authority] determines that there is no technical or operational conflict between two or more projects, the [Regulating Authority] might grant two or more licences that can overlap between each other.

3. In no circumstance may the [Regulating Authority] grant more than one licence to explore or exploit the same mineral in the same area.

4. No development minerals licences can be granted on environmental protected areas.

**Article [__]** Area of large scale mining development mineral licence

1. An exploration licence for large scale mining development minerals project shall cover an area of no more than 1000 km², determined in the terms and conditions of the tender process.

2. Subject to the provisions of subsection (4), the exploration area shall be reduced in size to eliminate therefrom—

   (a) at the end of the initial term of the exploration licence, not less than half of the initial area;
   (b) at the end of each period of renewal, half of the remaining area.

### Annotation

Drawn from Botswana’s mining law (1999), this example represents perhaps the outer limit (1000 km²) of the maximum size of area available under an exploration licence (called prospecting licence under the Botswana law). It is fairly typical in requiring a reduction of at least half of the area upon each renewal, but allows some flexibility in the case of renewals after the first.

Areas covered by retention licences are eliminated because they come under a separate licence (i.e., a licence holder may obtain a retention licence for part of a licence area while continuing to hold the rest under the prospecting licence).

The provision for small scale mining limits the size of an SSM licence (“minerals permit”) area to half of a square kilometre (i.e., 50 hectares.) It does not permit any exceptions, but it also does not limit the number of SSM licences that can be held by a single holder.

The provision also requires the permit holder to demarcate the SSM permit area within three (3) months of the issuance of the permit “in such manner as may be prescribed”.

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**NOTE: This Document is part of a multi-part document, Parts A - E**
(3) The holder of an exploration licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the exploration area and, in default thereof, the designation shall be made by the [Regulating Authority].

(4) Where a person holds two or more contiguous exploration licences covering the same period and the same mineral or minerals the [Regulating Authority] shall, for the purposes of the elimination, under subsection (2), of part of any of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one such exploration licence.

(5) No compensation shall be payable to the holder of any exploration licence arising out of reductions in area effected in terms of this article.

Article [__] Area of small scale development mineral licence.
(1) An exploration licence for artisanal and small scale mining development minerals project shall cover an area of no more than 0,5 km², as determined by the [Regulating Authority] based on the petition of the Licencee.

(2) The holder of a minerals permit shall, within three months of the issue thereof, secure the area covered by such licence.

Article [__] Area of artisanal development mineral licence.
(1) An artisanal mining licence area shall not be more than one half hectare (5000 m²).

(2) Every artisanal mining licence area shall be determined in the field by a government officer, jointly with the Licensee.

Article [__] Creation of special development mineral artisanal mining zones
(1) Considering the disperse nature of development minerals, artisanal licences can be adjudicated in all the territory of the State.

(2) The [Regulating Authority], after technical and economic analysis, may determine a specific zone as “Development Minerals Artisanal Mining Zone”, where licences shall be granted to artisanal miners organized as
### 30. Development Minerals Exploration Licence

#### 30.5 Specific Obligations of a Licence Holder

Provisions that lay out, for the holder of an exploration licence, the necessary responsibility or duty to undertake certain actions or restriction from undertaking certain actions or causing certain effects are collectively treated as obligations. Noncompliance with these obligations may lead to fines and/or ordered suspensions of operations until the Licencee is in compliance. Where suspension occurs, continued, uncured non-compliance beyond a specified time period may result in revocation of the licence.

Specific obligations of an exploration licence holder may include obligations before, during and after operations. Obligations prior to the commencement of operations may include: (1) introduction and presentation to local authorities; (2) preparation and regulatory approval of an environmental and social mitigation plan; and (3) establishment of an environmental restoration surety bond or fund.

Obligations during operations may include:
- Commencement of operations within a specified time period;
- Posting of an environmental surety;
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- Payment of annual fees per unit of surface area held;
- Implementation of an approved work program;
- Filing regular reports on work and investment completed and results achieved (e.g., geological findings);
- Implementation of approved environmental and social mitigation plan, and filing of periodic reports thereon;
- Compliance with labour, health and safety regulations;
- Compliance with applicable immigration, customs and tax laws and regulations;
- Compliance with all applicable contract terms, in countries where a contract between the State and each exploration licence holder is required.

Obligations upon the closure of operations normally include a final report of work carried out and results achieved, as well as the implementation of the site closure and restoration provisions of the approved environmental impact mitigation plan, unless the site is to be developed as a mine.

### 30.5. Example 1:

**Section [____]: Obligations for large-scale mining.**

**Article [____]: Obligations for maintaining the validity of the right**

1. In order to maintain the validity of their mining or quarrying right, the holder must:
   
   a. commence work within the period specified in Article [____] of the present Code;
   
   b. pay the annual surface area fees per square relating to their title, each year before the deadline set in Article [____] (on the amounts due as annual surface area fees per square) of the present Code.
   
   c. pay the taxes and contributions determined in the present Code in the event that the duration of the mining licence is extended.

2. Should one of these obligations not be fulfilled, the holder shall lose their right by application of the procedure provided for in Articles [____] (on failure to comply with administrative obligations, and the related penalties) of the present Code.

3. Should the holder fail to comply with the obligations listed in the

### Annotation

Drawn from DRC’s mining law (2002), the provision for large scale mining deals with obligations in two chapters. Chapter 1 establishes the principle that the holders of all licences must comply with two specific obligations that have specific time requirements in order maintain the validity of their rights:

- begin work within the time specified in article 197 of the Code; and
- pay the surface fee per square unit of area related to their title before the deadline set in article 199 of the Code.

Failure to comply with either of these obligations results in the Licensee being stripped of the licence.

The Licensee’s failure to comply with the obligations listed in the second chapter will be penalized by fines and/or possible orders to suspend operations, or in the case of violations, by judicial process.

This bifurcation of obligations into two categories and the clarity and objectivity of the two obligations that are enforced by revocation of the title provides great security of title to Licensees and also ensures prompt and complete payment of the fees that fund the work of the Regulating Authority.

The obligations in the second category are numerous and are only referenced
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<table>
<thead>
<tr>
<th>Following chapters, they shall be penalised with fines and/or possibly with an order to suspend or put an end to operations or, in the case of an offence, shall be prosecuted.</th>
</tr>
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<tbody>
<tr>
<td>Article [__]: The obligation to commence work</td>
</tr>
<tr>
<td>A Prospecting Licence holder shall be required to commence work within six months of the date on which the prospecting right was issued.</td>
</tr>
<tr>
<td>Article [__]: The obligation to pay the annual surface area fees per square</td>
</tr>
<tr>
<td>(1) To cover costs for the services and management relating to the rights established by mining titles, annual surface area fees per square, for each mining or quarrying title which is issued, shall be collected for the Ministry of Mines which shall redistribute a portion to the departments of [the regulatory authority] responsible for the administration of the present Code.</td>
</tr>
<tr>
<td>(2) Holders of Prospecting Licences, Operating Licences, Operating Licences relating to Tailings, Operating Licences for Small-Scale Mining, Permits to Prospect for Quarry Products and Permanent Quarry Operating Permits shall pay the surface area fees for the first year when the mining or quarrying title is issued.</td>
</tr>
<tr>
<td>(3) The holder is to settle the annual surface area fees per square for each following year before the end of the first quarter of the calendar year. However, annual surface area fees are to be paid pro rata per square, when the initial title is issued, or in the last year during which the title is valid.</td>
</tr>
<tr>
<td>(4) Annual surface area fees per square are to be paid at the relevant counter at the Ministry of Mines which issued the mining or quarrying title, which shall issue the holder with a receipt when payment is made.</td>
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<tr>
<td>Section [__]: Environmental Protection</td>
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<td>Article [__]: During reconnaissance</td>
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<tr>
<td>(1) Before reconnaissance work relating to mining or quarry products may commence, the holder of a Reconnaissance Licence or a Permit to Prospect here by article title, except for the obligation to prepare and obtain the approval of an Environmental Mitigation Plan (PAR) before commencing work (which must begin within 6 months of delivery of the licence). The process of approval is expedited by a sectoral environmental review authority.</td>
</tr>
<tr>
<td>Drawn from Sierra Leone’s mining law (2009), the provision for small scale mining includes the following key obligations:</td>
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<tr>
<td>- carrying out exploration and mining in a reasonable within the required competence.</td>
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<tr>
<td>- furnishing the required information to the Director of Mines</td>
</tr>
<tr>
<td>- carrying directives promptly to ensure safe and good practices</td>
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<tr>
<td>- Appoint manager to supervise operations</td>
</tr>
<tr>
<td>- notifying appropriate local authorities when beginning or ceasing operations</td>
</tr>
<tr>
<td>- keeping accurate records and submitting required reports</td>
</tr>
<tr>
<td>- selling minerals in prescribed manner</td>
</tr>
<tr>
<td>- complying with community development agreements</td>
</tr>
<tr>
<td>- carrying out required rehabilitation and reclamation of land</td>
</tr>
<tr>
<td>In addition, an SSM licence holder should also have a scheme in place for employing and training local people.</td>
</tr>
<tr>
<td>For the Artisanal mining licence, the example is also drawn from Sierra Leone’s mining law (2009), and includes the most essential obligations of Licensees. Evidently, the bar is lowered in this case, however, the artisanal mining Licensees need to comply at least a minimum set of duties, in order to ensure the safety of the basic interest of the community.</td>
</tr>
</tbody>
</table>
for Quarry Products must draw up and obtain approval for a Mitigation and Rehabilitation Plan (Plan d’Atténuation et de Réhabilitation (PAR)) for the proposed activities.

(2) The terms of the PAR and its approval shall be laid down in the regulations.

(3) The approval of a PAR shall fall under the jurisdiction of the department responsible for environmental protection within the [the regulatory authority] in collaboration with [the regulatory authority for the environment].

Section [__] The Protection of Cultural Heritage

Article [__] Declaration of indicators of an archaeological discovery
Article [__] The discovery of artefacts of national cultural heritage

Section [__] Health and Safety

Article [__] The jurisdiction of [the regulatory authority]
Article [__] The declaration of an accident in a mine or quarry
Article [__] The use of explosive products

Section [__] Various obligations

Article [__] The relationship with local authorities
Article [__] Registers and reports
Article [__] Inspections
Article [__] The opening and closure of a prospecting or operations centre.

(1) The holder of a small-scale mining licence shall—

(a) within the limits of its competence and resources, carry on in good faith, in the licenced area, exploration or mining operations;
(b) furnish the [Regulating Authority] with such information relating to its exploration or mining operations as the [Regulating Authority] may reasonably require or as may be prescribed;

(c) carry out promptly any directives relating to its exploration or mining operations which may be given to the holder by the [Regulating Authority] for the purposes of ensuring safety or good mining practices;

(d) if not personally supervising the exploration or mining operations under the licence, employ a Mines Manager for the purpose of supervising its exploration or mining operations provided that all such Mines Managers must be approved by the [Regulating Authority] and shall carry with them such means of identification as the [Regulating Authority] may direct;

(e) before beginning or ceasing any exploration or mining operations notify the appropriate local government authority or local authority and an authorized officer, of the intention to begin or cease exploration or mining, as the case may be;

(f) substantially comply with any community development agreement required under this [Law][Act][Code];

(g) sell the minerals obtained in the mining area as prescribed;

(h) carry out rehabilitation and reclamation of mined out areas;

(i) keep accurate records of winnings from the mining area and such records shall be produced for inspection on demand by the [Regulating Authority] or a duly authorized officer; and

(j) submit all reports as prescribed.

Article [_] Obligations for development minerals artisanal licence holders.

(1) The holder of an artisanal mining licence shall–

(a) within the limits of its competence and resources, carry on in good faith, in
### AMLA GUIDING TEMPLATE

#### PART B-5: Mineral Licences – Development Minerals

<table>
<thead>
<tr>
<th>the licenced area, exploration or mining operations;</th>
<th><strong>Annotation</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) carry out rehabilitation and reclamation of mined areas as prescribed in the law;</td>
<td>Drawn from South Africa’s mining law (2002), this provision requires (for exploration licences called prospecting permits) compliance with all of the obligations noted above and also:</td>
</tr>
<tr>
<td>(c) Perform the operations applying health and safety standards for its workers.</td>
<td>• Approval of an environmental management plan (as part of the licence grant process);</td>
</tr>
<tr>
<td>(d) Report to the government-</td>
<td>• Notification and consultation with the landowner or lawful occupier;</td>
</tr>
<tr>
<td>(i) annual production.</td>
<td>• Presentation of the licence to the Mining Titles office for registration;</td>
</tr>
<tr>
<td>(ii) annual income.</td>
<td>• Commencement of exploration (called prospecting) activities within 120 days of the effective date of the licence;</td>
</tr>
<tr>
<td>(iii) compliance of environmental obligations.</td>
<td></td>
</tr>
<tr>
<td>(e) The [Regulating Authority] shall issue regulation that will organize the reports to be submitted annually and jointly with the income tax reports.</td>
<td></td>
</tr>
<tr>
<td>(f) employ in the area in respect of which the licence is issued not more than ten workers per artisanal mining licence;</td>
<td></td>
</tr>
<tr>
<td>(g) Allow officers of the [Regulating Authority] or other government entities to inspect the site of operations when complains of any kind have been reported.</td>
<td></td>
</tr>
</tbody>
</table>

#### 30.5. Example 2:

**Article [__]. General rules for development minerals large scale operations.**

1. No person may prospect for or remove, mine, conduct, technical co-operation operations, reconnaissance operations, explore for and produce any mineral or commence with any work incidental thereto on any area without –

   (a) an approved environmental management program or approved environmental management plan, as the case may be;
(b) a prospecting/reconnaissance permission, exploration right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right or production right, as the case may be; and

(c) obtaining rightful permission from the land owner, after due compensation.

Article [_] Obligations of holder of development minerals large scale exploration licence

(1) The holder of an exploration right must –

(a) lodge such right for registration at the Mining Titles Office within 30 days of the date on which the right –

(i) becomes effective in accordance with the provisions of this [Law][Act][Code]; or

(ii) is renewed in accordance with the provisions of this [Law][Act][Code];

(b) commence with exploration activities within 120 days from the date on which the exploration right becomes effective or such an extended period as the [Regulating Authority] may authorize;

(c) continuously and actively conduct exploration operations in accordance with the exploration work program;

(d) comply with the terms and conditions of the exploration right, relevant provisions of this [Law][Act][Code] and any other relevant law;

(e) comply with the requirements of the approved environmental management programme;

(f) pay the prescribed exploration fees to the State; and

(g) subject to section [_] (on the rules regarding the removal and disposition of minerals), pay the State royalties in respect of any mineral removed and disposed of during the course of exploration operations.

• Maintenance of records, drilling logs, etc.; and
• Obtaining the [Regulating Authority]’s approval for any removal of bulk samples for testing.

This is a clear and comprehensive set of specific obligations of exploration licence holders.

Provisions for small scale mining, drawn from Ghana’s mining law (2006), include many of the obligations in the previous example, but goes further to address compensation for the use of land, the use of explosives and the process for adding additional minerals to the licence.
### Article [__] Permission to remove and dispose of minerals

1. Subject to subsection (2), the holder of an exploration right may only remove and dispose for his or her own account any mineral found by such holder in the course of exploration operations conducted pursuant to such exploration right in such quantities as may be required to conduct tests on it or to identify or analyse it.

2. The holder of an exploration right must obtain the [Regulating Authority]'s written permission to remove and dispose for such holder's own account of bulk samples of any other minerals found by such holder in the course of exploration operations conducted pursuant to such exploration right.

### Article [__] Information and data in respect of prospecting/reconnaissance and exploration

1. The holder of an exploration right or prospecting/reconnaissance permission must –

   - (a) keep proper records, at the registered office or place of business, of exploration operations and the results and expenditure connected therewith, as well as borehole core data and core-log data, where appropriate; and
   
   - (b) submit progress reports and data, in the prescribed manner and at the prescribed intervals, to the [Officer of the Regulating Authority] regarding the exploration operations.

2. No person may dispose of or destroy any record, borehole core data or core-log data contemplated in subsection (1)(a) except in accordance with written directions of the relevant [Officer of the Regulating Authority].

### Article [__] Environmental management principles

1. The principles set out in section [__] of the [National environmental legislation] –

   - (a) apply to all exploration and mining operations, as the case may be, and any matter or activity relating to such operation; and
(b) serve as guidelines for the interpretation, administration and implementation of the environmental requirements of this [Law][Act][Code].

(2) Any exploration or mining operation must be conducted in accordance with generally accepted principles of sustainable development by integrating social, economic and environmental factors into the planning and implementation of exploration and mining projects in order to ensure that exploitation of mineral resources serves present and future generations.

Article [... ] Integrated environmental management and responsibility to remedy
(1) The holder of a reconnaissance permission, exploration right, mining right, mining permit or retention permit –

(a) must at all times give effect to the general objectives of integrated environmental management laid down in the [National environmental legislation];

(b) must consider, investigate, assess and communicate the impact of his or her exploration or mining on the environment as contemplated in the [National environmental legislation];

(c) must manage all environmental impacts –
   (i) in accordance with his or her environmental management plan or approved environmental management program, where appropriate; and
   (ii) as an integral part of the prospecting/reconnaissance, exploration or mining operation, unless the [Regulating Authority] directs otherwise;

(d) must as far as it is reasonably practicable, rehabilitate the environment affected by the exploration or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and

(e) is responsible for any environmental damage, pollution or ecological degradation as a result of his or her prospecting/reconnaissance, exploration or mining operations and which may occur inside and outside the boundaries...
(2) Notwithstanding the [Companies Act], or the [Close Corporations Act], the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution.

Article [...] Financial provision for remediation of environmental damage
(1) The holder of an exploration right, mining right or mining permit must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the [Regulating Authority].

(2) If the [Regulating Authority] is not satisfied with the assessment and financial provision contemplated in this section, the [Regulating Authority] may appoint an independent assessor to rehabilitate the closed mining or exploration operation in respect of latent or residual environmental impacts, to be paid by the licence holder.

Article [...] Obligations of holder of development minerals small scale exploration licence.
(1) Registration of small scale Licensees
(a) A person engaged in or wishing to undertake a type of small scale mining operation shall register with the [cadastre registry] of the designated area where the person operates or intends to operate.

(b) A person shall not be granted a licence under section 82(1) unless the person is registered under this section.

(2) Operations of small scale miners
A person licenced under section [x] shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment during mining operations

(3) Compensation for use of land
Where a licence is granted in a designated area to a person other than the owner of the land, the Licensee shall pay compensation for the use of the land and destruction of crops to the owner of the land that the [Regulating Authority].
Authority in consultation with the [relevant government agencies] with responsibility for valuation of public lands may prescribe

(4) Use of explosives
A small-scale miner shall not without the written permission of the [Regulating Authority] use explosives in the area of operation

Article [...] Amendment of mineral at right to add other minerals

(1) Where in the course of exercising a mineral right under this [Law][Act][Code], the holder discovers an indication of a mineral not included in the mineral right, the holder shall within thirty days of the discovery, notify the [Regulating Authority] in writing of the discovery

(2) The notification given under subsection (1) shall
(a) contain particulars of the discovery, and
(b) the site and circumstances of the discovery.

(3) The holder of the mineral right may in the prescribed form, apply for the mineral right to be amended to
(a) include an additional mineral, or
(b) exclude a mineral

(4) Subject to this [Law][Act][Code] and unless the land which is the subject of the mineral right, is subject to another mineral right in respect of the mineral applied for under subsection (3), the [Regulating Authority] shall amend the mineral right on the terms and conditions that may be prescribed.

(5) A mineral right shall not be granted for another mineral over the same area of land subject to an existing mineral right unless the holder of the existing right is notified and given the first option of applying for the right.

(6) A notification given under subsection (5) shall contain
(a) particulars of the mineral applied for and
(b) the area applied for
Article [...] Obligations of holders of mineral rights
(1) The holder of a mineral right shall at all times appoint a manager with the requisite qualification and experience to be in charge of that holder's mineral operations.

(2) The holder of a mineral right shall notify the [Regulating Authority] in writing of the appointment of a manager and on each change of the manager.

Article [...] Records of and reports by mineral right holders
(1) A holder of a mineral right shall maintain, at an address in [Country] notified to the [regulating entity] for the purposes of this section, the documents and records that may be prescribed and shall permit an authorized officer of the [Regulating Authority] at a reasonable time to inspect the documents and records and take copies of them.

(2) A holder of a mineral right shall furnish the [regulating entity] and other persons prescribed, with such reports on the mineral operations of and geological information attained by or on behalf of the holder.

Article [...] Obligations for development minerals artisanal licence holders
(1) The holder of an artisanal mining licence shall—

(a) within the limits of its competence and resources, carry on in good faith, in the licenced area, exploration or mining operations;

(b) carry out rehabilitation and reclamation of mined areas as prescribed in the law;

(e) perform the operations applying health and safety standards for its workers;

(d) report to the government—

(i) annual production.

(ii) annual income.

(iii) compliance of environmental obligations.

(e) employ in the area in respect of which the licence is issued not more than
30. Development Minerals Exploration Licence

30.6 Rights of a Licence Holder

Provisions that address what possession of an exploration licence allows the licence holder to do or what the licence holder may be entitled to are collectively treated as rights. The rights of an exploration licence holder are usually exclusive exploration rights at depth within the licenced area. Although the licence usually relates to specified minerals only, under most mining laws no other exploration or mining licence can be granted to another party over the same area.

The exploration licence entitles the holder to carry out exploration activities, as defined; but not to engage in mining. The exploration licence holder generally also has the exclusive right to apply for an exploitation licence over the same area, in whole or in part, during the term of the licence.

As a general matter, the rights of a SSM or artisanal licence holder within the licenced area are similar to those of a large-scale exploitation licence holder within its licence area, except that the SSM and artisanal licence holder’s right may be limited to a certain maximum amount of production or investment. In order to exceed that limit, the SSM or artisanal licence holder must convert the original licence to the type of exploitation licence under which the projected higher level of production or investment is authorized.

Depending on the defined nature of the exploration right, the Licensee may have the right to pledge, mortgage or transfer the licence.

30.6. Example 1:

Article [...] Rights applicable to all development minerals licence holders
(1) Any licence holder of development minerals, regardless of the size of the operation, shall have the following rights:

Annotation
Inspired by Côte d’Ivoire’s mining law (2014), Tanzania’s mining law (2010) and Sierra Leone’s mining law (2009), this example includes a list of the rights that might apply to any development minerals licence, regardless of the size of the operation. Considering that this is an exploration licence, the approach might
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**PART B-5: Mineral Licences – Development Minerals**

<table>
<thead>
<tr>
<th>(a) To enter the area of licence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) To hold the exclusive right to explore for development minerals, as specified in its licence.</td>
</tr>
<tr>
<td>(c) To be protected from disturbance generated from third parties.</td>
</tr>
<tr>
<td>(d) To be able to explore the minerals it finds, after following the rules for that phase, included in this [Law][Act][Code].</td>
</tr>
<tr>
<td>(e) To freely dispose the products obtained during the exploration phase, with the purpose of geological essays.</td>
</tr>
<tr>
<td>(f) To transfer, mortgage or pledge the licence, with the consent of the [Regulating Authority]</td>
</tr>
</tbody>
</table>

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**30.6. Example 2:**

Section [__]

Article [__] Rights of large scale exploration licence holders.

(1) Subject to the provisions of this [Law][Act][Code] and the Regulations, an exploration licence confers on the holder the exclusive right to carry on exploration operations in the exploration area for minerals to which the licence applies.

(2) In the exercise of the rights conferred by this section, the holder may, subject to section [__] (on restrictions on the right of a mineral licence holder to enter land), either himself or by his employees or agents, enter upon the exploration area and erect camps and temporary buildings and may erect installations in any water forming part of the exploration area.

(3) The holder of an exploration licence for gemstones who in the course of carrying out exploration operations under the exploration licence recovers gemstones, may dispose of the gemstones by sale to a licenced dealer and shall promptly following any such sale submit particulars thereof to the [Regulating Authority], showing the name and business address of the dealer, a description of the stones, their weight and a copy of a receipt given by the purchaser for the price received.

(4) The holder of an exploration licence for gemstones who recovers gemstones in the course of exploration operations shall for the purpose of...
holding the gemstones and selling them pursuant to subsection (3) be deemed to be a mineral right holder.

(5) The exploration licence holder is authorized to apply for a retention licence.

(6) The exploration licence holder is entitled to apply for and obtain a special mining licence or a mining licence, subject to compliance with the application requirements specified in other articles.

Article [__] The scope of an Operating Licence for Small-Scale Mining
(1) The provisions of Article [__] of the present Code shall govern the scope of an Operating Licence for Small-Scale Mining.

(2) An Operating Licence for Small-Scale Mining confers on the holder the right to convert their Operating Licence if the technical conditions for the operations warrant this.

Article [__]. The scope of the Operating Licence
(1) An Operating Licence confers on the holder an exclusive right, within the area of the licence and during its period of validity, to carry out work relating to prospecting, development, construction and operations to mine the mineral substances for which the licence was granted, and for related substances if the holder has applied for an extension in this regard. In addition, and without limitation, it enables the holder to:

(a) enter the operating Area to carry out mining operations;

(b) build facilities and infrastructure required for the mining;

(c) use resources, namely water and wood, located within the Mining Area, as required for the mining, in compliance with the standards defined in the EIA and the EMP;

(d) freely dispose of, transport and market their marketable products resulting from their mining in the operating Area for own account;
(e) carry out operations for technical or metallurgical processing or concentration, as well as for converting the mineral substances extracted from the deposit within the operating Area;

(f) carry out work for the extension of the mine.

(2) For as long as an Area is the subject of an Operating Licence, no other application for a mining or quarrying right for all or part of the same Area may be considered.

(3) However, where the Operating Licence holder has refused to give consent to an applicant who wishes to open a quarry in the Area, said applicant may apply for a Quarry Operating Permit over a part of the Area which is the subject of the Operating Licence but which is not being used for mining operations.

(4) Where applicable, the application shall be examined and shall be made the subject of an administrative dispute in which the holder and the applicant are involved, if, together with their application, the applicant submits proof that the holder refused to give consent in bad faith.

(5) The Mining Regulations shall determine the substantive and procedural rules for the dispute.

Article [...] The extent of an Operating Licence for Small-Scale Mining
(1) An Operating Licence for Small-Scale Mining confers on the holder a right to mine the mineral substances for which it was specially granted and for which the holder has identified a deposit and shown that said deposit exists.

(2) An Operating Licence for Small-Scale Mining may be extended to include related or unrelated materials in accordance with the conditions provided for in Article [...] of the present [Code][Act][Law].

Article [...] The nature of an Operating Licence for Small-Scale Mining
An Operating Licence for Small-Scale Mining is an immovable, exclusive right, and may be assigned, subleased and transferred in accordance with the provisions of the present [Code][Act][Law].
### Article [__] Rights of artisanal mining licence holders

An artisan's mining right shall confer on the person to whom it is granted, or in the case of a right granted in accordance with subsection [__] of article [__], on the community concerned, exclusive rights to mine according to its terms in respect of the mineral specified in the permit within the area for which it is granted.

### 30. Development Minerals Exploration Licence

#### 30.7 Term of Licence

The term of the licence is the period of time during which it is valid. The mining law or regulation should establish the length of time or the maximum length of time for which a licence is granted. The licence itself should specify the start date and the end date of its period of validity (subject to possible early termination).

The term of an exploration licence should be long enough to allow time for enough investigation to enable the licence holder to make a determination of whether to pursue intensive drilling and sampling of specific targets within the licence area, provided that renewal terms are available during which deeper analysis, feasibility studies, environmental and social impact studies and required or necessary plans for local procurement, hiring and training, and community development can be developed or negotiated. It is thought that the initial term should be short enough to prevent Licensees from holding large areas for excessive periods without developing them; however, this goal could also be achieved by gradually increasing the annual fees per unit area payable by the Licensees, to encourage voluntary relinquishment, or providing fixed and limited renewals, with or without the previous authorization from the regulating entity, as we will develop in the examples.

It should be noted that as requirements are increased for the grant of a mining licence (for example, Economic and Social Impact Assessment (ESIA), community development agreement, local procurement, hiring and training programs), more time will be needed in order to accomplish them.

The typical term of a large scale exploration licence for metal minerals in Africa is 3 years, or a period not exceeding three years. (Examples: Botswana, Cameroon, CAR, Ghana, Guinea, Malawi, Mauritania, Morocco, Nigeria, South Africa, Uganda, Zimbabwe.) The term is 4 years, or for a period not exceeding four years, in Côte d’Ivoire, DRC for precious stones, Sierra Leone and Tanzania. The term is 5 years in the DRC except for precious stones, as well as in Madagascar and Mozambique. In Angola the term is set by contract.
The terms of SSM licences are generally much shorter than the terms of large scale exploitation licences because by definition SSM is limited to the exploitation of small scale deposits involving limited amounts of investment and/or production. Some mining laws that provide for SSM licences also contemplate a process for an SSM licence to be transformed into an industrial mining licence with a longer term if justified by the nature of the deposit and the technical operations during the course of operations under the SSM licence.

There is considerable variety in the terms of SSM licences under mining laws. There are examples for a term as short as three years, with unlimited renewals, or for as long as ten years with no renewals.

Factors to be considered in setting the term of licences include:
- whether the licence covers the exploration and exploitation phases or only the exploitation phase (if the former, a longer term is probably justified);
- whether the licence is preceded by work of the applicant under an exploration licence (in which case, a shorter term may be appropriate);
- whether to set a fixed term or a maximum term length and allow the regulating authority to set the exact term of the licence subject to that maximum (depending on the enforcement capability of the regulating authority to terminate licences under which work has been abandoned);
- whether to set the term length in the law or in the regulations (security of title in the law versus flexibility to adjust to subsector conditions by regulation);
- the extent of the information about the deposit and the work program required to be submitted with an application for the licence (more information available would suggest greater confidence in a relatively short term); and
- the definition of in the mining law and the ability to transform the licence into a larger scale mining licence with a longer term.

### 30.7. Example 1:

**Article [_]**

(1) Where an applicant is entitled to the grant of an exploration licence under the terms and conditions of this [Law][Act][Code], the licensing authority shall issue to the applicant the exploration licence as provided in that section and the licence so issued shall subsist for the following periods-

(a) for the initial exploration period for which the applicant has applied, a period not exceeding four years for large scale mining; 
(b) a period not exceeding two years for small scale mining; and  
(c) a period of one year for artisanal mining.

### Annotation

Inspired by Tanzania’s mining law (2010), Zambia’s mining law (2008) and Sierra Leone’s mining law (2009), this provision reflects a progressive awareness of the potential need for a somewhat longer than normal exploration term as well the need to accomplish certain formalities and obtain certain approvals before actual exploration work can begin.
(2) In determining the date for the commencement of the period for which the licence is granted, the licensing authority may take account of any period not exceeding six months from the date of the grant which is required by the applicant to make any necessary preparations for exploration operations.

30.7. Example 2:

Article [...] A minerals permit shall be valid for a period not exceeding five years, as the [Regulating Authority] may determine and may, on application made to the [Regulating Authority], be renewed for further periods not exceeding five years at a time.

**Annotation**

Drawn from Botswana’s mining law (1999), this provision sets a maximum term length of five years, but authorizes the regulating authority to set a shorter term for a particular licence. The provision also allows for unlimited renewals, each similarly limited to no more than (but possibly less than) five years.

Overall, this is a balanced approach that seeks to set an appropriate term length for the type of operation involved, in light of the pre-licence preparatory work required. It provides flexibility while guarding against the risk of licence areas being tied up for periods that exceed the time of their productivity. It might be an option to establishing a limit in the law of the maximum number of renewals that a Licensee can obtain, without moving forward to the exploitation phase.

30. Development Minerals Exploration Licence

30.8 Renewal of Licence

Addressed often at the same time as the term of the licence, renewal of licence refers to provisions determining when, for how long, and how many times a licence holder may extend the initial duration of the exploration licence. Given the relatively short initial term of exploration licences, renewal terms are generally necessary for additional exploration, completion of the studies and plans required prior to mining operations.

Licence holders who are in compliance with the terms of their licence and their obligations under the mining law are generally entitled to renewals.

Most countries in the region provide for two renewal terms, which may be of the same length as the initial term or may be for shorter periods.

Most countries have ultimate term limits on the combined initial and renewal terms; but ultimately, term limits are arbitrary and may be inadequate for the necessary preparation to develop a complex deposit or one situated in an area presenting major logistical or environmental challenges, or simply to finalize a feasibility study under difficult market conditions. To deal with such situations, Botswana, Namibia, Tanzania and Uganda provide for the availability of a retention licence after the exhaustion of renewal terms under an exploration licence.
Mining laws generally require an application for the renewal of an exploration licence to be filed no later than a certain date prior to the end of the initial term, in order to allow time for processing of the application before the initial term expires. The better mining laws also provide that an exploration licence for which a renewal application has been timely filed are automatically extended until they are either renewed or the renewal is definitively denied.

Most renewal provisions require the relinquishment of a percentage of the area held under the exploration licence (usually half) upon each renewal. An alternative approach would be to permit the holder to retain a larger area upon the payment of an additional fee in order for the licence holder to retain the area that would otherwise be subject to mandatory relinquishment (see Article 24 of the 2014 Mining Code of Côte d’Ivoire, for example). As a general matter, mining laws make very large areas available for initial prospecting/reconnaissance activity, but reduce the maximum size of the area that may be retained upon each renewal or transition from prospecting/reconnaissance to exploration and from the latter to exploitation. In doing so, the laws seek to maximum efficiency on the part of licence holders so that the country’s mineral resources are developed expeditiously, thereby generating employment, commercial activity and fiscal revenues that can be used for other national purposes. Most mining laws require reduction of the area licenced for exploration upon renewals in order to prevent the tying up of areas larger than are necessary for a normal exploration program and to make the excess area available to other prospective applicants who may be more highly motivated to conduct exploration in the relinquished area than the initial licence holder.

Conditions are set under which renewal may be permitted and granted; and these may include:

- Having met all the requirements of the licence during the preceding term such as fees, management of the environment, health, safety and mine development;
- Submission of an updated environmental impact assessment and mitigation and rehabilitation plan, if necessary;
- Submission of an updated work program, if necessary;
- There being enough resource to be exploited in the renewal period.

### 30.8. Example 1:

**Article [_.] Renewal for large scale development minerals licences**

(1) Where an applicant is entitled to the grant of an exploration licence, the [Regulating Authority] shall issue to the applicant the exploration licence as provided in that section and the licence so issued shall subsist for the following periods-

**Annotation**

Drawn from Tanzania’s mining law (2010), this provision clearly states the conditions under which the exploration (called prospecting) Licencee is entitled to renewals, when the applications must be filed, and the length of the renewal terms.

The terms of exploration licences for metallic and processed minerals decline...
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(a) for the initial exploration period for which the applicant has applied, a period not exceeding four years;

(b) where application for renewal has been made by the holder in the prescribed form, for the first period of renewal for which the applicant has applied, a period not exceeding three years;

(c) where application for renewal has been made by the holder in the prescribed form, for the second period of renewal for which the applicant has applied, a period not exceeding two years;

(d) where the holder is not in default and at the end of the second period of renewal a further period is required to complete a feasibility study, already commenced by the holder, for such further period as may be reasonably required for that purpose, but not exceeding two years.

(2) A holder of the licence who intends to renew the licence shall, not later than one month before expiry date of the licence, submit an application for renewal of the exploration licence.

(3) The [Regulating Authority] shall, on application of the holder of a licence granted under subsection (1) of this section and on payment of prescribed fees for renewal, renew the exploration licence-

(a) at the end of the initial exploration period or, as the case may be, at the end of the first renewal period, for the period referred to in paragraphs (b) and (c) of subsection (1);

(b) at the end of the second renewal period, in a case falling under paragraph (d) of subsection (1), for the period required to complete the feasibility study.

(4) The obligation of the [Regulating Authority] to renew an exploration licence is subject to the condition that-

(a) the holder is not in default except that the [Regulating Authority] shall not reject an application to renew an exploration licence on the grounds that the holder is in default, without first serving on the holder a notice giving

from 4 years to 3 years for the first renewal and 2 years for the second and third renewals. (For gemstones other than diamonds, there is only a one-year initial term, non-renewable.) An exploration licence for such minerals can therefore be held for up to 11 years in Tanzania, which also provides for the issuance of a retention licence for a term of 5 years, renewable once for a like term, if the required justification is demonstrated. Reduction of the surface area by half is required at each renewal, but not below 20 square kilometres.

By contrast, the one-year terms of exploration licences for gemstones other than kimberlitic diamonds and for building materials are not renewable.

Drawn from Botswana’s mining law (1999), this provision enables the regulating authority to grant multiple renewals of an SSM licence for renewal terms of up to five years. This provides flexibility in light of the fairly short term (5 years) of the SSM licence. However, in light of the definition of SSM in Botswana’s mining law, which includes limits on annual production and investment, it seems unlikely that an SSM licence holder will be able to obtain multiple renewals while retaining SSM status. Nevertheless, the potential availability of unlimited renewals enables very small scale subsistence miners to maintain their rights for as long as they can continue to profitably produce marketable mineral products from their licenced areas while remaining within the definition of SSM. This reflects, in part, a poverty reduction strategy.

The renewal application is the same as the initial licence application, thus assuring that a renewal is justified by the nature of the deposit and the planned work program, and adjusting the related environmental protection measures accordingly.

The deadline for submitting a renewal application, if any, is set in the regulations. Unfortunately, the mining law does not contain a provision that automatically extends the validity of the SSM licence until the final administrative decision on a renewal application is issued.

Drawn from Sierra Leone’s mining law (2009), the regulations applicable for artisanal mining in development minerals state that the licence is in general renewable, unless the area or the mineral covered are not considered anymore subject of artisanal activity.
particulars of the default and requiring the holder within a reasonable time specified in the notice to remedy the default; and

(b) the holder, on renewal under paragraph (a) of subsection (3), has relinquished in the case of a first renewal fifty per centum of the area held during the initial exploration period and in the case of a second renewal fifty per centum of the balance, and has by notice in writing to the [Regulating Authority] given a sufficient description of the areas he is relinquishing.

(5) The relinquished areas shall be displayed on the notice board at the [Regulating Authority] headquarters and local offices on a monthly basis.

(6) An exploration licence for gemstones other than kimberlitic diamonds, and an exploration licence for building materials shall subsist for one year from the date of grant and shall not be subject to renewal.

(7) The obligations of the [Regulating Authority] under paragraph (b) of subsection (4) shall not apply in the case where the exploration area is not more than twenty square kilometres.

Article [_] Renewal for small scale development minerals licences
(1) Subject to the provisions of subsection (2), a minerals permit shall be valid for such period, not exceeding five years, as the [Regulating Authority] may determine and may, on application made to the [Regulating Authority], be renewed for further periods not exceeding five years at a time.

(2) An application for renewal of the minerals permit shall be submitted no later than such period of time prior to the expiration date of the minerals permit as the [regulating authority] shall establish by regulation.

(3) The application for renewal shall provide the information and accompanying documents required by [First Schedule], which requires:

f) Identification of the applicant and its partners/directors/members/shareholders,

g) Description of the area applied for (including a map and coordinates),
h) Particulars of the minerals for which the permit is sought,
i) The period for which the permit is sought, and
j) The proposed programs of work, including –
   (i) Details of the mineral deposit,
   (ii) estimated date by which applicant intends to work for profit,
   (iii) estimated capacity of production and scale of operations, nature of
      product,
   (iv) envisaged marketing arrangements for sale of mineral product(s),
   (v) Brief environmental impact assessment study and
   (vi) Brief environmental reclamation program.

Article [...] Renewal for artisanal development minerals licences
(1) Subject to subsection (2), an artisanal exploration mining licence shall be
valid for a period of one year and may be renewed for up to three further
periods not exceeding one year at a time.

(2) An artisanal mining licence shall not be renewed pursuant to subsection
(1)—
   (a) if the artisanal mining licence area has ceased to be an area declared for
      artisanal mining operations;
   (b) in respect of any mineral which has ceased to be a mineral prescribed for
      artisanal mining operations;
   (c) unless the [Regulating Authority] is satisfied that the applicant has carried
      on, in good faith, within the limits of its competence and resources, mining
      operations in the artisanal mining licence area and intends to continue doing
      so;
   (d) if the applicant has not carried out effective rehabilitation and reclamation
      of the applicant’s mined out areas to the satisfaction of the [Regulating
      Authority] and authorities responsible for the protection of the environment
      or paid the prescribed fee;
   (e) if the applicant has not reported diligently on its mining operations; or
   (f) if the applicant is in default and the [Regulating Authority] is not prepared
      to waive the default.
### 30.8. Example 2:

**Article [...] Renewal for large scale development minerals licences**

(1) The holder of an exploration licence may, not later than ninety calendar days before the initial expiry of the licence, apply to the Mining Cadastre Office for a first renewal of the licence in respect of not more than one hundred and twenty-five square kilometres of the exploration licence area, except that where the results of exploration to date strongly indicate the presence of widespread mineralisation such that a surrender to one hundred and twenty-five square kilometres would result in some highly prospective areas being surrendered, the [Regulating Authority], on the advice of the Minerals Advisory Board, may exceptionally allow such areas constituting more than one hundred and twenty five square kilometres to be retained.

(2) An application for the first renewal of an exploration licence-

(a) shall be accompanied by-

(i) a detailed annual report as prescribed describing all operations carried out in the previous year together with an annual financial report for the same period, plus a surrender report as prescribed, covering in detail all work carried out over any portion of the ground to be surrendered and accompanied by all results, data, information and interpretation since the grant of the exploration licence;

(ii) a proposed programme of exploration operations to be carried out during the period of first renewal and the estimated cost thereof;

(iii) a plan identifying that part of the exploration licence area for which renewal is sought;

(iv) a description of the contiguous blocks comprising the exploration licence area for which renewal is sought, identified in the prescribed manner; and

(b) shall give particulars of any alteration in the matters stated in the application for the grant of the licence under paragraphs [...] of section [...] (on the required elements of an application for an exploration licence).

(3) The Mining Cadastre Office shall forward an application for the first renewal of an exploration licence to the Minerals Advisory Board.

### Annotation

Drawn from Sierra Leone’s mining law (2009), this provision sets the initial exploration term of four years for large scale exploration licences that can be renewed twice, for 3 years and 2 years respectively. This gradual reduction in term length encourages the licence holder to focus on the most prospective sites within the licenced area and to conduct its exploration program expeditiously.

Unlike Tanzania, Sierra Leone’s mining law does not provide for a retention licence. Thus, an exploration licence may be held for a maximum period of 9 years in Sierra Leone. That period is likely to be sufficient for the identification of a small to medium sized commercial deposit and completion of the requisite environmental and feasibility studies in order to progress to the exploitation phase, but the 9-year limit may be problematic for the detailed study of a complex or very large scale deposit in a challenging environment.

The article requires a mandatory reduction in size of the area to a maximum of 125 square kilometres for the first renewal that may be waived upon the requisite showing to the Minerals Advisory Board and the Regulating Authority. No further reduction of area is required for the second renewal.

Renewals are not automatic under Sierra Leone’s law. The licence holder is required to submit a detailed annual report of operations carried out and results achieved, as well as a proposed exploration work program for the requested renewal period. The renewal must be approved by the Minerals Advisory Board.

Drawn from Zambia’s mining law (2008), the provisions related to small scale mining exploration licence provide for a single renewal of an SSM or small-scale gemstone mining licence for a renewal term of up to ten years. As in the preceding example, the regulating authority is given the discretion to set the renewal term shorter than the maximum period established in the law. However, under Zambia’s mining law only a single renewal is contemplated, rather than multiple renewals. As in the preceding example, the renewal term is the same as the initial term of the licence, but the term under Zambia’s law is twice as long as the term in Botswana.
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(4) Upon receipt of a completed application for the renewal of an explorations licence from the Mining Cadastre Office, where the [statutory advisory board] has determined that an application for the renewal of an exploration licence has met all the criteria for such licence the [statutory advisory board] shall certify to the [Regulating Authority] in the prescribed form that it advises that the application be approved, and such certification shall be recorded in the mining cadastre registry.

(5) The [Regulating Authority] shall, subject to all prescribed criteria of this [Law][Act][Code] and of the regulations, on the certified advice of the Minerals Advisory Board, renew the licence for the reduced area applied for with or without variation of the conditions of the initial licence, for a period not exceeding three years.

(6) The holder of an exploration licence may, not later than ninety calendar days before the expiry of a once-renewed licence apply to the Mining Cadastre Office for a second renewal of the licence.

(7) An application for the second renewal of an exploration licence-

(a) shall be accompanied by-
   (i) a report on exploration operations carried out so far and the direct costs incurred thereby;
   (ii) a proposed programme of exploration operations, feasibility studies, and environmental impact assessments to be carried out during the period of second renewal and the estimated cost thereof;
   (iii) a plan identifying that part of the exploration licence area for which renewal is sought, which shall not be greater than one hundred and twenty-five square kilometres unless it can be conclusively demonstrated that to do so would unavoidably exclude part of an economically recoverable mineral deposit;
   (iv) a description of the blocks comprising the exploration licence area for which renewal is sought, identified in the prescribed manner;

(b) shall give particulars of any alteration in the matters stated in the application for the grant of the licence under paragraphs (a), (f), (h), (j) and (k) of section [__] (on the required elements of an application for an

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The longer initial and renewal terms for both SSM and small scale gemstone mining (SSGM) reflect the Zambian policy orientation of creating special subsectors for SSM and SSGM reserved for Zambian citizens, in order to promote local mining entrepreneurship. (SSM and SSGM are not defined by production or investment limitations under Zambia’s mining law.)

In contrast to Botswana’s law, the Zambian mining law limits the grounds on which the regulating authority can reject a renewal application, and further requires the regulating authority to provide the licence holder with notice and an opportunity to remedy three of the four potential grounds for non-renewal. This provides some security of tenure to small scale miners. There is, however, a significant gap in this protection by omitting a requirement of notice and opportunity to remedy a “breach of any condition of the licence or any provision of” the mining law. Nonrenewal for a temporary breach of a minor condition under the act, with no opportunity to cure the breach, is a potentially harsh penalty. SSM licence holders in Zambia are vulnerable to nonrenewal on such grounds because the regulating entity has the discretion to deny renewal on any such breach.

Zambia maintains parallel licensing regimes for SSM and small-scale gemstone mining. The former requires the applicant for an SSM licence to possess an exploration licence (prospecting permit) for the area as a prerequisite to obtaining a SSM licence. That is not required for a small-scale gemstone mining licence. Small scale gemstone mining is often characterized by “rushes” of small scale miners to sites where someone else has made an initial discovery, so the lack of a prospecting permit requirement matches that reality with the objective of formalizing small scale gemstone mining activity as much as possible.

The provisions of Zambia’s mining law on the term and renewals of SSM licences and small scale gemstone licences are identical, however. In both cases the regulating authority is directed to attach the approved work program to the renewed licence, such that it becomes a condition of the licence.

Drawn from Liberia’s mining law (2000), the renewal of the artisanal scale mining licence is suggested to be a simple and straightforward process, in order
NOTE: This Document is part of a multi-part document, Parts A - E
(2) Subject to subsection (3), the [Regulating Authority] shall, where an application for the renewal of a small-scale mining licence complies with the requirements of this [Law][Act][Code], renew the small-scale mining licence for a period not exceeding ten years, on such terms and conditions as the [Regulating Authority] may determine.

(3) The [Regulating Authority] shall reject an application for the renewal of a small-scale mining licence where:

(a) the development of the mining area has not proceeded according to the programs initially agreed;

(b) minerals in workable quantities do not remain to be produced;

(c) the program of the intended mining operations will not ensure the proper conservation and use in the national interest of the mineral resources of the mining area; or

(d) the applicant is in breach of any condition of the licence or any provision of this [Law][Act][Code].

(4) The [Regulating Authority] shall not reject an application on any ground referred to in—

(a) paragraph (a) of subsection (3), unless the [Regulating Authority] has given the applicant the details of the default and the applicant has failed to remedy the default within three months of the notification;

(b) paragraph (b) of subsection (3), unless [Regulating Authority] has given the applicant reasonable opportunity to make written representations thereon to the [Regulating Authority] or (c) paragraph (c) of subsection (3), unless the [Regulating Authority] has notified the applicant and the applicant has failed to propose amendments to the operations within three months of the notification.

(5) The [Regulating Authority] shall, on the renewal of a small-scale mining
2. Renewal of small-scale gemstone licence

(1) A holder of a small-scale gemstone licence may apply to the [Regulating Authority] at least sixty days before the expiry of the licence, for the renewal of the licence in the prescribed manner and form upon payment of the prescribed fee.

(2) Subject to subsection (3), the [Regulating Authority] shall, where an application for the renewal of a small-scale gemstone licence complies with the requirements of this [Law][Act][Code], renew the small-scale gemstone licence for a period not exceeding ten years, on such terms and conditions as the [regulating entity] may determine.

(3) The [Regulating Authority] shall reject an application for renewal of a small-scale gemstone licence where—

(a) the development of the mining area has not proceeded with reasonable diligence;

(b) minerals in workable quantities do not remain to be produced;

(c) the programme of the intended mining operations will not ensure the proper conservation and use in the national interest of the mineral resources of the mining area; or

(d) the applicant is in breach of any condition of the licence or any provision of this [Law][Act][Code].

(4) The [Regulating Authority] shall not reject an application on any ground referred to in—

a) paragraph (a) of subsection (3), unless the [Regulating Authority] has given the applicant the details of the default and the applicant has failed to remedy the default within three months of the notification;
(b) paragraph (b) of subsection (3), unless the [Regulating Authority] has given the applicant reasonable opportunity to make written representations thereon to the [Regulating Authority] or

(c) paragraph (c) of subsection (3), unless the [Regulating Authority] has notified the applicant and the applicant has failed to propose amendments to the operations within three months of the notification.

(5) The [Regulating Authority] shall, on the renewal of a small-scale gemstone licence, attach to the licence the program of mining operations to be carried out in the period of renewal.

Article [_] Renewal for artisanal development minerals licences
(1) Artisanal licences would be renewed in terms of one (1) year, upon petition of the Licensee, renewal that shall automatically.

30. Development Minerals Exploration Licence

30.9 Suspension of Licence

Suspension of a licence may be a temporary sanction against a licence holder or a de facto suspension of the licence term due to a force majeure event preventing the holder from conducting operations.

In the case of force majeure, the licence holder is excused from compliance with certain obligations during the reasonable duration of the event; and the term of the licence may be extended for that period. Careful attention should be given to the drafting of what is considered a force majeure event, the related notification requirement, the obligations of the licence holder to use best efforts to overcome the force majeure event as expeditiously as practicable, the determination and notification of the end of the force majeure event, whether the term of the licence is extended by the period of the force majeure event, and under what circumstances the licence may be terminated if the force majeure event continues beyond a specified time limit.

A distinction should be made between suspension of the mineral licence, on the one hand, and suspensions of operations, on the other hand. When the mineral licence is suspended, the rights of the holder of that title, as well as the term, are suspended; and this may complicate the remediation of the breach that the suspension requires. It also raises collateral issues to be addressed such as whether and on what conditions a third party
application for the area that is subject to the suspended licence can be submitted or accepted. The suspension of operations, on the other hand, prohibits the mineral activity under the licence but does not alter the holder’s right to occupy the licenced area and undertake whatever is necessary in order to remedy the breach of an obligation; and the term of the licence continues to run.

A suspension of the licence may be an appropriate temporary sanction for failure of the licence holder to timely make required payments or file required reports, because both the failure to meet those obligations and the remedy are administrative events wholly within the control of the licence holder and do not require any operations at the site.

A suspension of operations may be the appropriate temporary sanction for failures to implement sufficient environmental protection measures, to implement required social obligations or to meet health, safety, security and labour standards. Under such a suspension, the licence holder maintains its mineral licence for the purpose of taking the necessary remedial action and comply its obligations, but is prohibited from conducting exploration activities until the problem issues have been resolved to the satisfaction of the regulatory entity, evidently losing productive time in its licence, which is itself the sanction.

Some mining laws provide for the suspension of operations or of the licence as a preliminary sanction to be followed by revocation of the licence if the underlying cause for the suspension is not remedied within a specified time period.

30.9. Example 1:

Article [___]
(1) The [Regulating Authority], or any person authorized by the [Regulating Authority], may, in writing, order exploration operations to be temporarily suspended on an emergency basis, regardless of whether such operations are authorized by a mineral right, until such arrangements are made that are in the [Regulating Authority]’s opinion necessary to prevent danger to life, property or the environment or to comply with this [Law][Act][Code].

(2) The [Regulating Authority] may cancel or vary the terms of any temporary suspension order.

(3) The [Administrative Reviewer] shall have the power to confirm a temporary suspension order made by the [Regulating Authority] and may not delegate this power.

(4) A temporary suspension order shall lapse after twenty-one days of its

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision is designed to apply to reconnaissance, exploration or mining licences. That is appropriate insofar as there can be a risk of dangerous activity taking place under a prospecting/reconnaissance or exploration licence and there is no apparent reason to be more tolerant of any of the stated grounds for suspension based on the type of licence under which they have occurred.

This provision makes the distinction between suspension of operations pending remediation of a condition that constitutes a danger to life, property or the environment or is in non-compliance with the mining law, on the one hand, and suspension of a mineral licence as a precursor to potential cancelation of the licence in the event of non-remediation of any of the reasons listed, on the other hand. Whereas suspension of operations is not preceded by prior notice and an opportunity to remedy the cause of the suspension, prior notice and such opportunity are required in the case of suspension of the licence.

The Administrative Reviewer is the supervisory authority immediately superior
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<table>
<thead>
<tr>
<th>Issuance, unless it is confirmed, in writing, by the [Administrative Reviewer].</th>
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| (5) The [Administrative Reviewer] after consultation with the [statutory advisory body] may suspend a mineral right if the holder-
| (a) fails to make any of the payments required by or under this [Law][Act][Code] on the date due; |
| (b) fails to meet any prescribed minimum annual program of work or work expenditure requirement; |
| (c) grossly violates health and safety regulations or causes environmental harm; |
| (d) employs or makes use of child workers; |
| (e) fails to submit reports required by this [Law][Act][Code]; |
| (f) contravenes any of the provisions of this [Law][Act][Code] or the conditions of his mineral right or the provisions of any other enactment relating to mines and minerals; |
| (g) dies and his heir or successor in title is not qualified under this [Law][Act][Code] to hold the mineral right, unless an application is received from the heir or successor within ninety days of the death to transfer the right to a third party who is so qualified and accepts all duties under the right; |
| (h) becomes an un-discharged bankrupt or becomes of unsound mind; |
| (i) makes any statement to the [Administrative Reviewer] in connection with his mineral right which he knows or ought to have known to be false; |
| (j) fails to substantially comply with the terms of a community development agreement when required by this [Law][Act][Code] to do so; |
| (k) for any reason becomes ineligible to apply for a mineral right under article [_] (on eligibility rules). |

(2) The [Administrative Reviewer] shall, before suspending any mineral right to the Regulating Authority in the administrative hierarchy.

This provision represents, in general, a balanced approach to protecting the interests of the State and affected stakeholders from harm in a manner consistent with providing security of title to the licence holder. Failures to comply with specific obligations of the licence holder are sanctioned initially by suspensions of operations or rights, as the case may be, and the offending licence holder is encouraged and given the opportunity to establish compliance before action to cancel the licence is taken. Because of the breadth of some of the grounds stated for ultimate cancellation of the licence, the provision may heighten the risk of loss of title more than necessary. This could be attenuated by limiting the grounds for cancellation of the licence whilst maintaining broader grounds for temporary suspension of operations which is a costly sanction in itself.
give notice to the holder in such a manner as shall be prescribed and shall, in
such a notice require the holder to remedy in not less than thirty calendar
days any breach of the conditions of his mineral right.

(3) If the holder of a mineral right fails to remedy any failure or
contravention specified in paragraphs (c), (d) and (k) of subsection (1), the
[Regulating Authority] may, by notice to the holder thereof, suspend the
mineral right forthwith.

(4) The powers of the [Regulating Authority] under this section shall, in
relation to artisanal mining licences, be exercised by the [Regulating
Authority], but need not consult the [statutory advisory board].

30.9. Example 2:

Article []

(1) Any serious offence, as defined in the Mining Regulations, which is
committed by the holder shall be penalised with the immediate suspension of
work, decided on by [the Regulatory Authority], once prior notice has been
given.

(2) The duration of the suspension shall be set in the regulations, according
to the seriousness of the offence and its impact on the environment, and public
health and safety.

(3) To remedy said serious offence, [the Regulatory Authority] may, of its own
accord or at the request of the local authorities concerned, require that the
holder carry out work which it deems necessary in order to protect public
health, the environment, workers or neighbouring mines. Should the holder
fail to perform timeously, [the Regulatory Authority] may have said work
carried out by a third party, at the holder's expense.

Article []

(1) Should it be duly found that the required documents prescribed by the
present Code have not been kept in proper order, [the Regulatory Authority]
shall send a written warning to the mining operator concerned, if this failure
to comply does not constitute an offence.

Annotation

Drawn from the DRC Mining Code (2002), these provisions represent a
different approach to suspension. The first article provides for a suspension of
work as a sanction for any “serious failure”. The provision delegates to the
mining regulation the definition of “serious failure” and the length of the
suspension, which is to be a function of the seriousness of the failure and its
effect on the environment and public health and safety. The provision
authorizes the Mining Administration to undertake the necessary remedial
action if the licence holder fails to do so, at the licence holder's expense.

The second article provides for suspension of operations for three months as the
sanction for a repeated failure by the licence holder to maintain required
documentation. In such case, a warning and opportunity to remedy is provided
before the imposition of the suspension order. The suspension is extended for a
second period of three months if the underlying cause is not remedied by the
end of the initial suspension period; and if still not remedied at the end of the
second suspension period, a fine of USD 500 per day is levied against the
licence holder until the documents are properly maintained.

The suspensions do not ultimately lead to cancellation of the licence in either
case. This approach represents a philosophy that a costly sanction that does not
involve loss of rights is more conducive to remediation and compliance, as well
as more attractive to long term investment, than a sanction that leads to
cancellation of rights. However, it does involve a risk that the Mining
30. Development Minerals Exploration Licence

30.10 Termination of Licence

A mining law should state clearly in one place the various ways in which an exploration licence can terminate, which would include expiration of the term, surrender by the holder, and cancellation or withdrawal by the issuing authority. The law should make clear what the status of the licenced area is upon termination in each manner and any remaining potential liabilities or incapacities that the licence holder may have upon termination.

Some mining laws also provide that an exploration licence is automatically extended during the application process for a mining title once a timely application by the holder has been filed.

The validity of a mining licence typically terminates in one of the following ways:

- Upon its expiration date, unless and to the extent it is renewed or automatically extended by law; or
- Upon nullification (e.g., if issued to an ineligible holder, or for mineral substances for which such licences are not authorized, or over an area that is not available for a licence under the law, or if obtained by fraud); or
- Upon revocation due to abandonment or breach of conditions that constitute grounds for revocation of the licence; or
- Upon relinquishment or surrender of the licence by the holder prior to its expiration date.
In the cases of small scale and artisanal scale licensing, the mining law may provide that a licence must be transformed into an industrial or large scale exploitation licence if the mining operations exceed the parameters of small scale or artisanal scale production as defined in the law; and the law may authorize the regulating authority to monitor the SSM activity and terminate non-performing licences in order to avoid excessive areas being tied up by non-productive SSM licence holders.

It is important for termination provisions to specify the obligations of the licence holder in connection with termination of the licence. In addition, many mining laws provide the Government with a right to either acquire equipment and installations at the mine site upon termination or require their removal by the licence holder. The holder’s environmental rehabilitation obligation should apply regardless of the type of termination. It is best practice to require, at the granting of the licence, the licence holder to provide a bank guarantee and/or environmental escrow account to which the Government has access in order to pay for necessary environmental restoration if the licence holder abandons the mine without performing the necessary clean-up in the case of termination by revocation.

30.10. Example 1:

Article [...] Termination of mineral rights
“termination” means the lapse of a mineral right by expiry of time, surrender or cancellation; and where the surrender or cancellation is in respect of part only of the area covered by the mineral right, then the mineral right shall be deemed to have been surrendered or cancelled in respect of that surrendered or cancelled area;

Article [...] Applicable to all mining rights licence holders
(1) Where the holder of a mineral right intends to cease operations either during the period of or on termination of his mineral right, he shall, not less than ninety calendar days or such other period as the [Regulating Authority] may allow before such cessation or termination, furnish to the [regulating authority], a full register of assets showing those assets which he intends to remove and those which he intends to leave in the area covered by the mineral right, and shall further notify the [Regulating Authority] of any potentially hazardous substances, erections or excavations in that area.

(2) On receipt of a notice in terms of subsection (1), the [Regulating Authority] may, if he deems it necessary-

(a) certify that specified items of fixed machinery are necessary for the care and maintenance of the area covered by the mineral right and such items and

Annotation
Drawn from Sierra Leone’s mining law (2009), these provisions include a definition of “termination” of a mineral right as including its expiration, cancelation or surrender, which may be total or partial.

There are two general provisions on termination. The first governs (a) the required reporting and disposition of assets at the mining site, the reporting of site conditions, and the regulating authority’s prerogatives in response to such reports; (b) the restoration of the rights of the property owner to the land, subject to the Government’s option to retain the land upon the payment of compensation to the landowner; and (c) the maintenance intact of any fresh water dam on the site.

The second general provision requires the submission to the regulating authority of all records, data, plans and maps required to be maintained under the mining law and a final report summarizing all findings and work carried out under the mineral licence.

The specific provisions require the licence holder to notify “the appropriate local government authority or local authority and an authorized officer” in advance of any planned cessation of exploration or mining operations under the licence. They also require the licence holder to carry out rehabilitation and reclamation of the mined out areas.
machinery shall not be removed;

(b) require that specified buildings and other items of fixed machinery shall be removed;

(c) require that potentially hazardous substances, erections and excavations be removed or made safe in such manner as he may direct.

(3) If removal of specified assets which the holder has indicated that he wishes to remove is prohibited under paragraph (a) of subsection (2), the [supervising authority] shall pay reasonable compensation to the holder for such assets and any person who acquires a mineral right over the area concerned shall reimburse the sum equal to the compensation so paid.

(4) Upon cessation of operations by the holder of a mineral right, the area covered by the mineral right shall revert to the owner thereof provided that if the [regulating authority] determines that the area should be retained, it shall be so retained by the [Regulating Authority] subject to payment of fair compensation to the owner for such retention.

(5) Any fresh water dam and the waters impounded thereby shall be left intact on cessation of operations or termination of a mineral right.

(6) Upon termination of any mineral right, the holder thereof shall deliver to the [Regulating Authority] -

(a) all records which the holder is obliged under this [Law][Act][Code] to maintain including full and detailed reports as prescribed containing all information, results, interpretation, data and other related information pertaining to the exploration and mining of minerals under the mineral right;

(b) all plans or maps of the area subject to the mineral right prepared by the holder or at his instructions; and

(c) except for the holder of an artisanal mining licence, a final report which shall be a summary of previous annual reports plus a detailed report on containing all information, results, interpretation and data relating to all

These provisions apply in the case of any type of termination, and for any size of activity in development minerals.
activities carried out in the final period of the licence since the previous annual report.

(7) Where the former holder of a mineral right fails to deliver any document required to be delivered under subsection (6), the [Regulating Authority] shall call upon such former holder to comply with subsection (6).

30.10. Example 2:

Article [__]
(1) A mining right licence expires at the end of the period for which it was granted (including subsequent renewals thereof), by relinquishment or by revocation. At the end of the term of a mining right licence, the rights conferred on its holder revert to the State free of charge.

(2) Rights granted by the holder to third parties over substances and within the zone covered by the title, automatically lapse at the end of the term of such title.

(3) However, the holder of a mining right licence remains liable for the payment of outstanding duties and taxes and for the obligations incumbent upon it with respect to the environment and rehabilitation of the developed sites, as well as for all the other obligations contemplated under this Code, its implementing regulations and in the terms of reference or the Mining Agreement.

(4) Furthermore, the titleholder shall provide the [Regulating Authority] of a detailed report on the work carried out. All information provided shall become the property of the State.

Annotation

Drawn from the unofficial English translation of Guinea’s Amended Mining Code (2011), this provision:

- States the three grounds on which mineral licences terminate: (i) at the end of their term, (ii) by relinquishment, or (iii) by revocation;
- Establishes that the rights revert to the State upon termination and that all rights granted to third parties lapse upon expiration;
- Preserves the obligations of the mineral licence or authorisation holder after expiration, particularly as to payments due and site rehabilitation; and
- Requires the holder to submit a final report of work carried out to the Mining Administration.

Thus, these terms clarify the status of the mineral rights and related obligations at termination of the mineral licence or authorisation.

This provision applies to both exploration and exploitation licences.

30. Development Minerals Exploration Licence

30.11 Revocation of Licence

A provision in which a licence is withdrawn and/or taken away by the Regulating Authority is referred to as revocation of the licence. Whereas
suspension or monetary penalties may be imposed for various failures to comply with health, safety, environmental protection and other qualitative obligations – thereby providing an incentive to comply while protecting workers and communities from the consequences of such breaches, revocation of the licence is the ultimate penalty, the grounds for which should be limited and clearly stated, and due process should be granted to the Licencee, even in the administrative phase. The revocation provisions of the law should also state whether the ground for revocation is one that can be cured and, if so, within what timeframe after notice.

### 30.11. Example 1:

<table>
<thead>
<tr>
<th>Article</th>
<th>Revocation of licence</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The [regulating entity] may revoke a licence granted where,</td>
<td></td>
</tr>
<tr>
<td>(a) the [Regulating Authority] is satisfied that the Licencee has contravened or failed to comply with a term or condition of the licence or a requirement applicable to the Licencee,</td>
<td></td>
</tr>
<tr>
<td>(b) the Licencee is convicted of any offence relating to the smuggling or illegal sale or dealing in minerals, or</td>
<td></td>
</tr>
<tr>
<td>(c) fails to make payment on the due date, whether due to the Republic or another person, required by or under this [Law][Act][Code],</td>
<td></td>
</tr>
<tr>
<td>(d) becomes insolvent or bankrupt, enters into an agreement or scheme of composition with the holder’s creditors, or takes advantage of an enactment for the benefit of its debtors or goes into liquidation, except as part of a scheme for an arrangement or amalgamation,</td>
<td></td>
</tr>
<tr>
<td>(e) makes a statement to the [regulating entity] in connection with the mineral right which the holder knows or ought to have known to be materially false, or</td>
<td></td>
</tr>
<tr>
<td>(f) for a reason, becomes ineligible to apply for a mineral right under this [Law][Act][Code].</td>
<td></td>
</tr>
</tbody>
</table>

(2) The [Regulating Authority] shall, before suspending or cancelling a mineral right under subsection (1), give notice to the holder and shall in the notice, require the holder to remedy a breach of the condition of the mineral right within a reasonable period, being not less than sixty days and no more |

### Annotation

Drawn from Zambia’s mining law (2008), this provision states clear causes for the revocation of the licence granted by the government. It closes the door for discretionary action from the government officers. Also, it includes the obligation of providing a term for defence of the Licencee, when it can justify or remedy the problem presented and in consequence, continue executing its rights.
than 120 days, to show cause to the reasonable satisfaction of the [Regulating Authority] why the mineral right should not be suspended or cancelled.

(3) On cancellation of a mineral right under this section, the right of the holder shall cease but without prejudice to the liabilities or obligations incurred by another person in relation to the mineral right prior to the date of the cancellation.

(4) Without limiting the scope of section (2), the [Regulating Authority] shall cancel a mining lease or a restricted mining lease if the holder has failed other than for good cause, for a period of two years or more, to carry out any or a material part of the holder’s program or mineral operations.

(5) The [Regulating Authority] shall before cancelling a mining lease give notice to the holder and shall in the notice, require the holder to remedy the breach within a reasonable period, being not less than one hundred and twenty days, and where the breach cannot be remedied, to show cause to the reasonable satisfaction of the [Regulating Authority] why the mining lease or restricted mining lease should not be cancelled.

30.11. Example 2:

Article [...]

(1) Subject to subsections (2), (3) and (4), the [Regulating Authority] may cancel or suspend any prospecting/reconnaissance permission, exploration right, mining right, mining permit or retention permit if the holder thereof –

(a) is conducting any prospecting/reconnaissance, exploration or mining operation in contravention of this [Law][Act][Code];

(b) breaches any material term or condition of such right, permit or permission;

(c) is contravening the approved environmental management programme; or

(d) has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this

Annotation

Drawn from South Africa’s mining law (2002), this provision provides broader grounds for the cancelation or revocation of an exploration licence (called “prospecting right”) than do the provisions of the DRC Code. However, the South African provision also provides due process safeguards in the form of notice of grounds for revocation (to the Licensee and any mortgagees), an opportunity for the Licensee to respond with justifications, and required instructions for curative measures. The revocation can only proceed if the cause is not cured within the allotted timeframe.
PART B-5: Mineral Licences – Development Minerals

(2) Before acting under subsection (1), the [Regulating Authority] must –

(a) give written notice to the holder indicating the intention to suspend or cancel the right;
(b) set out the reasons why he or she is considering suspending or cancelling the right;
(c) afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and
(d) notify the mortgagor, if any, of the exploration right, mining right or mining permit concerned of his or her intention to suspend or cancel the right or permit.

(3) The [Regulating Authority] must direct the holder to take specified measures to remedy any contravention, breach or failure.

(4) If the holder does not comply with the direction given under subsection (3), the [Regulating Authority] may act under subsection (1) against the holder after having –

(a) given the holder a reasonable opportunity to make representations; and
(b) considered any such representations.

(5) The [Regulating Authority] may by written notice to the holder lift a suspension if the holder –

(a) complies with a directive contemplated in subsection (3); or
(b) furnishes compelling reasons for the lifting of the suspension.

30. Development Minerals Exploration Licence

30.12 Surrender of Licence
A provision in which the licence holder gives up the mining right voluntarily before the term of the licence has run out is referred to as surrender of the licence. Surrender of an exploration licence may be total or partial. Partial surrender or relinquishment of area subject to the licence might require the issuance of a new exploration licence for the area not surrendered. Surrender/relinquishment may be automatic at the option of the licence holder upon notice to the Regulating Authority, or it may require a decision of the authority.

An exploration licence holder may wish to surrender all or relinquish part of the licenced area when it has satisfied itself that the area in question does not contain a commercial deposit of the minerals sought, or because the holder lacks the funds or does not wish to allocate further funds to continue exploring for minerals in the area, or to reduce the amount of the annual fee that it must pay in order to maintain the licenced area in subsequent years, or to reduce its aggregate licenced area holdings in order to qualify for a licence in a more attractive area that has become available in the same jurisdiction.

It is considered to be in the interest of the State to facilitate surrender or partial relinquishment of areas held under exploration licences in order to encourage exploration licence holders to focus their exploration efforts and investment expeditiously, and to make areas available for other investors as soon as no further exploration activity in the area by the existing licence holder is to be expected. Therefore, the procedure for surrender or partial relinquishment of licenced exploration areas may be simpler and faster than the corresponding procedure for the surrender or relinquishment of a licence or licenced area for exploitation. However, such procedures tend to be similar across types of licences.

The mining law provision on surrender should (a) cover both total and partial surrenders of licenced area, (b) require that any partial surrender be of blocks or segments that comply with the cadastral rules of shape and dimensions, (c) indicate whether an administrative approval is required in order for the surrender to become effective, (d) clarify the consequence of a surrender with respect to responsibility for area-based fees paid or to become due, (e) clarify the consequence of a surrender with respect to liabilities or responsibilities of the licence holder under the mining law and other laws, in particular environmental laws, and related agreements, and (f) clarify the status and availability of the surrendered area, as well as the responsibility of a subsequent holder of a licence for the area.

Care should be taken in the mining law and regulations and/or the environmental law and regulations to assure that an environmental bond, escrow account or other surety mechanism is required and has been established and that either the surrendering/relinquishing exploration licence holder has completed all necessary environmental rehabilitation work or that the [Regulating Authority] has access to a sufficient surety to complete all necessary rehabilitation work.

30.12. Example 1:

<table>
<thead>
<tr>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [__] (1) The holder of a mining right licence may, upon application in the</td>
</tr>
<tr>
<td>Drawn from Nigeria’s mining law (2007), these two articles deal separately with the surrender of a mineral title, on the one hand, and the total or partial</td>
</tr>
</tbody>
</table>
(2) The Mining Cadastre Office shall approve an application made under subsection (1) of this section to surrender the mining right if he is satisfied that-

(a) the holder of the mining right has submitted the request for surrender in the prescribed form and manner;

(b) the surrender will not affect any liability incurred by the mining right holder before the surrender of the mining right, including environmental obligation;

(c) all rents due and fees prescribed, if any, have been paid by the holder of the mining right; and

(d) the holder of the mining right has surrendered the original title document.

Article [...]

(1) The holder of a mining right may at any time during the period of the validity of such mining right, upon application to the Mining Cadastre Office in the prescribed form and manner and upon meeting prescribed conditions, relinquish the area or part of area covered by the mining right; provided, the geometry and dimensions of each surrendered area shall satisfy the prescriptions of this [Law][Act][Code] and its Regulations

(2) Upon relinquishment of the area or part of the area covered by the mining right in accordance with the provisions of subsection (1) of this section, the fees payable on the basis of the area covered by the mining right shall be adjusted proportionally taking into account the area relinquished.

(3) The relinquishment of the area or part of the area covered by the mining right shall not affect the duration of the mining right.

(4) The relinquishment of the area or part of the area shall not affect any liability incurred by the mineral titleholder in respect of the area relinquished

relinquishment of land held under the mineral title, on the other hand.

The provisions apply to surrender of land held under all types of mineral licences, without distinction. That is probably appropriate as between exploration and exploitation, because exploration can involve the construction of access roads and camps, the introduction of chemicals for drilling, and invasive exploration techniques. Prospecting/reconnaissance activity, on the other hand, does not present similar issues, so surrenders of area held under prospecting/reconnaissance licences could be dealt with in more summary fashion.

These articles cover both total and partial surrenders of licenced area. Apparently, in the case of a total surrender of the licence, a two-stage procedure is involved: first the surrender of the licenced land area (under the second article), and then surrender of the licence (under the first article). The second article requires, appropriately, that any surrender of licenced land area comply with the prescriptions of the law and regulations as to geometry and dimension.

The surrender of land area, total or partial, appears to require an administrative approval, whereas the surrender of the licence appears to be automatic if the stated conditions are met. The second article provides for adjustment of fees payable on the basis of the area covered by the mineral title, to reflect any partial surrender or relinquishment. Both articles provide that the surrender of licenced land area or of the licence does not affect any liability of the licence holder incurred prior to the surrender, including environmental liability in particular.

These provisions do not clarify the status of the surrendered area, however. Ideally, provision would be made for an environmental audit or review before the area becomes available to another Licencee and a clarification of the respective environmental liabilities of the surrendering licence holder and the next licence holder. Clarification is also needed as to whether the surrendered area will subsequently be made available for minerals exploration, and if so, by what method (for example, whether by competitive bid or by claim staking).
prior to the relinquishment, including environmental obligations.

### 30.12. Example 2:  

**Article []**  

(1) A holder of a mining right who wishes to surrender all or a part of the land subject to the mining right shall apply to the [Regulating Authority] for a certificate of surrender not later than two months before the date on which the holder wishes the surrender to take effect.

(2) An application under subsection (1) shall be in accordance with prescribed Regulations.

(3) Subject to subsection (4), upon an application duly made under subsection (1), the [Regulating Authority] shall issue a certificate of surrender in respect of the land to which the application relates.

(4) The [Regulating Authority] shall not issue a certificate of surrender

(a) to an applicant who is in default,

(b) to an applicant who fails to give records and reports in relation to the applicant’s mineral operations,

(c) where the [Regulating Authority] is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice, or

(d) in respect of land, if the remaining area of the land after the surrender would be less than one block.

(5) Where a certificate of surrender is issued under this section, the [Regulating Authority] shall, where only part of the land subject to the mineral right is surrendered, amend the relevant licence accordingly or cancel the mining right where the surrender is in respect of the whole area covered by the mineral right.

(6) Land in respect of which a certificate of surrender is issued, shall be

**Annotation**  

Drawn from Ghana’s mining law (2006), this article combines the provisions for total and partial relinquishment of licenced area and surrender of the licence. As in the first example, the conditions and procedure are the same regardless of the type of mineral right involved; and the coverage is similar.

However, in this example, stricter conditions apply for the issuance of the certificate of surrender, and the conditions under which such a certificate shall not be issued are specified. These include, in particular, a failure to provide records and reports of mineral operations (presumably as further detailed in regulations) and “where the [Regulating Authority] is not satisfied that the applicant will surrender the land in a condition which is safe and accords with good mining practice”. The latter stipulation appears to require an inspection of the area to be surrendered. Further clarification is needed as to whether the condition applies to environmental rehabilitation and as to the applicable standard, both of which could be provided in the mining regulation.
### 30. Development Minerals Exploration Licence

#### 30.13 Transfer/Assignment of Rights

Transfer and assignment of rights refers to provisions that deal with whether a licence holder may hand over, sell, rent (either in whole or in part) or in any way encumber/place a lien on the licence for the benefit of another person or entity. The ability to transfer or assign rights to an exploration licence, or ownership of the company holding the licence, and any conditions for such transfer or assignment, are key considerations in a mining law. Most exploration work is carried out by junior mining companies, usually with the goal of discovering a commercial deposit and then selling the rights to develop it – in whole or in part – to a major mining company. While transfer of exploration rights do not on their own grant the transferee the right to exploit a mineral deposit, acquisition of another company’s exploration licence covering a substantial identified deposit can place a larger mining company in a preferential or exclusive position to acquire exploitation rights for the deposit, since most regimes give the exploration licence holder a preferential or exclusive right to acquire such an exploitation licence during the term of the exploration licence, subject to meeting the requirements for issuance of the exploitation licence.

If such transfers and sales are discouraged or rendered difficult, that in turn can have a negative impact on investment in exploration, since the vast majority of investment in exploration in previously underexplored territory around the world since about 1990 has been made by or through junior mining companies that lack the capability to develop and exploit a major mineral deposit on their own and who invest with the intent of transferring their rights or shares to a major mining company if they make a substantial discovery. On the other hand, countries are entitled to verify that the transferee is an eligible person who is not disqualified from holding the licence. Accordingly, review and control over transfers and assignments to assure compliance with eligibility and capability requirements is the norm. In that sense, in most of the countries, the government has the right to refuse the authorization for the transfer, if it considers the rights of the State will be undermined.

The transfer provisions should specify that the transferee assumes all of the obligations under the licence, and also whether the transferor remains responsible or liable for obligations incurred during the transferor’s tenure.
30.13. Example 1:

Article [__]  
(1) Subject to this section, an exploration licence or any interest therein or any controlling interest in the holder thereof may be transferred to any other person provided that the [Regulating Authority] grants proper authorization.

(2) In the petition for the authorization, the applicant shall give to the [Regulating Authority] such details of the transferee as would be required in the case of an application for an exploration licence.

(3) Where the [Regulating Authority] is satisfied that the transferee is not disqualified under any provision of this [Law][Act][Code] from holding an exploration licence, the [Regulating Authority] shall notify the applicant of approval of the transfer of the exploration licence or an interest therein.

(4) Upon the transfer of an exploration licence, the transferee shall assume and be responsible for all rights, liabilities and duties of the transferor under the licence.

**Annotation**  
Drawn from Botswana’s mining law (1999), this provision establishes an equilibrium between the licence holder’s right to transfer the licence and the State’s right to require that the transferee be an eligible holder. It also clarifies that the transferee assumes all of the transferor’s liabilities and duties under the licence.

This is a liberal transfer provision because:

- It requires only the eligibility of the transferee; and
- The mining law does not state that the transferor continues to be liable for the results of the transferor’s action or inaction during its tenure as holder of the licence.

30.13. Example 2:

Article [__] Deeds of assignment  
(1) Mining rights and [Permanent Quarry Operating Permits] may be the subject of a total or partial cession or assignment. Said assignment shall be final and irrevocable. In the absence of provisions to the contrary, the common law relating to assignment shall apply.

(2) Any partial assignment must comply with the provisions of Articles [__] and [__] (on the shape and location of mining areas) of the present Code.

(3) In addition, any partial assignment of an operating right or a [Permanent Quarry Operating Permit] shall be effective only from when a new mine or quarry operating right is granted.

(4) It is a prerequisite that the assignee must be a person who is eligible to request and hold the mining rights or the [Permanent Quarry Operating Permits].

**Annotation**  
Drawn from DRC’s mining law (2002), these articles provide a substantial amount of detail as to the treatment of various aspects and types of transfers of mineral rights. The same procedures and standards apply for transfers of exploration rights as for transfers of exploitation rights.

The first article establishes that mineral rights and quarry rights may be transferred in whole or in part; that partial transfers must conform to cadastral rules as to the size and form of licenced areas, specified in other articles; that rights can only be transferred to an eligible person, and that the agreement of transfer must contain the engagement of the transferee to assume all of the obligations of the transferor under the licence; as well as other details.

The second article refers back to other articles for the details of the review of applications for transfers of mineral rights and quarrying rights, respectively.

The third article provides that a partial transfer is only enforceable when a new...
NOTE: This Document is part of a multi-part document, Parts A - E
### AMLA GUIDING TEMPLATE
### PART B-5: Mineral Licences – Development Minerals

<table>
<thead>
<tr>
<th>c) determining, where appropriate, that any changes proposed by the transferee to the original documents which were the basis for the mining right or [Permanent Quarry Operating Permit] being granted do not alter the technical findings for the project.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) Should the transfer of a mining right or a [Permanent Quarry Operating Permit] be refused, written reasons must be given and said refusal gives the right to appeal as provided for in the provisions of Articles [<em>] and [</em>] (on appeal proceedings) of the present [Code][Act][Law].</td>
</tr>
<tr>
<td>(4) The transfer of a mining right or a [Permanent Quarry Operating Permit] shall be registered in the appropriate registry kept by the Mining Cadastre in accordance with Article [_] (on the registration and enforceability of mortgage deeds) immediately after the transferor and transferee have been notified of the decision to approve the transfer.</td>
</tr>
<tr>
<td>(5) A transfer may only take place if it relates to mining rights or [Permanent Quarry Operating Permits] which are currently valid.</td>
</tr>
<tr>
<td>Article [_] The obligations of the assignor after assignment Notwithstanding any clause to the contrary, a transfer does not relieve the original holder of their obligations, with regard to the State, to pay the fees and charges which relate to their mining or quarrying title during the period in which they were the holder, nor does it relieve the holder of their obligations relating to environmental rehabilitation.</td>
</tr>
<tr>
<td>Article [_] Deeds of transfer (1) Mining rights and [Permanent Quarry Operating Permits] may be transferred in whole or in part under the terms of a merger agreement and on account of death. In the absence of provisions to the contrary, the common law relating to transfers shall apply.</td>
</tr>
<tr>
<td>(2) It is a prerequisite that the person to whom the right is to be transferred must be eligible to hold mining or quarrying rights.</td>
</tr>
<tr>
<td>Article [_] Deeds of partial transfer The partial transfer of mining rights and [Permanent Quarry Operating Permits]</td>
</tr>
</tbody>
</table>

**NOTE:** This Document is part of a multi-part document, Parts A - E
Permits] is to be done in compliance with the provisions of Articles [___] and [___] (on the shape and location of mining areas) of the present [Code][Act][Law].

Article [___] The registration and enforceability of deeds of transfer
In order to be binding on third parties, the registration of deeds of transfer is to be done in accordance with the provisions of Article [___] (on the registration and enforceability of mortgage deeds) and Article [___] (on the registration and enforceability of a deed of assignment) of the present [Code][Act][Law].

Article [___] A deed of transfer under the terms of a merger agreement and on account of death
The terms and procedures for the admissibility and assessment of deeds of transfer under a merger agreement and on account of death shall be those provided for deeds of assignment relating to mining rights organised under the present [Code][Act][Law].

Article [___] The obligations of the person to whom the right is transferred
Notwithstanding any clause to the contrary, the person to whom the right is transferred shall remain liable with regard to the State and third parties to fulfil all of the obligations of the original holder of the mining right or [Permanent Quarry Operating Permit].

Article [___] Option contracts
A Prospecting Licence may be the subject of an option contract. Such a contract may be freely concluded between the parties and gives the recipient the right to obtain an interest in the enjoyment of an operating right following on from a Prospecting Licence or in the total or partial alteration of it if a certain investment is realised and/or specific work is completed as part of the mining activities relating to the Prospecting Licence in question.

Article [___] The registration of option contracts
The registration of option contracts is to be done in accordance with the provisions of Article [___] (on the registration and enforceability of mortgage deeds) of the present [Code][Act][Law].
### 30. Development Minerals Exploration Licence

#### 30.14 Specific Violations and Penalties

In addition to the General Offenses and Penalties described earlier at No. 22 of the Guiding Template, the common specific violations and penalties that apply to Exploration Licences are (1) conducting exploration activities in an area for which the operator does not hold an exploration licence, (2) engaging in mining under an exploration licence, and (3) not meeting the applicable work and expenditure requirements. It is therefore of critical importance, notably in cases where a mining right may ultimately attach to an exploration licence, to clearly define and distinguish between what activities are permitted under exploration licences and mining titles, respectively – particularly with respect to the taking and disposal of samples under an exploration licence. Typical penalties include fines, suspension of the mineral right, and seizure of minerals (that are mined illegally). Prison is not recommended, as these are usually economic and administrative offenses.

**Example 1:**

(Article [])

1. The following shall be penalised with imprisonment for a period of between two months and three years and with a fine of between [ ] and [ ] [national currency] or with only one of these two penalties: whoever is engaged in prospecting or mining work relating to a mine or quarry without a title, or outside of the limits for their title, or whoever undertakes mining work with a prospecting licence.

2. The above fine shall be between [ ] and [ ] [national currency] if the related substance is diamonds or another gem.

3. A conviction shall result in the State seizing the fraudulently mined products and the relevant instruments used for this.

4. Should the offence be repeated, the fine shall be tripled and the prison sentence doubled.

**Annotation**

Drawn from Guinea’s mining law (2011), this provision articulates the classic prohibition against engaging in exploration without a licence or outside of the licence area and the prohibition against engaging in mining (exploitation) while only holding an exploration licence. The law provides for a range of financial penalties dependent on the type of violation, as well as seizure of any mineral products obtained in the course of the violation.

Though no amounts are specifically given in the example, the fine amount should be significant enough to meet the deterrence objective of sanctions.

**Example 2:**

(Article [])

1. A person who—

**Annotation**

Drawn from Nigeria’s mining law (2007), this provision contains a more generic description of the violations discussed above. Notably, the Nigerian law covers a broader range of offences, including but not limited to knowingly...
(a) conducts exploration or mines minerals otherwise than in accordance with the provisions of the [Law][Act][Code];

(b) in making application for mineral title, knowingly makes a statement which is false or misleading in any material particular;

(c) in any report, return or affidavit submitted in pursuance of the provisions of this [Law][Act][Code], knowingly gives any information which is false or misleading or fails to declare in any material particular;

(d) removes, possesses or disposes of any mineral contrary to the provisions of this [Law][Act][Code], commits an offence.

(e) does not make the investments compromised at the moment of the licence granting.

(2) A mineral title holder who is guilty of an offence under article [_] (on illegal mining, false and misleading statements, false or non-declaration and smuggling) is liable to have his licence revoked and on conviction at the first instance, to a fine not less than [___][national currency], if the offence is a continuing one, whether or not it is a first offence, the person convicted shall, in addition, be liable to a fine of [___] [national currency] in respect of each day during which the offence continues.

(3) A person who-

(a) places or deposits, or causes to be placed or deposited in a place any minerals, with the intention to mislead any other person as to the mineral possibilities of the place; or

(b) mingles or causes to be mingled, with samples or ore, any substances which may enhance the value or in any way change the nature of the ore, with the intention to cheat, deceive or defraud; or engages in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting, or dealing in ores, metals or minerals, contrary to the provisions of this [Law][Act][Code], commits an offence under this [Law][Act][Code] and is giving false and misleading information or failing to declare relevant information. While it can be of value to provide a broader range of offences as shown in this example, for organizational clarity it may serve a mining law to place offences that occur across all mining licences in a general offences and penalties section, restricting offences discussed here to those that are narrowly specific to the particular licence.
31. Development Minerals Exploitation Licence

Development minerals encompass a range of minerals and materials that may be mined with little or no exploration or extensive exploration as required in metals mining. For instance, building and construction minerals and materials like sand, clays and aggregates may not require exploration before they are mined, and minerals like limestone, barite, and some kaolin require exploration to determine the extent and quality of the deposit before exploitation is planned. Thus, this topic provides for cases where an exploration licence holder can upgrade to an exploitation licence upon meeting the minimum work requirements as well as cases where an applicant applies for an exploitation right at first instance without progressing from an exploration right. The latter process is particularly suitable for artisanal and small scale mining where applicants typically lack resources for exploration or consider the requirement of exploration a disincentive to formalization. In most cases, however, the minerals mined by artisanal and small scale miners do not require exploration. Countries that have sufficient geological data on development minerals may also grant exploitation rights without a prior exploration rights. In such cases, exploitation licences may require applicants to submit feasibility study reports within up to six months or a year and to commence mining operations not later than the same period.

Where sufficient geological data is available, countries may also consider using auction processes to allocate exploitation rights. Auctions are not commonly used in the mining sector because countries often do not have sufficient geo-scientific data to interest multiple bidders. Where such data is available, auctions can be used to ensure optimal allocation of mineral resources. This is particularly true of development minerals whose occurrence or deposits can be established with limited or no exploration. For auction regimes to be effective, rules and regulations must be put in place to ensure that they are transparent, objective, and competitive.

31.1. Eligibility

This topic provides the minimum qualification for applying for a large scale development minerals exploitation licence. The main criteria for eligibility is citizenship, which is basic for all the mineral rights that may be granted in respect of development minerals. Other criteria like incorporation are required of large scale applicants. In the case of artisanal and small scale mining individuals or cooperatives may be considered. Citizens of other countries or within a region may also be included depending on a country or region’s development mineral plans. To promote

NOTE: This Document is part of a multi-part document, Parts A - E
PART B-5: Mineral Licences – Development Minerals

Local involvement in the economic development of development minerals some countries have set a high bar for entry by non-citizens.

### 31.1. Example 1:

**Article [__]** Application for exploitation licence by a holder of an exploration licence
A holder of a development licence exploration licence may not later than [__] days before the expiration of the licence, apply in the prescribed form for an exploitation licence in respect of the area or part of the area subject to the exploration licence.

**Article [__]** Application for exploitation licence by any other person
A person may apply for a development mineral exploitation licence in the prescribed form in accordance with the regulations

**Article [__]**
(1) A person shall be eligible for the grant of a large scale development mineral exploitation licence if the person:

(a) is a body corporate incorporated under [relevant related law]; and
(b) is citizen of [country] or in respect of [list particular development mineral] is a citizen of [list countries or region];

### Annotation
This example allows either a holder of a prior exploration licence or a “fresh applicant” to apply for a development mineral exploitation licence. Apart from local incorporation requirement which is similar to most mining regimes, this example also allows for regional development of minerals to be considered as planned or agreed with other countries.

### 31.1. Example 2:

**Article [__]**
(1) A person shall be eligible for the grant of a large scale development mineral exploitation licence if the person:

(a) is a body corporate incorporated under [state appropriate law]; and
(b) is citizen of [country] or in respect of ...... [list particular development minerals] is a citizen of [list countries or region]; or
(c) has at least [__] % of its shares held by citizens of [Country]; or
(d) where the person is a non-citizen, the person shall be required to meet the minimum investment threshold [as defined in article [__] / as prescribed under regulations].

### Annotation
Inspired by Ghana’s mining law provision on industrial minerals, this example makes citizens of a country or a region eligible provided they are locally incorporated whilst non-citizens are eligible only if they partner with citizens or commit to invest a specified amount in the mineral operations in addition to local incorporation. The minimum investment threshold may be provided in the definitions section in this part or prescribed in regulations.
# 31. Development Minerals Exploitation Licence

## 31.2 Requirements for Licence Applications

In addition to the usual requirements for application for an exploitation right, an applicant is required to submit a development or industrialization impact plan which considers the local, national, or regional development impacts of the exploitation of the mineral, including plans for local value addition and beneficiation. Just as the completion of standard application forms are aimed at simplifying the application and reviewing processes, it is recommended that guidelines are provided for preparing the development/industrialization impact plan to facilitate compliance and comparison.

### 31.2. Example 1:

Article [...] 

An application for a large-scale development mineral exploitation licence shall include the following:

- (a) A completed application form (where applicable);
- (b) Particulars of incorporation;
- (c) Particulars of technical capacity to undertake the proposed mineral activity;
- (d) Particulars of financial capacity to undertake the proposed mineral activity;
- (e) Feasibility study report in accordance with prescribed guidelines;
- (f) Development/industrialization impact plan in accordance with prescribed guidelines;
- (g) Applicable fee

### Annotation

This example provides the complete list of documentation or information required to be submitted by an applicant for a mining right, including the recommended development/industrialization impact plan.

### 31.2. Example 2:

Article [...] 

In addition to the requirements for application of a mining lease as provided in [...] of this Law, an application submitted by an applicant for a large scale development minerals exploitation licence shall include a development/industrialization impact plan.

### Annotation

In this example, it is assumed that the provisions of the law already require certain documents or information to be provided and only the recommended development/industrialization impact plan is to be provided by an applicant for a development mineral.
### 31. Development Minerals Exploitation Licence

#### 31.3 Environmental Impact Assessment / Environmental Permit

Environmental regulation of mineral operations is important. And extensive provisions exist in this template on this subject. Therefore, it does not bear repeating such provisions in this part. However, it is claimed by some experts that the environmental impact of mining development minerals does not require the extensive environment assessments provided for mining metals such as iron, gold, or copper. Some of the common environmental issues associated with development minerals include dust and noise pollution. Therefore, the objective is to provide where appropriate simplified environmental regulation to facilitate the exploitation of development minerals. It must be noted that this provision is not intended to excuse the environmental responsibility or liability of applicants or holders of development mineral rights.

<table>
<thead>
<tr>
<th>31.3. Example 1:</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [...] An applicant for a holder of a development mineral exploitation licence shall comply with the environmental provisions of this [Law][Act][Code] and [Applicable Environmental Laws] subject to such modifications as shall be made by [Regulating Authorities] to facilitate the exploitation of the mineral without causing damage to the environment.</td>
<td>This example gives the environmental authority power to make changes in the existing environmental regime to accommodate any unique characteristics of development minerals and to ensure that their development is not hindered by undue environmental regulation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>31.3. Example 2:</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article [...] Prior to commencement of mineral operations, a holder of a development mineral exploitation licence shall obtain an environmental permit from [Regulating Authority] upon submitting the following information [or as provided in regulations]:</td>
<td>This example seeks to simplify the environmental permitting process by ensuring that where certain information regarding the environmental impact of the proposed mining operations is provided an environmental permit would be granted. To do this efficiently, it is useful to have pre-established baseline environmental conditions in the relevant areas.</td>
</tr>
<tr>
<td>(a) [__________]</td>
<td>(a) [__________]</td>
</tr>
<tr>
<td>(b) [__________]</td>
<td>(b) [__________]</td>
</tr>
<tr>
<td>(c) [__________]</td>
<td>(c) [__________]</td>
</tr>
</tbody>
</table>

#### 31.4. Grant of Licence
The provisions for the grant of a licence under the mining law are generally applicable, subject to the authority determined to be the grantor as discussed above. Where a state or other local government authority is determined to be the grantor this may require clarifications in this part regarding how such grants may be effected. Additionally, an improvement worth considering, even for other grants of mineral rights generally, is the allocation of unique licence numbers that must be exhibited on the land.

### 31.4. Example 1:

Article [__]
(1) The grant of a development mineral exploitation licence shall be in the prescribed form and shall include the following:

- (a) a unique licence number;
- (b) a description of the area;
- (c) the name of the grantee;
- (d) the date of the grant;
- (e) the term of the licence;
- (f) confirmation of the grant by the [Regulating Authority];
- (g) the terms and conditions of the licence.

### Annotation
This example requires that a document evidencing the grant of an exploitation right contains sufficient relevant information including a unique number that with the use of appropriate technology can indicate the holder’s geo-location. This ensures that licence holders who stray from their location can be identified and disciplined.

### 31.4. Example 2:

Article [__]
(1) The [Regulating Authority] may grant exploitation licences by auction where:

- (a) sufficient geo-scientific data is available for the area to warrant an auction;
- (b) an area was subject to previous mining activities or produced significant quantities of minerals;
- (c) two or more applications are received at the same time in respect of the same area;
- (c) the [Regulating Authority] considers that an auction is the most appropriate method for granting rights over an area.

### Annotation
This example provides for situations where auctions may be used to allocate exploitation rights.
## 31. Development Minerals Exploitation Licence

### 31.5. Area

Development minerals as distinguished from other minerals may require different boundary size limitations (typically smaller because development minerals tend to be more concentrated and homogenous in their formation), and this ought to be clearly stipulated in the law to avoid ambiguity and for optimal exploitation of the mineral resource. Apart from commercial and local economic considerations, the size of the area granted for mining may also be dependent on the rate of mining allowed or approved by the Regulating entity. Accordingly, this provision requires that consideration is given to all these factors in determining the appropriate size grantable for exploitation of the various development minerals. Rules in respect of contiguity and shapes that are applicable to other mineral rights should be applicable.

**31.5. Example 1:**

**Article [ ]**  
The area granted for a large scale development mineral licence shall be determined by [Regulating Authority] in accordance with the nature or characteristics of the deposit and the method of mining but in any case shall not cover an area greater than [ ].

**Annotation**  
This example allows the Regulating entity to determine a maximum area based on economic and other considerations as well as on the nature or characteristics of the mineral resources and the proposed mining operations. The minimum area may be determined by the maximum area of other mining rights, such as a small scale mining right and an artisanal mining right.

**31.5. Example 2:**

**Article [ ]**  
An area subject to a large scale mineral development exploitation licence shall be at least [ ] [units/blocks] and not more that [ ] [units/blocks], [units/blocks] shall be contiguous and have a side in common with at least one another.

**Annotation**  
This example simply provides the lower and upper limit of the size of a large scale development mineral exploitation licence. Rules of contiguity and may be included if it is not provided in another part of the law.

### 31.6 Rights of a Licence Holder

This refers to the rights attached to the mining licence that empower the holder to undertake the mining operations as well as other activities
related to the operations, such as construction and transportation. For development minerals, the condition for local processing or beneficiation require that rights such as processing, trading or dealing (which are also licenced under the law) are granted to the holder if it wishes to undertake such activities.

31.6. Example 1:
Article [...]  
(1) A large scale development minerals exploitation licence confers on the holder of the licence in respect of the area covered by the licence -

(a) authority to enter the area covered by the licence to conduct approved mining operations;

(b) exclusive rights to conduct exploration and exploitation in respect of the mineral the subject of the licence;

(c) rights to use the water and wood and other construction materials found in the licence area as necessary for the mineral operations subject to obtaining appropriate permits and in accordance with appropriate regulations;

(d) rights to store, remove, transport, submit to treatment, transform and process the mineral resources, and dispose of any waste; and

(e) rights to process, transport, market, sell, export or otherwise dispose of the mineral products resulting from the mining operations subject to appropriate conditions or authorization of [Regulating Authority]

| Annotation | In contrast with example 2, this provision stipulates the particular rights conferred on a holder of a large scale development mineral exploitation licence. |

31.6. Example 2:
Article [...]  
(1) The rights of a holder of large scale development mineral exploitation licence shall be the same as those of a holder of a mining right subject to such modifications as shall be made by the [Regulating Authority] including the following:

(a) the right to process, transport, market, sell, export or otherwise dispose of

| Annotation | Without expressly stating them, this example grants to a holder of a development mineral exploitation licence the same rights due to a holder of an exploitation licence for higher value minerals. This example presupposes that such rights have been stipulated in respect of higher value minerals in another part of the law. |
the mineral products resulting from the mining operations subject to appropriate conditions or authorization of [Regulating Authority];

### 31. Development Minerals Exploitation Licence

#### 31.7 Obligations of licence holder

The obligations of a holder of an exploitation right are sufficiently discussed elsewhere in the GT. These include work obligations, commencement within a stipulated time, reporting, health, safety and environmental requirements and fee payments. To these may be added the principal requirement in relation to development minerals, i.e. the obligation to process or beneficiate minerals locally. Also, where a minimum investment threshold is required, this provision may stipulate the obligation to make the investment.

**31.7. Example 1:**

*Article [__]*

(1) A holder of a large scale development mineral exploitation licence shall process or add value within the [Country] [Region] to the mineral exploited under the licence in accordance with the holder’s approved development/industrialization impact plan.

(2) A holder shall not dispose of or export any mineral that has not been processed or beneficiated otherwise than as approved under the development/industrialization impact plan or by the [Regulating Authority].

*Annotation*

This example requires the holder to comply with the approved development impact plan. This plan, the format of which is to be designed by governments, will determine the level of processing or beneficiation required of the mineral to be exploited. The plan shall also provide for situations where the holder proposes to undertake exploitation only and supply the minerals to a holder of a processing licence. In such cases the holder must ensure that the mineral is supplied to an approved local processing facility.

**31.7. Example 2:**

*Article [__]*

A holder of a large scale development mineral exploitation licence who is not a citizen shall make the investments required under the minimum investment threshold within the period stipulated in this [Law][Act][Code] or by regulations.

*Annotation*

This is an example provision to require compliance with the minimum investment threshold to be made by non-citizen applicants for large scale development mineral exploitation licences.

### 31.8 Term of licence
Refer to example provisions for mining licences. Many countries however provide shorter terms for development minerals because the areas granted are smaller than for other minerals and the rate of exploitation is faster. In addition to determining an appropriate term that accounts for the type of mineral, mining methods, and return on investment, a maximum term with the right of renewal subject to specific conditions such as performance should guarantee against sterilization, under-utilization or speculation.

31.8. Example 1:  
Article [__]  
A large scale development mineral exploitation licence shall be for a period determined by [Regulating Authority] upon review of the approved feasibility study report and the development impact plan and shall not exceed [__] years.

Annotation  
This example allows the regulating entity to determine the appropriate term suitable for the development of the mineral, but such term shall not exceed a stipulated term that is reasonably sufficient for profitable exploitation of the mineral.

31.9 Renewal of licence

Refer to example provisions for mining licences. In addition to the considerations discussed under those provisions, it is recommended that reporting requirements should be included as a condition for renewal. This is one way of ensuring that holders of development minerals provide accurate data required for policy analyses and formulation.

31.9. Example 1:  
Article [__]  
[Regulating Authority] may reject an application for renewal of a licence if the holder fails to comply with reporting requirements in relation to the mineral operations or willingly or negligently submits inaccurate reports.

Annotation  
This example aims to emphasise data collection for better policy analysis in a sector that is dogged by inaccurate and poor data.

31.9. Example 2:  
Article [__]  
Upon satisfying the conditions for renewal of a large scale development mineral exploitation licence, the licence shall be renewed by the [Regulating Authority].

Annotation  
This example provides assurance that the licence will be renewed if the holder meets the conditions of the licence as provided in the law or in the licence.
AMLA GUIDING TEMPLATE
PART B-5: Mineral Licences – Development Minerals

Refer to example provisions for mining licences. To these may be added circumstances where reports are not submitted on time or are inaccurate, non-compliance with the non-citizen minimum investment threshold, or non-compliance with the development impact plan. These provisions may also serve as grounds for termination of the licence.

31.10. Example 1:

Article [__]
(1) Subject to the provisions of this [Law][Act][Code], the [Regulating Authority] may suspend or terminate a development mineral exploitation licence if the holder:

(a) fails to submit the reports required by law within the time stipulated in the [Law][Act][Code];
(b) submits inaccurate reports;
(c) being a non-citizen fails to invest the amounts required under the minimum investment threshold;
(d) at any time does not meet local shareholding requirement;
(e) at any time fails to comply with the approved development impact plan.

(2) A licence shall not be terminated unless the holder is given an opportunity to remedy the breach within [__] days and fails to do so or where the breach is not remediable.

Annotation
This example provides a list of additional conditions under which a regulating entity may suspend a development mineral exploitation licence.

31. Development Minerals Exploitation Licence

31.11 Transfer/Assignment of Rights

Refer to example provisions for mining licences. In view of the restrictions on a non-citizen’s right to hold a development mineral exploitation...
licences, additional conditions must be stipulated for transfer or assignment of rights.

31.11. Example 1:

Article [__] No transfer of a development mineral exploitation licence to a non-citizen shall be valid if the non-citizen fails to comply with the requirements for acquiring a development mineral exploitation licence.

Annotation

Whilst transfers of mineral rights are generally not prohibited in order to facilitate exploration and development of mineral resources, the standard to be met by a potential transferee is the standard for acquiring the licence de novo. In the case of development minerals where a minimum investment threshold is required for non-citizens to acquire a mineral right, this provision ensures that transfers are not used to bypass this requirement.

32. Artisanal/Small Scale Development Minerals Exploitation Licence

32.1 Eligibility and Requirements

The provisions of the large scale development minerals exploitation licence may apply to small scale licences subject to appropriate modifications, including those provided in the provisions below. Limited rights and obligations may be provided for small scale and artisanal licences. Artisanal and small scale licences may be further differentiated by size, term, investment limit, production limit, etc.

32.1. Example 1:

Article [__] Eligibility

Notwithstanding article [], an artisanal or small scale development mineral exploitation licence shall not be granted to a non-citizen.

Article [__] Requirements for application

(1) An application for an artisanal or small scale development mineral exploitation licence may be made by an individual, cooperative or incorporated body of persons and shall include:

(a) A completed application form (where applicable);
(b) Particulars of incorporation/formation of cooperative (where applicable);
(c) Evidence of citizenship;
(d) Particulars of technical capacity to undertake the proposed mineral exploitation.

Annotation

In many jurisdictions, the bureaucracy involved in obtaining artisanal or small scale licences contributes to increased illegal mining activities. Rather than proscribing the submission of certain, licensing times can be shortened or facilitated by providing simple forms for submitting information on technical and financial capacity, feasibility reports and development impact plans for small scale and artisanal mining applications without unduly burdening the applicants.
### AMLA GUIDING TEMPLATE

**PART B-5: Mineral Licences – Development Minerals**

<table>
<thead>
<tr>
<th>activity;</th>
<th>(e) Particulars of financial capacity to undertake the proposed mineral activity;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>[(f) Feasibility study report in accordance with prescribed guidelines;]</td>
</tr>
<tr>
<td></td>
<td>[(g) [Development/industrialization] impact plan in accordance with</td>
</tr>
<tr>
<td></td>
<td>prescribed guidelines;]</td>
</tr>
<tr>
<td></td>
<td>(h) Applicable fee</td>
</tr>
</tbody>
</table>

**Article [__] Rights**

**Article [__] Obligations**

#### 32.1. Example 2:

**Article [__] Exclusive areas for [artisanal/small scale] mining**

1. The [Regulating Authority] may from time to time designate areas for artisanal or small scale mining as prescribed in regulations.

2. The areas designated for artisanal or small scale mining shall be reserved exclusively for artisanal or small scale mining.

3. An application for artisanal or small scale mining licence shall not be valid unless it is made in an area designated for artisanal or small scale mining in accordance with this [Law][Act][Code] and accompanying regulations.

**Article [__] Upgrading or conversion from artisanal to small scale to large scale**

1. A holder of an artisanal licence may convert to a small scale licence by applying in the prescribed form to the [Regulating Authority].

2. Where the [Regulating Authority] determines that an artisanal mining licence holder’s operations have progressed to a small scale mining operation, the holder shall be required to apply to convert the licence to a small scale mining licence.

**Annotation**

This example provides for where an exclusive area is designated for small scale mining.

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**NOTE: This Document is part of a multi-part document, Parts A - E**
33. General Provisions for Development Minerals

The provisions contained in this part will cover miscellaneous or general issues that are common to mineral rights for development minerals, including health and safety, environment, fiscal issues, appeals, and gender issues.

33. Example 1:

<table>
<thead>
<tr>
<th>Article</th>
<th>Mine health and safety</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The rules applicable to health, safety and environmental practices to be observed in an artisanal, small scale or large scale mine for development minerals shall be as prescribed in regulations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article</th>
<th>Fiscal provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The fees, taxes, royalties and other imposts payable in respect of an artisanal small scale or large scale mining licence for development minerals shall be as prescribed in regulations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article</th>
<th>Appeals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>An appeal against the rejection of an application for an artisanal, small scale or large scale development minerals exploitation licence shall be made to the appropriate authority as prescribed in regulations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article</th>
<th>Gender mainstreaming</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In granting mineral rights for exploitation of development minerals by auction, [the regulating entity] shall ensure that applicants who are women or include women are entitled to at least [28] points/marks to be reckoned in the evaluation of bids.</td>
</tr>
</tbody>
</table>

34. Specific Violations and Penalties

This part deals with contraventions of the law and requirements relating to development minerals and provides corresponding penalties that seek to deter non-compliance. Depending on how the mining law is structured, the provisions of this part may form part of the main offences provisions of
the law or be dealt with separately in the development minerals section. Some of the contraventions listed here also apply to dealings in minerals generally.

34. Example 1:

Article [__] Specific violations [or breaches]

(1) Notwithstanding any violations and penalties provided in any part of this law, any of the following shall constitute a violation under this part:
   (a) Making a false statement knowingly or negligently pursuant to a provision of this law;
   (b) Failure to pay royalties, taxes, fees or charges imposed under this law;
   (c) Failure to comply with the minimum investment threshold requirement;
   (d) Transfer or assignment of a right contrary to the provisions of this law;
   (e) Conduct of operations without appropriate authorisation;
   (f) Conduct of operations outside authorised areas or in prohibited areas;
   (g) Failure or refusal to comply with a direction or order lawfully given under this law;
   (h) Obstruction of an authorised officer in the performance of the officer’s duties under this law;
   (i) Engaging in wasteful mining practices or operations that do not accord with good mining practice;
   (j) Acting with another person to commit the above breaches or contravene any provision of this law.

(2) Where a person commits any of the violations in [Article__], the [Regulating Authority] shall notify the person of the breach committed and impose an appropriate penalty subject to the severity of the breach:
   (a) A fine not exceeding [US$_____] or [___ penalty/currency units]
   (b) Seizure of equipment used in commission of breach;
   (c) Confiscation of minerals that are obtained illegally or in contravention of this law;
   (d) Suspension of licence for specified period or until the breach has been remedied;

Annotation

This example attempts to provide an elaborate list of likely offences that can apply to dealings in development minerals. More or others may be added to the list depending on a country’s particular circumstances and the particular issues it wishes to prevent or discourage. It is also expressed widely to include conspirators in the commission of the breach and persons who without justification prevent an authorised officer from carrying out their duties under the law. In this example, the Regulatory Authority is authorised to determine the severity of the breach and to apply the appropriate penalty/penalties from a number of penalties provided in the law. It is important that notice is given of the breach and a reasonable time is given for the breach to be remedied before a more severe penalty like revocation is applied. This example does not provide an elaborate appeal process as this is normally provided in the mining law or is available under the general laws of a country.
### AMLA GUIDING TEMPLATE

**PART B-5: Mineral Licences – Development Minerals**

<table>
<thead>
<tr>
<th>(e) Revocation of licence or rights granted under this law if a breach is not remediable or remedied within a specified period;</th>
</tr>
</thead>
</table>

#### 34. Example 2:

**Article [__]**

Notwithstanding any violations and penalties provided in any part of this law, any of the following shall constitute a violation under this part for which the stipulated penalty applies:

- (a) For making a false statement knowingly or negligently pursuant to a provision of this law, a fine of [US$___] or [___ penalty/currency units];
- (b) For failure to pay royalties, taxes, fees or charges imposed under this law, a fine of [US$___] or [___ penalty/currency units];
- (c) For failure to comply with the minimum investment threshold requirement, a fine of [US$___] or [___ penalty/currency units] and/or suspension of licence for a specified period or until the breach has been remedied, and/or confiscation of minerals that are obtained illegally or in contravention of this law, and/or revocation of licence or rights granted under this law if a breach is not remediable or remedied within a specified period;
- (d) For transfer or assignment of a right contrary to the provisions of this law, a fine of [US$___] or [___ penalty/currency units];
- (e) For conduct of operations without appropriate authorisation, a fine of [US$___] or [___ penalty/currency units] and suspension of licence for specified period or until the breach has been remedied;
- (f) For conduct of operations outside authorised areas or in prohibited areas, confiscation of minerals that are obtained illegally or in contravention of this law, a fine of [US$___] or [___ penalty/currency units] and/or suspension of licence for specified period or until the breach has been remedied;
- (g) For failure or refusal to comply with a direction or order lawfully given under this law, a fine of [US$___] or [___ penalty/currency Units];
- (h) For obstruction of an authorised officer in the performance of the

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**Annotation**

In cases where a regulatory authority is considered to have limited capacity or where one seeks to eliminate unfair use of discretion or bias in enforcing penalties, the provisions may be expressed more definitely by matching a specific penalty (or penalties) to a violation. In this way, the regulatory authority simply applies the law irrespective of the severity of the violation. A drawback of this approach is that the law tends to be rigid and may not account for less severe violations or the circumstances of each case.
| **officer’s duties under this law, a fine of [US$____] or [___
penalty/currency units];** |
| (i) **For engaging in wasteful mining practices or operations that do not accord with good mining practice, a fine of [US$____] or [___ penalty/currency units];** |
| (j) **For acting with another person to commit the above breaches or contravene any provision of this law, a fine of [US$____] or [___ penalty/currency units].** |
### 35. Beneficiation – Processing, Trade and Transport

Unlike in other resource-rich countries such as China, Brazil, Australia or Canada, in many African countries, the refinement of extracted minerals to increase their value takes place outside of the country in which they are mined. To address this, a mining code may include beneficiation which encourages or requires mining licence holders to establish facilities that enhance or beneficiate extracted minerals within the country’s borders before exportation abroad. The “requirement option” ensures that there are clear obligations on mining companies. However, to succeed such obligations on mining companies must be realistic and correspondingly supported by a strong and comprehensive national industrialization policy. Note that in some countries beneficiation of minerals may be addressed in its own law, separate from the country’s general mining law.

A key element for designing successful policies in this area is to first conduct a sound economic and environmental analysis in order to identify sound beneficiation and commercialization opportunities and constraints. In this regard, it is interesting to consider opportunities at national level but also at a regional level, as some constraints might be better addressed in coordination with other regional countries rather than each individual country standing alone.

This topic may also deal with authorisation for the transport, processing, refining, cutting, polishing or trading of mineral products. In some cases, commercialization may be addressed to specific minerals. In some cases, a specific mineral will have a separate piece of legislation rather than provisions within the mining law that address this topic. In these circumstances, a country is treated as having multiple primary mining laws for the purpose of the AMLA platform. For example, diamonds typically have separate provisions or legislation to address how and under what circumstances diamonds may be transported and refined for selling. Elsewhere, provisions may address the sale of jewellery or other final products made from minerals, and in some cases will lay out a licensing process, with only authorised buyer and seller licence holders permitted to engage in the commercialization of minerals.

For the purpose of the Guiding Template, the sample topics here apply only to development minerals (see Part B-5 for the explanation on development minerals) because it is an area where the current African context and capacities can prove fertile in the short to medium term, and a swift uptake by African countries of a comprehensive regional beneficiation and commercialization policy underpinned by a strong legal framework that utilizes some of the guidance outlined here can bring about transformational development dividends at both the national and continental level.

Processing, trade and transport of development mineral products may be conducted as part of an integrated mining operation or they may be conducted separately by independent actors. As such they may be governed by the mining law or by other laws or by a combination of the two. In any event, the mining law should be the law that establishes the overall policy and institutional framework for these activities.
PART B6: Beneficiation – Processing, Trade & Transport

35. Beneficiation – Processing, Trade and Transport

35.1 Institutional Framework for Beneficiation and Trade of Development Minerals

The mining law should make provision for an institutional framework for the licensing and regulation of processing, trade and transport of development minerals that is most expedient, efficient and appropriate for the promotion of the subsector. It should also be consistent with the Constitution and government structure of the country and with other laws and rights that might apply or be affected.

When these activities are conducted as part of an integrated mining operation, they should generally be licenced and regulated by the Regulating Authority as part of the integrated mining project.

However, when development mineral beneficiation is conducted separately by independent actors, depending on the scope, type and complexity of the activity, it may be licenced by a national authority or by a provincial regulating entity that coordinates with the national Regulating Authority responsible for mining. For example, licensing of a cement plant might be by a national authority whereas a crushing plant for aggregates might be licenced by a provincial or state regulating entity. Similarly, the licensing of trader/dealers who trade in a national or regional market and the licensing of transporters who transport development minerals throughout a national or regional market should be the responsibility of a national licensing authority, whereas a provincial/state regulating entity should have responsibility for the licensing of such activities that operate solely within a single province/state. Furthermore, the national licensing authority for a complex processing facility, or a nationwide or regional trader or transporter may be different than the Regulating Authority that issues mineral licences.

Multiple licences from multiple regulating entities may be necessary for these activities (e.g., business, environmental, etc.). However, licensing requirements should be tailored to the national and regional context and capabilities, avoiding overlapping and excessive burdens while protecting the public interest. Therefore, an institutional framework for coordination among the regulating entities involved is highly desirable.

The mining law should specify which regulating entities or authorities are responsible for issuing standards and regulations for the implementation of the law with respect to the various activities, including in particular the sequencing of any multiple licensing requirements.

35.1. Example 1: | Annotation
### Article [ ]

1. Integrated projects to mine, process, transport and trade development minerals shall be licenced and regulated by the [Regulating Authority], which shall issue regulations specifying the applicable requirements consistent with the provisions of this Act.

2. Independent processing of development minerals, whether integrated with transport and/or trade of such minerals or separate, shall be licenced and regulated by the [national regulating entity] in the case of [processing facilities specified here or in the regulations] and in all other cases by [the provincial/state regulating entity]. The national or provincial/state licensing authority shall issue regulations specifying the requirements applicable to the processing facilities, trade and transport activities for which they are the licensing authority, consistent with the provisions of this Act.

3. Independent trade in development minerals shall be licenced and regulated by the [national regulating entity] in the case of [trade activities that are national or regional in scope] and by [the provincial/state regulating entity] in the case of trade activities that are carried out solely within the province/state. The national or provincial/state licensing authority shall issue regulations specifying the requirements applicable to the trade activities for which they are the licensing authority, consistent with the provisions of this Act.

4. Independent transport of development minerals shall be licenced and regulated by the [national regulating entity] in the case of [transport activities that are national or regional in scope] and by [the provincial/state regulating entity] in the case of trade and/or transport activities that are carried out solely within the province/state. The national or provincial/state licensing authority shall issue regulations specifying the requirements applicable to the transport activities for which they are the licensing authority, consistent with the provisions of this Act.

This provision distinguishes between processing, trade and transport of development minerals that are part of an integrated project and those that are conducted separately from the extraction of the minerals. It provides that the Regulating Authority (e.g., often the Mines Ministry) shall be the licensing and regulating authority of the integrated projects. This provides a one stop shop for the licensing and regulation of the integrated projects and nationwide consistency in the application of policy to them.

The provision states that a national or provincial regulating entity shall be the licensing and regulating authority for the licensing of independent development minerals processing, trading and transport, depending on the type of processing facilities and the scope of the trade or transport activities. The larger scale and more complex processing facilities such as cement plants would be licenced by a national regulating entity, which may be the Ministry of Industry rather than the Mines Ministry. The smaller scale and less complex processing facilities such as crushing plants for aggregates would be licenced by a provincial or state regulating entity.

Similarly, the provision also states that trade and transport of development minerals that are conducted separately from extraction by independent actors would be licenced and regulated by a national regulating entity if the activities are national or regional in scope, but would be licenced and regulated by a provincial or state regulating entity if the activities are to be conducted solely within a single province or state. Since these activities are commercial activities that do not involve extraction of minerals, they can be appropriately licenced and regulated at the provincial/state level, which is more readily accessible and provides greater flexibility, when the activities take place solely within that jurisdiction. Trade and transport of development minerals that are national or regional in scope must be licenced and regulated at the national level in order to be able to operate in multiple provinces or states, and within neighbouring countries.

For both trade and transport of development minerals, the licensing and regulating entity may be different from the Regulating Authority for mining; and different licensing authorities may be responsible for trade and transport, respectively (for example, the Ministry or Department of...
### 35. Beneficiation – Processing, Trade and Transport

#### 35.2 Authorised Possession [General Prohibition and Penalties]

Possession of development minerals in commercial quantities is authorised by licensing for either an integrated project or separate processing, trade and transport activities. Possession of commercial quantities of such minerals without the requisite licence is prohibited and subject to penalties. What constitute “commercial quantities” of development minerals should be defined in the mining law. The definition should exclude quantities that are sufficient for personal or domestic use rather than commercial sales.

#### 35.2. Example 1:

**Article[]**

“Commercial Quantities” of development minerals are those quantities of such minerals that are sold or are destined for sale by an individual or entity to a third party for use in a processing, construction, fortification, renovation, decoration or related project of any kind. Quantities of development minerals intended for personal or domestic use are excluded from the definition of Commercial Quantities of development minerals.

**Article[]**

No person shall process, transport, trade or otherwise deal in or possess commercial quantities of development minerals, as defined in this

#### Annotation

This provision includes both a definition of Commercial Quantities of development minerals and a straightforward proposition that it is prohibited to engage in any of the licenced activities with respect to development minerals in commercial quantities, or to otherwise deal in or possess them, unless one is licenced. It is advisable to supplement this definition with greater specificity in regulations adopted by the Regulating Authority. Violations of this prohibition should be punished by fines and/or imprisonment.

(5) Notwithstanding the foregoing, other licences from other authorities may be required for these activities.

(6) The licensing authority specified in this Act[Code][Law for the particular activity shall be the lead authority for purposes of organizing a coordinating mechanism among multiple licensing authorities.

Commerce and Trade, on the one hand, and the Ministry or Department of Transportation, on the other hand, at both the national and provincial/state levels.

The example provides that the entity responsible for licensing and regulating the activity is the entity authorised to issue regulations for the activity, provided that they must be consistent with the provisions of the Act.

Finally, the provision makes clear that other licensing requirements may apply, in which case it provides that the entity that is the licensing authority under the Act is to be the lead authority for organizing a coordinating mechanism to enhance efficiency, proper sequencing and reduction of overlaps.
35. Beneficiation – Processing, Trade and Transport

35.3 Eligibility for Licence

This section sets forth the eligibility requirements for licences to engage in processing and/or trade and/or transport of development minerals when those activities are conducted separately and independently from minerals extraction. As noted above, integrated mining projects that include these activities should be licenced by the Regulating Authority through a single process. When processing, trade and/or transport of development minerals are conducted independently, however, they are industrial and commercial activities rather than mining activities. As such, depending on the jurisdiction, they will generally be licenced by an authority other than the Regulating Authority for exploration and exploitation of minerals (e.g., by the Ministry of Industry and Trade and/or a provincial/state regulating entity). Nevertheless, to assure consistency and clarity, the related eligibility and licensing requirements can be set forth in the mining law, to be implemented by the appropriate licensing authority.

The provisions on eligibility state who may apply for a licence to engage in processing, trade and/or transport of development minerals, as well as who may not do so. The eligibility provisions may include stipulations as to origin, residency and type of person or entity.

Because processing, trade and transport of development minerals can be licenced separately and by different regulating entities, the eligibility requirements for each type of licence may vary.

35.3(a) Eligibility for Licence as Authorised Processing Facility

Eligibility for licensing to engage in processing of development minerals should be limited to individuals or entities organized under the law of the jurisdiction who are registered to do business in the jurisdiction. If an entity, its authorised powers and business registration should include engaging in minerals processing. Any national or local ownership requirements should be specified. It is generally advisable to require that eligible companies only be involved in the minerals processing business and related activities, including trade, transport and other industrial activities that will use the products of the processing operations, in order to avoid abuse of any import or other fiscal privileges and to minimize tax avoidance by offsetting profits in one line of business with losses in another unrelated line.
35.3(a) Example:

Article [__]

(1) Individuals of at least 18 years of age who are citizens of a member state of the African Union and whose principal residence is located in [the jurisdiction], duly registered and authorised to do business as mineral processors in [the jurisdiction] shall be eligible to be licenced as an Authorised Processing Facility.

(2) Entities shall be eligible to be licenced as an Authorised Processing Facility, provided that they meet the following requirements:

(a) they are organized under the laws of [the jurisdiction];

(b) they have the power under their charter document to engage in processing of development minerals;

(c) for licences issued by the national regulating entity, no less than 51% of the ownership shares of the entity are ultimately held and controlled by citizens of member states of the African Union,

(d) for licences issued by the [provincial/state] regulating entity, 100% of the ownership shares of the entity are ultimately held and controlled by citizens of member states of the African Union, of which no less than 40% are ultimately held and controlled by nationals (i.e., citizens of the licensing jurisdiction),

(e) they are registered and authorised to do business as mineral processors in [the jurisdiction], and

(f) they are only authorised to engage in processing of development minerals and associated activities as defined in the regulations.

(3) The following persons or entities shall not be eligible for licensing as an Authorised Processing Facility:

(a) Persons who are bankrupt or subject to bankruptcy, receivership or

Annotation

The example incorporates the parameters for both individuals and companies permitted to carry out business in the jurisdiction. For individuals, there are four requirements: (1) they must be at least 18 years old, (2) they must be citizens of a member state of the AU, (3) they must have their principal residence in the licensing jurisdiction, and (4) they must be duly registered and authorised to engage in the business of development mineral processing under the applicable commercial registration law.

The example imposes 6 eligibility requirements on entities.

For those entities that propose to operate a large scale, complex processing facility that would be licenced by the national regulating entity, the company must be at least 51% owned and controlled by Africans. For those entities that propose to operate a processing facility that would be licenced by the provincial or state regulating entity, the company must be at least 100% owned and controlled by Africans, of which 40% must be citizens of the licensing jurisdiction.

The example also requires that companies be limited to those solely engaged in mineral development processing and related activities, as defined in the regulations. The related activities should include, for example, trade and transport of development minerals and other industrial activities that would utilize the products of the proposed processing facility. The limitation to engage only in the operation of the intended processing facility is purposely to avoid abuse of any fiscal incentives that may be provided under this or any other Act and to minimize tax avoidance by offsetting losses against profits in consolidated financial statements for tax purposes.

This provision further specifies those persons ineligible, in particular for lack of financial capacity, previous malfeasance or conflict of interest.
reorganization/liquidation proceedings;

(b) Persons whose licence under any of the activities provided for in this [Act][Code][Law] has been revoked within the past [___] years.

(c) Persons who have been found guilty of fraud, money laundering or corrupt activities

(d) Persons engaged in activities other than processing, trade and transport of development minerals and associated activities.

(e) Any staff member of the [Regulating Authority] or a regulating entity under this [Act][Code][Law].

35. Beneficiation – Processing, Trade and Transport

35.3 Eligibility for Licence

35.3(b) Eligibility for Licence as Authorised Trader/Dealer

Licensing in this area may already be contemplated by existing general business regulating laws and authorities in the jurisdiction. In that case, these provisions should guide and, if necessary, amend the existing business regulating laws.

Eligibility for licensing to engage in trade or deal in development minerals should be limited to individuals or entities who are registered to do business in the jurisdiction. If an entity, it should be organized under the law of the jurisdiction, and its authorised powers and business registration should include engaging in minerals trade. Any national ownership requirements should be specified. It is generally advisable to require that eligible companies only be involved in the minerals trade business and related activities, including processing and transport, in order to avoid abuse of any import or other fiscal privileges and to minimize tax avoidance by mining rights licence holders offsetting profits in one line of business with losses in another unrelated line.

35.3(b) Example:

Article [___]:
(1) Individuals of at least 18 years of age who are citizens of a member state of the African Union and whose principal residence is located in [the jurisdiction], duly registered and authorised to do business as mineral traders in [the jurisdiction] shall be eligible to be licenced as an Authorised

Annotation

The example is the same as the prior example for individuals, adjusted for the type of activity licenced.

For entities, this example proposes that the ownership be at least 51% national, with the balance held by citizens of other AU member states.
### Trader/Dealer

(2) Entities shall be eligible to be licenced as an Authorised Trader/Dealer, provided that they meet the following requirements:

(a) they are organized under the laws of [the jurisdiction],

(b) they have the power under their charter document to engage in trading of development minerals,

(c) 100% of the ownership shares of the entity are ultimately held and controlled by citizens of member states of the African Union, of which no less than 51% are ultimately held and controlled by nationals (i.e., citizens of the licensing jurisdiction),

(d) they are registered and authorised to do business as mineral traders in [the jurisdiction], and

(e) they are only authorised to engage in trading of development minerals and associated activities as defined in the regulations.

(3) Persons or entities not eligible for licensing as an Authorised Trader/Dealer includes:

(a) Persons who are bankrupt or subject to bankruptcy, receivership or reorganization/liquidation proceedings;

(b) Persons whose licence under any of the activities provided for in this [Act][Code][Law] has been revoked within the past [_] years.

(c) Persons who have been found guilty of fraud, money laundering or corrupt activities.

(d) Persons engaged in activities other than processing, trade and transport of development minerals and associated activities.

(e) Any staff member of the [provincial/state] regulating entity under this

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In other respects, the eligibility and ineligibility provisions in this example are the same as for the processing licence.
35. Beneficiation – Processing, Trade and Transport

35.3 Eligibility for Licence

35.3(c) Eligibility for Licence as Authorised Transporter

Licensing in this area may already be contemplated by existing general business regulating laws and authorities in the jurisdiction. In that case, these provisions should guide and, if necessary, amend the existing business regulating laws, mindful that these activities may be subject to other laws (e.g., environmental and road safety laws) as well.

Eligibility for licensing to engage in transport of development minerals should be limited to individuals or entities organized under the law of the jurisdiction who are registered to do business in the jurisdiction. If an entity, its authorised powers and business registration should include engaging in minerals transportation. Any national ownership requirements should be specified. It is generally advisable to require that eligible companies only be involved in the minerals transportation business and related activities, including processing and trade, in order to avoid abuse of any import or other fiscal privileges and to avoid offsetting profits in one line of business with losses in another unrelated line.

35.3(c) Example:

Article [__]
(1) Individuals of at least 18 years of age who are nationals of [the licensing jurisdiction], duly registered and authorised to do business as mineral transporters in [the jurisdiction] shall be eligible to be licenced as an Authorised Transporter of development minerals.

(2) Entities shall be eligible to be licenced as an Authorised Transporter, provided that they meet the following requirements:

(a) they are organized under the laws of [the jurisdiction],
(b) they have the power under their charter document to engage in transport of development minerals,
(c) 100% of the ownership shares of the entity are ultimately held and

Annotation

In this example, only individuals who are nationals of the licensing jurisdiction are eligible to apply for the development minerals transporter licence. Residence in the jurisdiction is not a requirement, because it is presumed that any individual national applicant will be a resident. Eligibility is reserved for nationals because transportation of development minerals is not a subsector that requires foreign capital or expertise.

For entities, this example requires that the ownership be 100% national.

In other respects, the eligibility and ineligibility provisions in this example are the same as for the trading licence.
controlled by nationals (i.e., citizens of the licensing jurisdiction),

d) they are registered and authorised to do business as mineral transporters in [the jurisdiction], and

(e) they are only authorised to engage in transportation of development minerals and associated activities as defined in the regulations.

(3) Persons or entities not eligible for licensing as an Authorised Transporter includes:

(a) persons who are bankrupt or subject to bankruptcy, receivership or reorganization/liquidation proceedings;

(b) persons whose licence under any of the activities provided for in this [Act][Code][Law] has been revoked within the past [_] years.

(c) persons who have been found guilty of fraud, money laundering or corrupt activities.

(d) persons engaged in activities other than processing, trade and transport of development minerals and associated activities.

(e) any staff member of the [provincial/state] regulating entity under this [Act][Code][Law].

35. Beneficiation – Processing, Trade and Transport

35.4 Requirements for Applicants

Once eligibility has been determined, an applicant must meet specific requirements related to his application for a specific licence to be granted under this Act. As noted above, depending on the jurisdiction, processing, trade and/or transportation of development minerals conducted as a business separate from extraction of those minerals will generally be licenced by an authority other than the Regulating Authority for exploration and exploitation of minerals, such as the Ministry of Industry and Trade or the Ministry of Transportation and/or a provincial/state regulating entity. In the case of large scale, complex processing and national or regional trade and transportation, the
licensing should be the responsibility of a national regulating entity; while in the case of small and medium scale processing, and trade and transportation of development minerals within a single province or state, the licensing should be the responsibility of a provincial/state regulating entity. However, to assure consistency and clarity, the application requirements for all of these licences can be set forth in the mining law, to be implemented by the appropriate licensing authority.

This provision will describe the documentation required for each licence so as provide a universal and uniform understanding of the requirements to fulfil in order for applications to be successfully processed and licences issued by the relevant authorising entities.

### 35. Beneficiation – Processing, Trade and Transport

#### 35.4 Requirements for Applicants

##### 35.4(a) Application requirements for an Authorised Processing Facility Licence

Provisions in this section should require demonstration that the applicant is capable technically and financially to develop and operate a processing plant that is economically viable as a condition for the issuance of a processing licence.

This section would require information establishing the eligibility of the applicant for the licence as well as a business plan for the proposed processing plant. The required contents of the business plan can be specified in the regulations, and should include, for example:

- a) development minerals inputs;
- b) processing methodology;
- c) products to be produced and intended markets for sale;
- d) professional/registered/qualified staff;
- e) plant size and capacity;
- f) location and site arrangement;
- g) storage facility for inputs and products; and
- h) financial resources available.

Other information that should be provided in the application would include (i) the applicant’s knowledge and experience in minerals processing; and (ii) minerals processing licences previously granted to the applicant.

In addition, the mining law should require the applicant to submit, as part of the application, proof of submission of the required environmental impact statement, assessment or study to the environmental permitting authority. The environmental law and regulation will
usually determine the environmental documentation requirement that applies to the particular type of processing facility. The mining law should specify that the proper environmental permit or authorisation must be obtained from the environmental regulatory authority prior to the commencement of operations of the processing plant.

### 35.4(a) Example:

**Article [__]**

1. **The applicant for a licence as an Authorised Processing Facility shall submit the following to [the licensing entity]:**

   - (a) application in the prescribed form as provided in the [Act][Code][Law] (information identifying applicant) together with supporting documentation;
   - (b) *Business plan for the processing facility as prescribed in the regulations;*
   - (c) *a statement of the applicant’s knowledge and experience in minerals processing;*
   - (d) *reference to all licences as an Authorised Processing Facility previously granted to the applicant; and*
   - (e) proof of submission of the required environmental documentation to the environmental permitting authority, if applicable.

**Article [__]**

1. **Within [__] days of the submission of an application, the regulating entity may grant an Authorised Processing Facility licence, or request additional information from the applicant, or reject the application and provide reasons for the rejection.**

2. **Any rejection of an application is subject to appeal within [__] days from the date of notification of such rejection to the applicant in accordance with the provisions of this [Act][Code][Law].**

3. **An Authorised Processing Facility licence shall be granted when the applicant demonstrates to the reasonable satisfaction of the regulating**

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**Annotation**

The first section in the example sets forth the application requirements for a processing licence which includes all the information necessary for the regulating entity to make the determination contemplated by the second section.

The environmental documentation requirement would apply to most medium and large scale processing plants, depending on the jurisdiction’s environmental law and regulations. Proof of submission of the required environmental documentation, if any, would be sufficient for purposes of review of the processing licence application by the authority responsible for that licensing. In this example, the processing licence could be issued prior to the issuance of a permit or authorisation by the environmental regulatory authority; but the issuance of such environmental permit or authorisation would be a condition that must be fulfilled before operation of the processing plant could commence.

The second section provides a statutory timeframe for the processing of the application, the standard of review and the obligation of the regulating entity to provide reasons for any rejection of an application.

The second section further provides for the possibility of a supplemental filing if the application is deficient or an appeal where it has been rejected. The appeal procedures will be set forth in another section of the Act.

A processing licence should be valid for a term which is sufficient to enable the holder to recover his investment and make a reasonable profit but short enough to assure proper oversight and to motivate the licence holder to comply with the obligations and conditions of the licence. The licence should be renewable as long as the licence holder is in compliance with the licence obligations and conditions and remains eligible.
entity that the applicant is capable technically and financially to develop and operate the proposed processing plant in an economically viable manner. If an environmental permit or authorisation is required for the processing facility and has not yet been issued to the applicant, the Authorised Processing Facility licence shall be granted subject to the condition that the applicant obtain the proper environmental permit or authorisation from the environmental regulatory authority prior to the commencement of operations of the processing plant.

Article [__]
An Authorised Processing Facility licence shall be granted for a term of [__] years, renewable for a like term without limitation.

Article [__]
(1) The mining right licence holder may surrender the Authorised Processing Facility licence at any time; however, the mining right licence holder shall remain liable for any damages caused by the processing operations and for environmental rehabilitation requirements related to the processing operation.

(2) In such case, the regulating entity shall issue a certificate of surrender which may be with or without conditions.

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<tr>
<td>35.4 Requirements for Applicants</td>
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<tr>
<td>35.4(b) Application requirements for an Authorised Trader/Dealer Licence</td>
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This section would require information from the applicant with respect to trading of development minerals, including:

a) type of development minerals to be traded;
b) storage facilities of development minerals;
c) office location(s);
d) financial resources available; and

e) trading licences previously granted.

Provisions in this section should require demonstration that the applicant is capable technically and financially to trade in development minerals on an economically sustainable basis.

It is not anticipated that an environmental permit or authorisation would be necessary in order to engage in the business of trading development mineral products. However, a licenced trader should be subject to environmental regulations applicable to the storage and handling of traded development mineral commodities.

35.4(b) Example:

Article [___]
(1) The applicant for an Authorised Trader/Dealer licence shall submit the following to [the licensing entity]:

(a) application in the prescribed form as provided in the [Act][Code][Law] [information identifying applicant] together with supporting documentation;

(b) information pertaining to:
   • the type of development minerals to be traded;
   • storage facilities for the development minerals;
   • office location(s);
   • financial resources available; and

(c) reference to all Authorised Trader/Dealer licences previously granted to the applicant.

Article [___]
(1) Within [___] days of the submission of an application, the regulating entity may grant an Authorised Trader/Dealer licence, or request additional information from the applicant, or reject the application and provide reasons for the rejection.

(2) Any rejection of an application is subject to appeal within [___] days from the date of notification of such rejection to the applicant in accordance with

Annotation

The first section in the example sets forth the application requirements for a trading licence which includes all the information necessary for the regulating entity to make the determination contemplated by the second section.

No environmental compliance requirements with respect to a trading licence. However, depending on the jurisdiction the applicant might need to obtain a warehousing permit.

The second section provides a statutory timeframe for the processing of the application, the standard of review and the obligation of the regulating entity to provide reasons for any rejection of an application.

The second section further provides for the possibility of a supplemental filing if the application is deficient or to an appeal where it has been rejected. The appeal procedures will be set forth in another section of the Act.

A trading licence should be valid for a term which is sufficient to enable the holder to recover his investment and make a reasonable profit but short enough to assure proper oversight and to motivate the licence holder to comply with the obligations and conditions of the licence. The licence should be renewable as long as the licence holder is in compliance with the licence obligations and conditions and remains eligible.
NOTE: This Document is part of a multi-part document, Parts A - E
Provisions in this section should require demonstration that the applicant is capable technically and financially to transport development minerals nationally or regionally, as the case may be, on a safe and reliable basis that also facilitates certification of origin, subject to the provisions of this Act and any other applicable Acts.

It is not proposed to require an environmental impact assessment in connection with the licensing of Authorised Transporters; but the environmental laws of the jurisdiction will determine what activities require an environmental impact assessment, mitigation plan and related environmental authorisation or permit. The regulations on the obligations of Authorised Transporters should include environmental impact mitigation guidelines and requirements to be followed in development minerals transportation operations.

### 35.4(c) Example

**Article [...] (1)** The applicant for an Authorised Transporter transport licence shall submit the following:

(a) application in the prescribed form as provided in the [Act][Code][Law] [information identifying applicant] together with supporting documentation

(b) Information pertaining to:
   - office location(s);
   - types of development minerals to be transported;
   - transportation methods to be utilized; and
   - financial and other resources available to the applicant.

(c) reference to all Authorised Transporter licences previously granted to the applicant;

**Article [...] (1)** Within [...] days of the submission of an application, the regulating entity may grant an Authorised Transporter licence, or request additional information from the applicant, or reject the application and provide reasons for the rejection.

### Annotation

The first section in the example sets forth the application requirements for a transport licence which includes all the information necessary for the regulating entity to make the determination contemplated by the second section.

No environmental compliance requirements with respect to a transport licence.

The second section provides a statutory timeframe for the processing of the application, the standard of review and the obligation of the regulating entity to provide reasons for any rejection of an application.

The second section further provides for the possibility of a supplemental filing if the application is deficient or to appeal where it has been rejected. The appeal procedures will be set forth in another section of the Act.

A transport licence should be valid for a term of [...] which is sufficient to enable the holder to recover his investment and make a reasonable profit.

The incentives to be provided under this Act shall be with respect to a specified radius depending on where the development minerals to be transported were sourced. For those sourced from the mine area, the radius

**NOTE:** This Document is part of a multi-part document, Parts A - E
### 35. Beneficiation – Processing, Trade and Transport

#### 35.5 Certification of Development Minerals Products

Certification of development mineral products refers to the processes to be followed in establishing the quality, origin and compliance with public policy of those products. Certification will also ensure that development mineral products are compliant with other laws such as EITI.
laws, environmental laws and labour laws (i.e. child labour). The objective is to inform the markets for those products as to their quality and origin so that the markets may exert pressure on producers and traders to provide products that meet certain standards as to quality, origin and compliance. This in turn should foster improvement in the quality of development minerals, better health, safety and labour practices by the development minerals sector, and improvement in the sector’s environmental protection practices. Such improvements should contribute to the enhancement of the value of development minerals, improvements in the quality of local construction generally and the expansion of the markets for development minerals.

Certification involves standards, a process for verifying the extent to which the standards have been met, and procedures that assure that the final products delivered to the consumer do in fact meet the relevant standards. Institutionally, this requires an authoritative institution that establishes standards, an independent authority that conducts verification by testing and analysis, and a regulatory unit that monitors and enforces tracking of products through the value chain and publishes the results of its findings.

This section deals with the rules and information necessary in order to establish and maintain standards and enable their enforcement along the value chain.

35. Beneficiation – Processing, Trade and Transport
35.5 Certification of Development Minerals Products
35.5(a) Certification of Quality

Certification of quality refers to the authenticity of the content of development minerals that are sold in commerce. Certification by international specialists of the mineral content of metallic and non-metallic mineral products that are sold in international commerce is typically required for such sales. Development minerals are sold primarily in the domestic marketplace where quality verification may be less rigorous. The standards for the specific mineral content of development minerals should be established by the national standards agency. The national minerals laboratory should be the agency responsible for certifying the quality of development minerals from any particular source.

Certification of quality should be an option for the buyer of any development minerals until sellers begin obtaining certification to obtain competitive advantage.

35.5(a) Example:

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<td>Any person who directly disposes of any development minerals locally.</td>
<td>This example makes available to sellers and buyers the possibility of quality certification of development mineral products and by-products by an official</td>
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nationally or regionally shall either (a) deliver a certificate of quality of the development mineral as prescribed in the Regulations to the party to whom he is disposing the development minerals or (b) sell the development minerals as uncertified with respect to quality.

Article [__]
A certificate of quality of a development mineral or a development mineral by-product shall be issued by the [national or provincial/state official minerals laboratory] after analysis of samples based on the standards established by the [national bureau of standards].

Article [__]
(1) The [national or provincial/state official minerals laboratory] is authorised to make investigations from time to time of any site for the extraction, processing, storage, trading or transport of development minerals for the purpose of verifying the mineral content of development minerals in commerce. Such investigations shall take place during normal business hours and shall follow the procedures in the Regulations.

(2) The [national or provincial/state official minerals laboratory] shall publish the results of its findings during such investigations on its website. Such findings shall also be published on the website of the [Regulating Authority].

(3) Any person whose site has been investigated pursuant to this provision and who contests the results as published may challenge such findings by administrative and judicial appeal in accordance with the provisions of this [Act][Code][Law].

This example also authorises the official laboratory (which may be national or provincial/state) to make site investigations - not only of mines but also of processing, storage, trading and transportation facilities - to verify the mineral content of development minerals that are in commerce. That provides an important check on the quality of development mineral products in the stream of commerce and provides information for development of policy and enforcement actions.

The example also provides for the publication of the results of site inspections by the officials of the laboratory so that the market has objective information about the relationship between what is reported and what is observed in reality. In light of the possibility of errors in reporting and publication, the example provides a mechanism whereby an aggrieved party can challenge the published results of a site investigation.

35. Beneficiation – Processing, Trade and Transport

35.5 Certification of Development Minerals Products

35.5(b) Certification of Origin

This section should deal with the requirement that each development mineral product or by-product should be certified so as to identify the source of the development mineral through its value chain. As such, the miner, processing plant, trader and transporter all must ensure that
their products carry a certificate of origin for traceability purposes which will also assist to enhance compliance with other laws (environmental, labour, trade licensing, etc.). The specifics of who is authorised to do the certification of origin, and what it should include, should be set forth in the regulations, based on what is feasible and workable in the existing national and local context.

35.5(b) Example:

**Article [__]**
Each holder of an exploitation licence for development minerals who directly disposes of any development minerals to a third party shall either (a) deliver a certificate of origin of the development minerals as prescribed in the Regulations to the party to whom he is disposing the development minerals or (b) sell the development minerals as uncertified with respect to origin.

**Article [__]**
Every Authorised Processing Facility, Authorised Trader or Authorised Transporter shall either (a) provide to the authorities and to their buyers, on demand, the original or a copy of the certificate of origin of the development minerals in their custody or (b) declare to the authorities and to their buyers that such development minerals are not certified with respect to origin.

**Article [__]**
(1) A certificate of origin of development minerals shall be established by the person(s) authorised to do so in the regulations for the implementation of this [Act][Code][Law] and shall certify as to the matters prescribed in the regulation in accordance with the procedure and conditions set forth therein.

(2) In general, a certificate of origin of development minerals and related mineral by-products shall certify the site from which such products were extracted and further certify that:

(a) the minerals were extracted under a valid licence for exploitation of the development minerals at the site;

**Annotation**
The example does not require all actors in the development minerals sector to provide a certificate of origin. Rather, it requires them to either provide such a certificate or to explicitly sell their development mineral as uncertified with respect to origin. It therefore does not burden small scale and artisanal miners of development minerals; but it provides the buyers of such products with the ability to pressure their sellers for certification.

The example also requires every participant in the value chain to either provide the original or a copy of the certificate of origin or declare the development minerals that they are selling or transporting to be uncertified with respect to origin. The expectation is that all major projects in the market will require their suppliers to provide certification of origin.

The example leaves to the regulations the specifics of who is authorised to establish certificates of origin, as well as what their scope should be; but it provides some guidance with regard to scope. The regulations will also specify the procedures that all licenced Processing Facilities, Traders and Transporters are to follow in order to ensure that development minerals for which the origin is certified are kept separate from development minerals whose origin has not been certified (the price for which will presumably be lower).

For purposes of verification, the example provides for a copy of every certificate of origin to be filed with a specified department of the Regulating Authority, which is to maintain a database of such certificates that the public can consult.
(b) the site was not under the control of any armed military group;

(c) the minerals were extracted by labour that was independent or employed without coercion, and not by children under the age of [18]; and

(d) based on due diligence conducted by the person establishing the certificate, the source of the working capital used in the extraction operation is known and does not include any illegal activity in the jurisdiction or, to the best of the exploitation licensee’s knowledge, in another country.

Article [__]
A copy of every certificate of origin of development minerals shall be deposited with the [department] of the [Regulating Authority] by the person who issues the certificate. The [Regulating Authority] shall maintain a database of all certificates of origin of development minerals that shall be available for consultation by the public.

Article [__]
The regulations shall specify the procedures to be followed by all holders of exploitation licences for development minerals, all Authorised Processing Facilities, all Authorised Trader/Dealers and all Authorised Transporters to assure the continuity of the identification of development minerals that are certified with respect to origin and those that are not so certified, respectively, throughout the value chain from extraction up until delivery to the ultimate consumer.

### 35. Beneficiation – Processing, Trade and Transport

#### 35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

This section should stipulate the various obligations of an Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter after they have been licenced by the respective licensing authorities. In addition to the aforementioned obligations with respect to certification of quality and origin, the obligations of such licensees should generally include obligations to maintain registers and records and file reports; obligations to utilize domestic and regional inputs; and obligations to utilize domestic and regional labour.
### 35. Beneficiation – Processing, Trade and Transport
#### 35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

#### 35.6(a) Recordkeeping and Reporting Requirements

For various information purposes, it is important that Authorised Processing Facility, Trader/Dealer and Transporter licensees keep records and provide reports pertaining to their transactions concerning development minerals. The purpose of the registers is to record the nature, quality, quantity and price of development mineral products received and sold or delivered by them, respectively. The purpose of the reports is to provide to the Regulating Authority for the development minerals subsector the information necessary for monitoring performance, compiling statistics and publishing information useful to the markets for development mineral products.

**Example:**

**Article [...]**

1. Each Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter shall keep a register in which the following information, and such additional information for the purpose of monitoring the type, physical characteristics and quantity of development minerals present in different stages of commerce as is required by the applicable regulations shall be kept:

   - **(a)** Type, physical characteristics, quantity, source, seller and purchase price of development minerals purchased or received each day;
   - **(b)** Results of any analysis or identification of development minerals;
   - **(c)** Costs incurred;
   - **(d)** Identification number or code for the shipment purchased or received;
   - **(e)** For each transaction, whether the shipment is certified with respect to quality and origin, respectively, or not;
   - **(f)** In the case of Authorised Processing Facilities and Authorised Trader/Dealers, the purchase price paid for the shipment, if applicable; and if not applicable the nature of the transaction;

**Annotation:**

The first section requires that Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter licensees record certain information concerning the characteristics and movement of development minerals in their custody from time to time. Such information would be relevant for the sector and the public for purposes of ascertaining the origin of development minerals, production from processing facilities and movement to and by traders and/or transporters locally, nationally and regionally.

The example establishes a daily record keeping obligation for each Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter. It does not require daily reporting of the recorded information, but provides instead for inspections of the daily registers by official agents of the licensing entity from time to time. This recordkeeping requirement is designed to establish a basis for the collection of data on the performance of the development minerals subsector of the mining industry and also to track the movement of such minerals through commerce, for purposes of verifying quality and origin.

The example also imposes a periodic price reporting obligation for Authorised Processing Facility and Authorised Trader/Dealer licensees, in order to enable the regulators to provide important information on the quantities, characteristics and price of various development minerals and...
(g) Type, physical characteristics, quantity, source, purchaser and sale price of development minerals sold or delivered each day;

(h) Identification number or code for the shipment sold or delivered.

(2) The registers maintained as required in subsection (1) shall be available for inspection by authorised inspectors of the entity that issued the Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence to the licensee during regular business hours.

(3) Each Authorised Processing Facility and Authorised Trader/Dealer shall submit to the regulating entity that issued its licence, a [weekly/monthly/quarterly] report, in the form prescribed by the regulations, of the following information:

(a) The high, low and average unit price paid by the licensee for each type of development mineral purchased during the reporting period; and

(b) The high, low and average unit price for which the licensee sold each type of development mineral during the reporting period.

(4) Each Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter shall submit to the entity that issued its licence, a quarterly report for each calendar quarter, of the aggregate information recorded in accordance with subsection (1) in such form as shall be prescribed in the regulations.

**35. Beneficiation – Processing, Trade and Transport**

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<th>35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder</th>
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<tr>
<td><strong>35.6(b) Use of Domestic and Regional Inputs</strong></td>
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</table>

Use of domestic and regional inputs refers to an obligation to procure goods and services necessary to the licensee’s business from sources that are indigenous to the African jurisdiction or region. Consistent with the goal of promoting linkages in the extraction, processing, marketing and transportation of development minerals, as contemplated by the African Mining Vision, this obligation aims to promote the

NOTE: This Document is part of a multi-part document, Parts A - E
### Procurement of Goods and Services

**Procurement of goods and services for the licensee’s operations from local African sources.** This is relevant to Authorised Processing Facilities.

#### 35.6(b) Example:

<table>
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<tr>
<th>Article [...]</th>
<th>Annotation:</th>
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<tr>
<td>(1) Unless otherwise excused by the licensing entity, an Authorised Processing Facility shall develop a plan for the procurement of goods and services available in [jurisdiction] and in particular within the area of operations of the processing facility, or if the goods and services are not available within said area, then from sources based within the national jurisdiction of the processing facility, failing which the Authorised Processing Facility may source from member states of the African Union.</td>
<td>This provision requires every Authorised Processing Facility to prepare a plan for the procurement of local goods and services; and where such local goods and services are not available in the jurisdiction, to procure them from sources within any AU member state. Provision is made for the possible exemption of small licensees by the licensing entity.</td>
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<td>(2) The plan referred to in subsection (1) above shall be submitted to the entity that issued the Authorised Processing Facility licence within [...] days of the issue of the licence.</td>
<td>The plan is to be filed with the licence issuing entity for review and approval. The licensing entity must either review and approve the plan or request additional information or modification within 30 days of the filing or any supplemental filing. In this example, the plan would be developed and submitted by the licensee after receiving the licence. Alternatively, it could be required as an element of the application for an Authorised Processing Facility licence, with implementation of the approved plan being a condition of the licence.</td>
</tr>
<tr>
<td>(3) The licensing entity shall review the plan, which shall comply with this [Act][Code][Law] and the business laws of [Country] [or of the provincial/state jurisdiction of the regulating authority] and where necessary may consult with the [entity regulating commerce and trade in the jurisdiction]. The licensing entity may require additional information or modification of the plan by written notice to the Authorised Processing Facility licensee within [thirty] days of the date of submission of the plan or of any subsequent submission in response to a request of the licensing entity.</td>
<td>The Authorised Processing Facility is required to implement the approved plan and file annual reports on the results achieved by the implementation of the plan (except in the case of excused licensees).</td>
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<tr>
<td>(4) The licensing entity shall issue its approval of the plan within thirty days of the submission of the plan or of the latest submission in response to a request from the licensing entity for additional information or modification of the plan, provided that there is no further request for additional information or modification of the proposed procurement plan outstanding.</td>
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<tr>
<td>(5) Unless excused as provided in subsection (1), the Authorised Processing Facility licensee shall implement the procurement plan approved by the regulating entity.</td>
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### 35. Beneficiation – Processing, Trade and Transport

#### 35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

#### 35.6(c) Employment of domestic and regional labour

Employment of domestic and regional labour refers to the obligation of the licensee to recruit, hire, train, and promote candidates from the local labour force for employment at all levels of the enterprise, consistent with the AU Mining Vision.

#### 35.6(c) Example:

**Article [...]

(1) An Authorised Processing Facility and an Authorised Trader shall employ and train citizens of [jurisdiction] and implement a succession plan for the replacement of expatriate employees in accordance with the labour laws of [jurisdiction]. In as far as possible priority shall be given in employment of nationals from the jurisdiction of the processing plant.**

(2) where an Authorised Processing Facility or an Authorised Trader are unable to find a citizen of [jurisdiction] who is qualified for a particular technical or managerial position, they may employ citizens of any AU member state subject to the labour laws [of jurisdiction]. The burden of proof shall be on the employer.

**Article [...]

An Authorised Transporter shall not employ persons who are not citizens of [jurisdiction].**

**Annotation**

This section is to ensure that local communities in particular benefit from the presence of an Authorised Processing Facility which should enhance local participation and capacity building. As such, in order for local communities to benefit directly from development minerals, the processing facility should ensure employment and training of nationals and persons within local communities situated within the vicinity of the processing facility, as well as procurement of goods and services nationally and locally.

Where employment requires technical know-how and no such person is available nationally and in accordance to labour laws [of each jurisdiction] the Authorised Processing Facility and Authorised Trade may employ a citizen of an AU member state.

Authorised Transporters would not be entitled to employ non-citizens, in line with the eligibility requirements to be an Authorised Transporter.
### 35.6(d) Environmental Impact Mitigation, Safety and Security

Authorised Processing Facility licensees may be subject to obligations to prepare an environmental impact assessments and an environmental impact management and mitigation plan, and to implement the plan once approved by the environmental regulation authority. Although Authorised Trader/Dealers and Transporters are not expected to be subject to environmental impact assessment studies as a prerequisite for conducting operations under their licences, they and Authorised Processing Facilities will be subject to obligations to follow certain rules to guard against or mitigate the impact of their activities on the natural and social environment, as well as rules on security, safety and hygiene. This section refers to those rules, which may be in the environmental legislation or regulations applicable in the jurisdiction, or in health and safety law and regulations applicable to all commercial establishments, or in regulations under the mining law, and should reflect, among other things, climate change commitments of the host state.

#### 35.6(d) Example:

**Article [__]**

1. If applicable, Authorised Processing Facility licensees shall implement their environmental impact management and mitigation plans that have been approved by the environmental regulation authorities, perform the required monitoring and evaluation, submit the related reports as required by regulations and take all necessary remedial measures.

2. All Authorised Processing Facility licensees shall comply with standards and procedures for security, safety and hygiene as set forth in the regulations with respect to:

   - stockpiling, warehousing and handling of development minerals, chemicals and mineral products;
   - operation of machinery and equipment;
   - control of toxic and particulate emissions and dust;
   - disposal of chemicals, fuels and lubricants;
   - prevention and control of fire and explosions;
   - storage, treatment and usage of water; and
   - site access, appearance, maintenance and eventual restoration.

**Annotation**

The example establishes the principle that all Authorised Processing Facility and Authorised Trader/Dealer and Authorised Transporter licensees shall be subject to regulations for environmental protection, security, safety and hygiene. It contains a section for each type of licensee, listing the respective subject of regulation to which they are subject.

Some Authorised Processing Facility licensees may be subject to environmental impact assessment and environmental permitting requirements under the environmental laws and regulations of the jurisdiction. The section on Authorised Processing Facility licensees requires that they implement their approved environmental management and mitigation plans and the related required monitoring and evaluation.

Authorised Processing Facility licensees have the most obligations, because they construct, operate and maintain industrial processing facilities.

Authorised Trader/Dealer licensees have the fewest environmental obligations because their activities have the least impact on the environment.

The common obligation among all three types of licensee is the obligation to comply with standards and procedures for security, safety and hygiene with

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**NOTE:** This Document is part of a multi-part document, Parts A - E
### 35. Beneficiation – Processing, Trade and Transport

#### 35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

#### 35.6(e) Trading Practices

Authorised Trader/Dealers should be subject to obligations under existing law and regulations or new provisions enacted to promote the use of fair trade practices and prevent or penalize the use of unfair or deceptive trade practices.

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<th>35.6(e) Example</th>
<th>Annotation</th>
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<tr>
<td>Article [...]</td>
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<tr>
<td>(1) Authorised Trader/Dealer licensees shall comply with the general law and regulations on fair trade practices and such regulations on fair trade practices as may be adopted by the regulating entity that issued the licensee’s licence.</td>
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<td>This provision requires all Authorised Trader/Dealers to comply with general law and regulations with respect to fair trade practices, as well as any regulations on such subject adopted by the regulating entity that issued the licensee’s licence. The example authorises the respective regulating entities to adopt regulations to curb any trade practices that they “reasonably determine” to be unfair, provided that an investigation of the practices has been conducted before the adoption of such measures. This enables those regulating entities to plug any holes in existing regulations that may become apparent.</td>
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<tr>
<td>(2) In the absence of provisions of general law and regulations to curb any trade practices that it reasonably determines after investigation to be unfair or deceptive, the regulating entity shall adopt regulations to prohibit and penalize such practices on the part of persons to whom it issues licences.</td>
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procedures for security, safety and hygiene as set forth in the regulations with respect to stockpiling, warehousing and handling of development minerals and mineral products.

Article [...]

Authorised Transporter licensees shall comply with standards and procedures for security, safety and hygiene as set forth in the regulations with respect to:

(a) stockpiling, warehousing and handling of development minerals and mineral products;
(b) transportation of development minerals and mineral products;
(c) driver training, preparedness and safety;
(d) vehicle operation and maintenance; and
(e) vehicle security and safety.

respect to stockpiling, warehousing and handling of development minerals and mineral products.
### 35. Beneficiation – Processing, Trade and Transport

#### 35.6 Obligations of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

**35.6(f) Land Access**

The siting of an Authorised Processing Facility presents land access issues. In general, the Authorised Processing Facility is subject to the general land laws and must secure its plant site legally. Since not all sites will have a legally registered title holder, but may have lawful occupants under either formal law or tribal custom, it is desirable to state clearly in the mining law that Authorised Processing Facility licence holders are subject to the obligation to obtain the consent of such lawful occupants and to abide by land law provisions regarding compensation, resettlement or relocation of them in connection with securing the site for the processing facility.

**35.6(f) Example**

**Article [_]**

(1) The holder of an Authorised Processing Facility licence shall seek the prior written consent from the lawful occupants, and in consultation with the local government authority, with respect to any occupied land or land that is being used as farm land on which the licensee intends to construct its processing plant and related facilities, and shall comply with the land laws with respect to compensation, resettlement and relocation of any occupants of land.

(2) The holder of an Authorised Processing Facility licence shall obtain the prior consent from the regulatory authority in charge with respect to land situated in a game reserve, national park, forest or wildlife reserve before engaging in any activities on such sites.

**Annotation**

An Authorised Processing Facility licence holder must obtain various consents with respect to land that is owned or occupied by a lawful occupier and protected lands that are regulated under separate laws.

#### 35.7 Rights of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

This section provides for specific rights attached to the Authorised Processing Facility, Trader/Dealer and Transporter licences. The
preceding provisions dealt with the obligations of the holders of such licences; but this section will now deal with their respective rights.

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<td><strong>35.7 Rights of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder</strong></td>
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The rights of an Authorised Processing Facility Licence holder should include the rights to purchase inputs for its licenced processing facility at freely negotiated prices, the right to process those inputs as contemplated by the licence, and the right to sell those inputs at prices freely determined or negotiated. The territory within which the licence holder is authorised to exercise its rights should be consistent with the territory of the jurisdiction that issued the licence – i.e., the province or state for licensees whose licences were issued by provincial/state regulating authorities, and the national government and the African region for those licensees whose licence was issued by the national regulating entity.

**35.7(a) Example**

Article [_] (1) The holder of an Authorised Processing Facility licence shall have the following rights, during the term of the licence, and subject to the terms and conditions of this [Act][Code][Law] and of the licence:

(a) to purchase raw development minerals for its processing facility from
   (i) legal sellers of such minerals within the jurisdiction that issued the licence, or
   (ii) if the licence was issued by the national regulating entity, from legal sellers within any member state of the African Union;

(b) to engage in the type of processing of development minerals for which the licence was issued, whether for its own account or for the account of a third party;

(c) to sell, at prices that it freely determines or agrees to, processed mineral products that it has produced for its own account or for the account of a third party to –
   (i) purchasers within the jurisdiction that issued the licence, and

**Annotation**

This example provides the Authorised Processing Facility licence holder with the rights to buy development mineral inputs, process such minerals, and sell the processed mineral products. It also provides the licence holder with the right to process development minerals for third parties, to sell those minerals for its own account when it has not been paid by the third parties, and to engage in necessary ancillary activities.

If the licence was issued by the national regulating entity, the licence holder is entitled to purchase development mineral inputs from any legal seller in the country that issued the licence, or in a member state of the AU. It has similar freedom to sell its products throughout the country and the member states of the AU.

If the licence was issued by a provincial or state regulating entity, the licence holder is entitled to purchase development mineral inputs from any legal seller in the province or state that issued the licence. (This could include a nationally licenced Authorised Trader/Dealer selling development minerals in the local province or state.) If licenced by a province or state, it is entitled to sell its processed products only to purchasers within the
(ii) if the licence was issued by the national regulating entity, to purchasers within any member state of the African Union; and

d) to engage in necessary ancillary activities in connection with the foregoing.

(2) The holder of an Authorised Processing Facility licence shall have the right to benefit from the incentives provided for development minerals processing in this [Act][Code][Law] and in applicable tax and finance laws.

(3) The holder of an Authorised Processing Facility licence shall have the right to construct and operate power supply generation facilities utilizing renewable resources (e.g., hydro, wind, solar or biomass) to provide some or all of the electric power and energy supply needs of the licensee’s processing plant and related facilities. The holder shall also have the right, but not the obligation:

(a) to purchase ancillary services and back-up power from the electric utility authorised to provide electric service in the area where the licensee’s processing facility is situated at rates that are no greater than the lesser of (i) the utility’s average system cost and (ii) its marginal cost; and

(b) to sell surplus electric energy from its renewable energy power plant to the electric utility authorised to provide electric service in the area where the licensee’s processing facility is situated, at the licence holder’s average cost of producing the electric energy.

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<td><strong>35.7 Rights of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder</strong></td>
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</table>

The rights of the Authorised Trader/Dealer licence holder are those special rights conferred upon the holder by the licence and include the rights to purchase and to sell raw and processed development minerals at prices that are freely determined or negotiated, within the territory of the jurisdiction that issued the licence. If the licence was issued by the national Regulating Authority, then the licence holder can buy and sell both nationally and throughout the regional market (i.e., within the member states of the AU).
35.7(b) Example

Article [...]

(1) The holder of an Authorised Trader/Dealer licence shall have the following rights, during the term of the licence, and subject to the terms and conditions of this [Act][Code][Law] and of the licence:

(a) to purchase raw and processed development minerals, for its own account or for the account of a third party, from legal sellers of such minerals within the jurisdiction that issued the licence or, if the licence was issued by the national regulating entity, from legal sellers within any member state of the African Union;

(b) to sell raw or processed mineral products for its own account or for the account of third parties to purchasers within the jurisdiction that issued the licence or, if the licence was issued by the national regulating entity, to purchasers within any member state of the African Union at prices it freely determines or agrees to; and

(c) to engage in necessary ancillary activities in connection with the foregoing.

(2) The holder of an Authorised Trader/Dealer licence shall have the right to benefit from the incentives provided for development minerals trading in this [Act][Code][Law] and in applicable tax and finance laws.

Annotation

This example is very similar to the previous example for Authorised Processing Facility licence holders, but simpler. It provides that Authorised Trader/Dealer licence holders have the right to buy and sell raw or processed development minerals for their own account or for the account of a third party client.

If the licence was issued by a provincial or state regulating entity, the licence holder may purchase from sellers and sell to purchasers only within the licensing province or state. If the licence was issued by the national regulating entity, the licence holder can purchase from sellers and sell to purchasers within any member state of the AU (subject to applicable laws of each member state).

The licence holder has the freedom to set or agree to its own prices.

Authorised Trader/Dealer licence holders also have the right to engage in necessary ancillary activities (such as storage of development minerals or mineral products) and to enjoy the benefits of the incentives provided for trading in development minerals in the mining law or other legislation.

35. Beneficiation – Processing, Trade and Transport

35.7 Rights of the Authorised Processing Facility, Trader/Dealer and Transporter Licence Holder

35.7(c) Rights of the Authorised Transporter Licence Holder

The rights conferred upon the holder of an Authorised Transport licence include the rights to freely transport development minerals within the jurisdiction that issued the licence, and within the African region if the licence was issued by the national Regulating Authority, and to freely set or negotiate prices for such services.
35.7(c) Example

Article [...]

(1) The holder of an Authorised Transporter licence shall have the following rights, during the term of the licence, and subject to the terms and conditions of this [Act][Code][Law] and of the licence:

(a) to transport raw and processed development minerals, for its own account or for the account of a third party,
   (i) from legal owners or sellers of such minerals within the jurisdiction that issued the licence or, if the licence was issued by the national regulating entity, from legal sellers within any member state of the African Union, and
   (ii) to the owners or buyers of such minerals within the jurisdiction that issued the licence or, if the licence was issued by the national regulating entity, to buyers within any member state of the African Union;

(b) to freely determine or agree to prices for its development mineral transport services; and

(c) to engage in necessary ancillary activities in connection with the foregoing.

(2) The holder of an Authorised Transporter licence shall have the right to benefit from the incentives provided for development minerals trading in this [Act][Code][Law] and in applicable tax and finance laws.

Annotation

The rights of the holder of an Authorised Transporter licence include the right to transport both raw and processed development minerals, for its own account and for the account of others. A licence holder may wish to transport development minerals or products for its own account if it is also licenced to process or trade in such minerals, for example.

As with the other two types of licensees discussed above, the Authorised Transporter licence holder is limited to providing services in the province or state that issued the licence; but if the licence was issued by the national regulating entity, the licence holder has the right to provide development mineral transport services throughout the country and the member states of the AU (subject to their respective laws and regulations).

The Authorised Transporter licence holder also has the freedom to set or agree to its own prices for its services.

Authorised Transport licence holders also have the right to engage in necessary ancillary activities (such as storage of development minerals or mineral products) and to enjoy the benefits of the incentives provided for trading in development minerals in the mining law or other legislation.

35. Beneficiation – Processing, Trade and Transport

35.8 Price Transparency

In the interest of promoting price transparency and greater consistency in the pricing of raw and processed development minerals and transport services, the Regulating Authority may be authorised to regularly publish aggregate price data (high low and average per unit volume during the reporting period) for types and qualities of such minerals and processed mineral products, as well as aggregate price data for the transport of raw and processed development minerals between major quarry sites and processing plants or usage centres. Such price information would be based on transaction prices reported to the Regulating Authority by licence holders (under Obligations, above) and/or surveys conducted by the Regulating Authority.
35.8 Example

Article [__]  
(1) Within [12 months] after the date when this [Act][Code][Law] enters into effect, the [Regulating Authority] shall develop the capability to regularly publish periodic data on the pricing of:

(a) sales of different types of raw development minerals with similar characteristics,

(b) sales of different types of processed development minerals with similar characteristics, and

(c) services for the transport of raw and processed development minerals between major sources of supply of such minerals and product and major centres of usage (processing plants, major construction sites, major infrastructure projects)

(2) The data referred to in subsection (1) shall be developed from information reported by the holders of licences for Authorised Processing Facilities, Authorised Trader/Dealers and Authorised Transporters and from surveys conducted by or on behalf of the [Regulating Authority].

(3) The data to be published will be anonymous and will list high, low and average unit prices for each type and quality of development minerals or mineral products for which data is available.

(4) The [Regulating Authority] shall publish the pricing data on its official website, or on a dedicated site for which there is a clearly identified and functional link on the [Regulating Authority]'s official website and shall update the information regularly and promptly after it receives the inputs for the data. Such information shall also be published in a newspaper of wide circulation in the licensing jurisdiction.

Annotation

The example instructs the Regulating Authority to develop the capability to regularly publish pricing data relevant to the development minerals industry and its clientele within, for example, twelve months after the legislation enters into effect. There will have to be a lead time in order for the Regulating Authority to receive and compile data from the reports of licensees, and to develop an appropriate publishing format.

The data to be published will depend on what is submitted by the licence holders. It is probable that there will be sufficient pricing data points to warrant publication of prices for some but not all types of development mineral products.

The pricing data must be aggregated for all development minerals or products with similar characteristics. The published information will not disclose the identities of buyers or sellers. It will be anonymous.

The pricing data should be published on the official website of the Regulating Authority, or on a dedicated website reachable by link from the official website, in order to facilitate easy accessibility for the public. Such information should also be published in a widely circulating newspaper which will be beneficial especially to those with limited internet connectivity.
## 35.9 Domestic Sales

Domestic sales refer to the rules or conditions that govern sales of development minerals and mineral products within the internal market of the licensing country. In order to promote the growth of the domestic development minerals subsector, participation in the domestic market for development minerals should be restricted to licenced integrated producers of such minerals and Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter licence holders. Imports of development minerals should only be made by licenced Authorised Processing Facilities and Authorised Trader/Dealers.

The terms, including price, of all domestic sales of development minerals should be freely negotiated between purchasers and licenced sellers. General laws on fair trade should protect against the exercise of market power or any deceptive or manipulative practice by any seller or buyer to artificially inflate or depress prices. Licenced sellers should be required to sell their products as either certified as to quality and/or origin or not, and to regularly report unit prices at which they have sold specific types of development minerals or mineral products of a particular quality, as indicated above.

The Government may be authorised to implement certain measures to promote domestic sales if there is an insufficiency of supply to meet domestic demand, or in the case of an opportunity to promote the development of a domestic project with significant and sustainable multiplier effects.

### 35.9 Example

**Article [ ]**

*Subject to the terms of any binding international trade agreements to which [country] is a party, sales of development minerals and processed development mineral products within [Country] may only be made by Authorised Processing Facilities and Authorised Trader/Dealers in accordance with the terms of this [Act][Code][Law].*

**Article [ ]**

*All sellers of development minerals or processed development mineral products in [Country] must either (a) furnish to their purchaser a copy of the certificate of quality and the certificate of origin of their products or (b) sell their development minerals or processed development mineral products as uncertified with respect to quality and origin.*

**Article [ ]**

### Annotation

This example reserves the domestic market for development minerals and processed mineral products to licence holders under the Act. This is subject to any binding international trade agreements to which the country is a party.

The authorised sellers are required to either furnish certificates of quality and origin to their purchasers or sell their products as uncertified with respect to quality and origin. The principle of freedom of terms of sale, including price, is established by this example.

The example also provides the Government with the authority to take temporary measures to relieve any shortages in the domestic market, subject to strict requirements to report to the Legislature on the reasons for such measures and the results achieved.
PART B6: Beneficiation – Processing, Trade & Transport

The terms of sale, including prices, of development minerals and processed development mineral products sold within [Country] shall be freely determined by the sellers and buyers in the domestic market for such products.

Article [ ]
(1) In the event of shortages of development minerals and processed products in the domestic market, the Government may implement temporary measures to relieve such shortages provided that such measures do no lasting damage to the natural or social environment. Such measures may include authorising imports from other sources, stabilizing prices and restricting exports.

(2) In the event that any such temporary measures are implemented, the Government shall report to the [Legislature] on the measures implemented and the justification for such measures within their implementation and shall furnish such reports to [Legislature] on the results of such measures as the Legislature shall request.

35. Beneficiation – Processing, Trade and Transport

35.10 Export Sales

The section on export sales refers to the rules or conditions that govern sales of development minerals and mineral products from the licensing country to a purchaser in another country. The sellers authorised to make such sales should be limited to nationally licenced Authorised Processing Facilities and Authorised Trader/Dealers.

The law may provide the Government with the authority to restrict export sales when there is a shortage of supply to the domestic market.

35.10 Example

Article [ ]
(1) Subject to the following section, export sales of development minerals and processed development mineral products may be made only by holders of Authorised Processing Facility licences and Authorised Trader/Dealer licences issued by the national regulating entity.

Annotation
This example provides that only holders of Authorised Processing Facility licences and Authorised Trader/Dealer licences issued by the national regulating entity are authorised to make export sales of development minerals and processed mineral products. Furthermore, such export sales may only be made within the African Union member states.
## 35. Beneficiation – Processing, Trade and Transport

### 35.1 Civil Violations and Penalties

Civil violations of the Act are those violations that do not involve criminal intent. A person may commit a civil violation of a requirement or obligation under the Act unintentionally. Thus, the failure to comply with reporting requirements or environmental mitigation, health and safety obligations of the licensee would constitute civil violations.

The burden of proof of the Government or the enforcement agency to show that a civil violation has been committed is not as high as the burden of proof for a criminal conviction. A civil violation may be found by an administrative body or tribunal rather than a court of law.

Civil violations of the law may be punishable (i) by a fine which may be assessed per violation or per day, week or month of continuation of a condition in violation of the Act, (ii) by an injunctive order to carry out corrective action, or (iii) by suspension or revocation of a licence. Civil violations are not punished by imprisonment; and they do not constitute part of a person’s criminal record.

In the interest of enforcement of the provisions of the Act, the relevant jurisdiction may incentivize citizens to report violations of the Act by granting them a share of the fines assessed and recovered for violations duly found by the administrative adjudicatory body.
### 35.11 Example

**Article [ ]**
Any seller of development minerals who fails to comply with the requirement to either (a) furnish his purchaser with a certificate of quality or a certificate of origin of the development minerals or (b) sell the development minerals as uncertified with respect to quality or origin, will be subject to a fine in an amount not less than [ ] and not more than [ ] per transaction.

**Article [ ]**
Any holder of an Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence who fails to record the information concerning all of his transactions in development minerals as required by section [ ] above shall pay a fine of [ ] per month until the holder’s recordkeeping is in compliance with the requirement.

**Article [ ]**
Any holder of an Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence who fails to submit by the official deadline the annual report summarizing in the aggregate information on transactions recorded as required by Section [ ] above shall be subject to a fine of [ ] per day until the report is filed.

**Article [ ]**
Any holder of an Authorised Processing Facility, or Authorised Trader/Dealer licence who fails to report required pricing data as required by the terms of this Part by the statutory deadline shall be subject to a fine of [ ] per [week] month until the report is filed.

**Article [ ]**
Any holder of an Authorised Processing Facility or Authorised Trader/Dealer licence who fails to comply with the applicable requirements to hire and train citizens of the jurisdiction in accordance with the regulations under this Part shall be subject to a fine of [ ] per month until the licence holder is in compliance.

### Annotation
The example articulates the penalties that apply to all of the various civil violations of the provisions of this Part that impose requirements or obligations on the holders of Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter licences. In most cases, the penalties consist of fines that apply per transaction or per period of the continuation of the civil violation. In certain cases, the penalty consists of suspension of the licence.

The example also provides that a licence can be revoked if a suspension of a licence is not lifted or a fine is not paid within a certain timeframe.

It also provides that the regulating entity that issued the licence is authorised to impose the penalties for civil violations, provided that it does so in writing with justification after notice to the offending licence holder and a hearing. The orders of the regulating entity imposing penalties should be subject to appeal under the applicable Administrative Procedures Act of the jurisdiction, as stated in the example.

Finally, in order to incentivize enforcement by citizens, the last section of the example provides for the payment of 50% of the recovered fine to the person who notified the Regulating Authority or the regulating entity of the suspected violation that was confirmed and resulted in the collection of the fine.
Article [___]  
Any holder of an Authorised Processing Facility licence who fails to timely submit or to implement a local procurement plan as required by Section [___] above shall be subject to a fine of [___] per month until the required plan is submitted or implemented.

Article [___]  
Any holder of an Authorised Processing Facility licence who fails to comply with the requirements of Section [___] above and the implementing regulations regarding access to land shall be subject to a fine of [___] per month until the licence holder is in compliance with such requirements.

Article [___]  
Any holder of an Authorised Transporter licence who hires a non-citizen of [Country] in connection with his development minerals transport business shall pay a fine of not less than [___] and not more than [___] per week of such employment.

Article [___]  
Any holder of an Authorised Processing Facility or Authorised Trader/Dealer licence who makes sales of development minerals or development mineral products outside of the territory within which such sales are authorised by the licence shall be subject to a fine of [___] per transaction or to the suspension of its licence for [one month] by the regulating entity that issued the licence or to both penalties.

Article [___]  
Any holder of an Authorised Trader/Dealer licence who fails to comply with applicable regulations on fair trade practices shall be subject to a fine of not less than [___] and not more than [___] per violation.

Article [___]  
Without prejudice to the provisions of any other applicable law and regulations, any holder of an Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence who fails to comply with the requirements and regulations for the protection of the environment,
security, safety and hygiene under this Part shall be subject to the suspension of the holder’s licence until the holder is in compliance.

Article [__]
The regulating entity that delivered the licence to any holder of an Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence may direct the licence holder to take any corrective action that it deems reasonably necessary in order to comply with the provisions of this Part and the regulations hereunder and within such timeframe as it reasonably deems to be appropriate. Failure of the licence holder to timely comply may result in the suspension of the licence by the regulating entity.

Article [__]
If a penalty of suspension of the licence of an Authorised Processing Facility, an Authorised Trader/Dealer or an Authorised Transporter is not lifted after [6 months/one year], or if a fine is not paid by the holder against whom it was assessed within [sixty (60) days] of notification of the fine, the regulating entity may revoke the holder’s licence.

Article [__]
For any other violations of the provisions of this [Act][Code][Law] committed by an Authorised Processing Facility, an Authorised Trader/Dealer or an Authorised Transporter not provided for herein, the licence holder shall be subject to a fine not exceeding [$ ] to be paid to its licensing entity.

Article [__]
(1) The penalties for civil violations of the provisions of this Part shall be ordered and levied by the regulating entity that issued the licence to the holder.

(2) Before imposing any civil penalty under the provisions of this Part, the regulating entity shall provide the licence holder with notification in writing of the nature of the violation and the potential penalty and a fair hearing at which the licence holder will have the opportunity to present a defence.
(3) All penalties ordered or levied by a regulating entity under this Part must be stated in writing with the reasons for the imposition of the penalty and delivered to the holder who is the subject of the penalty.

(4) Any penalty ordered for a civil violation of this Part will be subject to administrative appeal to the Administrative Reviewer within thirty (30) days after the notification thereof to the offending holder. The Administrative Reviewer shall issue its decision on appeal in writing stating the grounds thereof within sixty (60) days of the filing of the administrative appeal by or on behalf of the licence holder. The decision shall be recorded by the regulating entity, immediately notified to the licence holder and published.

(5) A final decision by the Reviewing Authority shall be subject to judicial review in accordance with the [Administrative/Civil Procedures Act] of [Country].

Article [...] A person who notifies the [Regulating Authority] or the provincial/state regulating entity, as the case may be, of a suspected violation that is confirmed and results in the recovery of a fine by the [Regulating Authority] or the provincial/state regulating entity shall be entitled to receive payment of [50%] of the fine paid.

35. Beneficiation – Processing, Trade and Transport

35.12 Criminal Violations and Penalties

Criminal violations are those wilful acts in violation of the law that are punishable by fines and imprisonment after conviction by a judicial tribunal following due process of law, where the burden of proof on the state is higher than that required to find a person guilty of a civil offense. The penalties for criminal violations typically increase in the case of repeat offenses.

35.12 Example

Article [...] (1) Any person who knowingly violates Article [...] (on the prohibition against processing, trading or dealing in, and transporting development

Annotation

The assumption is that each jurisdiction has laws governing criminal acts, including money laundering, theft, fraud, forgery etc. As such, any criminal act committed in the processing, trading, transportation or in any way
minerals without a licence issued under the [Act][Code][Law], commits an offense that shall be punishable by a fine of not more than [_] or imprisonment for a term not exceeding [_] or both.

(2) Any holder of an Authorised Processing Facility, Authorised Trader/Dealer or Authorised Transporter licence who knowingly engages in the trading, sale or transport of minerals other than the development minerals for which his licence was issued without a licence or other authorisation to deal in such other minerals commits an offense that shall be punishable by a fine of not more than [_] or imprisonment for a term not exceeding [_] or both.

Article [_]
(1) Any person who knowingly falsifies a certificate of origin or any material information on a certificate of origin of development minerals shall be guilty of fraud on the person to whom the falsifying party sells or delivers such minerals and to all subsequent parties who purchase the same minerals without knowledge of the fraud.

(2) Any person who commits the fraudulent acts cited in subsection (1) above commits an offense that shall be punishable by a fine of twice the price for which the person sold or transported the development minerals, or imprisonment for [_] year(s), or both.

Article [_]
(1) Any person who -

(a) in any application under this [Act][Code][Law] knowingly makes any statement which is knowingly false or misleading in a material way;

(b) in any report or return submitted in pursuance of any provision of this [Act][Code][Law], knowingly includes or permits to be included any information which is knowingly false or misleading in a material manner;

(c) places or deposits, or is accessory to the placing or depositing of, any material in any place with the intention of misleading any other person as to the nature of development minerals in that place;

The principle aim of the provisions in the example is to make it illegal for any individual or company to process, trade, deal in, transport or stack, store, warehouse any development mineral without being licenced to do so.

The example also establishes that falsifying a certificate of origin or any information on it is a fraud for which the perpetrator will be liable to all subsequent purchasers of the development minerals in question; and that the fraud will also be punishable as a crime. It further lists deliberate falsification of applications and reports, as well as deceptive practices with respect to the nature and quality of development minerals, as criminal violations that will be punished by fines or imprisonment.

This example also renders companies and their officers liable for any criminal acts committed with respect to development minerals.
(d) mingles or causes to be mingled with any sample of development mineral any substance which will enhance the value or in any way or change the nature of the development mineral with the intention to cheat, deceive or defraud, commits an offence for which the penalty, upon conviction, is –
(i) in the case of an individual, a fine not exceeding [_] or imprisonment for not more than [_] year(s); or
(ii) in the case of a body corporate, to a fine not exceeding [_]

(2) Where an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar office of the body corporate, or of any person who was purporting to act in any such capacity, that individual as well as the body corporate, commits an offence and shall be punished accordingly.

Article [_]
Where any person commits an act in relation to development minerals which amounts to criminal activity, such person shall be subject to national laws relating to criminal prosecution.

### 35. Beneficiation – Processing, Trade and Transport

#### 35.13 Incentives for Processing, Trade and Transportation of Development Minerals

Incentives for processing, trade and transportation of development minerals are advantages conferred on licensees for purposes which may include promotion of one or more of the following policy goals:

- (a) formalization of informal economic activities (e.g., declaration and/or reporting of economic activity, business registration and payment of taxes);
- (b) local investment in the subsector;
- (c) increasing and/or stabilizing local employment in the subsector;
- (d) improvement of practices in the subsector; or
- (e) other policy goals.

Incentives frequently take the form of tax relief (i.e., tax exemptions or holidays, rate reductions, allowable deductions, etc.). However, they
NOTE: This Document is part of a multi-part document, Parts A - E

may take other forms such as:

(i) priority for the award of certain government contracts;
(ii) protection from competition;
(iii) preferential access to credit, or preferential terms for credit;
(iv) government subsidies; or
(v) the provision of services or material and equipment to licensees for free or at discounted prices.

The important thing about incentives is that they should be carefully designed so that they are only provided to the target population or activity. They should be easy to administer and not subject the beneficiaries to onerous paperwork or procedures in order to benefit from them. They should be part of a comprehensive policy with clear objectives and a realistic timeline. And they should be evaluated as to their effectiveness and modified or eliminated if they are not effective in achieving the motivating policy goals or if they produce significant unintended negative consequences. Moreover, enforcement and policing of incentives should be implemented in such a way so as to prevent abuse.

35. Beneficiation – Processing, Trade and Transport

35.13 Incentives for Processing, Trade and Transportation of Development Minerals

35.13(a) Tax Holiday

A tax holiday is an incentive in the form of a temporary exemption from the obligation to pay a certain tax. Tax holidays are viewed unfavourably by tax economists when they (a) are unnecessary or (b) result in a taxpayer paying taxes on certain economic activity in a jurisdiction other than the jurisdiction in which the economic activity took place and which granted the tax holiday.

On the other hand, a tax holiday may be justifiable when it avoids the imposition of a tax that renders certain desirable economic activity uneconomical by its effect on marginal cost. For example, if VAT at a high rate (e.g. 15% or more) applies to all imports, in addition to customs duties, and the import of certain equipment is necessary to a certain desirable economic activity but the VAT renders that activity uneconomical, that would be a case where a tax holiday may be justified.

35.13(a) Example

Article [__]

1 The holder of an Exploration licence for development minerals issued by the national [Regulating Authority] shall be entitled to the following tax

Annotation

The example provides certain tax exemptions to the holders of Exploration licences for development minerals during the term of their licences, which is short.
### AMLA GUIDING TEMPLATE

**PART B6: Beneficiation – Processing, Trade & Transport**

<table>
<thead>
<tr>
<th>Exemptions during the terms of its licence, provided that it files tax returns that comply with the applicable reporting rules for the tax:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) [tax exemption];</td>
</tr>
<tr>
<td>(b) [tax exemption];</td>
</tr>
<tr>
<td>(c) [tax exemption].</td>
</tr>
</tbody>
</table>

(2) The holder of an Exploration licence for development minerals issued by a provincial/state regulating entity shall be entitled to the following tax exemptions during the terms of its licence, provided that it files tax returns that comply with the applicable reporting rules for the tax:

<table>
<thead>
<tr>
<th>Exemptions during the terms of its licence, provided that it files tax returns that comply with the applicable reporting rules for the tax:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) [tax exemption];</td>
</tr>
<tr>
<td>(b) [tax exemption];</td>
</tr>
<tr>
<td>(c) [tax exemption].</td>
</tr>
</tbody>
</table>

**Article [...]**

(1) The holder of an Exploitation licence for development minerals issued by the national [Regulating Authority] shall be entitled to the following tax exemptions for the fiscal year in which the issuance of its licence occurs and the immediately following two fiscal years, provided that it files tax returns that comply with the applicable reporting rules for the tax:

<table>
<thead>
<tr>
<th>Exemptions during the terms of its licence, provided that it files tax returns that comply with the applicable reporting rules for the tax:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) [tax exemption];</td>
</tr>
<tr>
<td>(b) [tax exemption];</td>
</tr>
<tr>
<td>(c) [tax exemption].</td>
</tr>
</tbody>
</table>

(2) The holder of an Exploitation licence for development minerals issued by a provincial/state regulating entity shall be entitled to the following tax exemptions for the fiscal year in which the issuance of its licence occurs and the immediately following two fiscal years, provided that it files tax returns that comply with the applicable reporting rules for the tax:

<table>
<thead>
<tr>
<th>Exemptions during the terms of its licence, provided that it files tax returns that comply with the applicable reporting rules for the tax:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) [tax exemption];</td>
</tr>
<tr>
<td>(b) [tax exemption];</td>
</tr>
<tr>
<td>(c) [tax exemption].</td>
</tr>
</tbody>
</table>

It also provides certain tax exemptions to the holders of Exploitation licences for development minerals, Authorised Processing Facility licences, Authorised Trader/Dealer licences, and Authorised Transport licences. The exemptions are for their start-up period: the fiscal year in which the licence is issued and the two fiscal years after that.

The example does not propose any particular tax exemptions. The appropriate tax exemptions, if any, will depend on the tax structure and the economic conditions of each jurisdiction, and an analysis of whether certain taxes constitute a barrier to development of the subsector from which relief should be granted. The gains from the favoured economic activity should be greater than the estimate of foregone tax revenue in order to justify the tax exemptions.

The tax exemptions will also depend on whether the licence was issued by the national or the provincial/state licensing entity. In the latter case, some provincial/state tax exemptions may be granted. Thus, each section in the example contains a paragraph on the tax exemptions available to the nationally licenced operator and a separate paragraph on the tax exemptions available to the operator licenced by the provincial/state authority.

For the Authorised Processing Facility that produces fertilizer products for sale in the domestic market, the possibility of additional tax exemptions (notably, VAT on inputs and outputs) is contemplated, because that activity enables stimulation of the growth of local agricultural production.

These provisions should be properly situated in the tax law to better ensure uniform application, but could also be lodged in the mining law, if that is the proper compilation for sectoral fiscal policy in the particular jurisdiction.
**AMLA GUIDING TEMPLATE**

**PART B6: Beneficiation – Processing, Trade & Transport**

<table>
<thead>
<tr>
<th>Article [ ]</th>
</tr>
</thead>
</table>
| (1) The holder of an Authorised Processing Facility licence issued by the national [Regulating Authority] shall be entitled to the following tax exemptions for the fiscal year in which the issuance of its licence occurs and the immediately following two fiscal years, provided that it files tax returns that comply with the applicable reporting rules for the tax:  
| (d) [tax exemption];  
| (e) [tax exemption];  
| (f) [tax exemption].  
|  
| (2) The holder of an Authorised Processing Facility licence issued by a provincial/state regulating entity shall be entitled to the following tax exemptions for the fiscal year in which the issuance of its licence occurs and the immediately following two fiscal years, provided that it files tax returns that comply with the applicable reporting rules for the tax:  
| (a) [tax exemption];  
| (b) [tax exemption];  
| (c) [tax exemption].  
|  
| (3) If the Authorised Processing Facility produces fertilizer products that are sold domestically, the holder of the licence shall be entitled to the following additional tax exemptions during the term of the licence:  
| (a) [e.g., VAT exemption on inputs];  
| (b) [e.g., VAT exemption on sales of products];  
| (c) [other tax exemption].  

<table>
<thead>
<tr>
<th>Article [ ]</th>
</tr>
</thead>
</table>
| (1) The holder of an Authorised Trader/Dealer licence issued by the national [Regulating Authority] shall be entitled to the following tax exemptions for the fiscal year in which the issuance of its licence occurs and the immediately following two fiscal years, provided that it files tax returns that comply with the applicable reporting rules for the tax:  
| (a) [tax exemption];  

NOTE: This Document is part of a multi-part document, Parts A - E
35. Beneficiation – Processing, Trade and Transport

35.13 Incentives for Processing, Trade and Transportation of Development Minerals

NOTE: This Document is part of a multi-part document, Parts A - E
### 35.13(b) Reduced Income Tax

This section outlines measures designed to apply a reduced income tax with respect to holders of licences as Authorised Processing Facilities, Authorised Trader/Dealers and Authorised Transporters of development minerals. It is intended that the reduced income tax should apply only to citizens of the country where the development minerals are being mined in order to grow the local entrepreneurial class.

Reduced income tax may or may not be appropriate in a given jurisdiction. In jurisdictions where the tax rates are progressive and increase as income levels increase, the tax rate may already be sufficiently modest to permit the development of a low-margin development minerals beneficiation subsector of the minerals sector by local entrepreneurs. On the other hand, if the country’s tax rates are uniform across income levels.

A reduction in the income tax rates may be appropriate in order to stimulate investment in the development minerals beneficiation subsector.

#### 35.13(b) Example

<table>
<thead>
<tr>
<th>Article</th>
<th></th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Individuals who are holders of Authorised Processing Facility licences and are citizens of [Country] shall be entitled to a [%] reduction in the rate of income tax payable on their net income from activities under their licence, in accordance with the applicable tax law.</td>
<td></td>
<td>The example provides for a percentage reduction in the otherwise applicable income tax rate for the holders of Authorised Processing Facility, Authorised Trader/Dealer and Authorised Transporter licences. The actual percentage reduction is not specified. It will depend on the tax structure of each jurisdiction and the extent to which an income tax reduction is necessary in order to spur development of the subsector.</td>
</tr>
<tr>
<td>(2) Entities formed under the laws of [Country] who are holders of Authorised Processing Facility licences shall be entitled to a [%] reduction in the rate of income tax payable on their net income from activities under their licence, in accordance with the applicable tax law.</td>
<td></td>
<td>The example assumes that Authorised Processing Facility licence holders will be treated differently than the holders of Authorised Trader/Dealer and Authorised Transporter licences. The former will probably be granted a greater reduction than the latter because of the relative capital intensity of minerals processing.</td>
</tr>
<tr>
<td>Article</td>
<td></td>
<td>The example also recognizes that individual licence holders and corporate licence holders will be subject to different tax structures. Consequently, there may be a justification for granting them separate reductions, respectively.</td>
</tr>
<tr>
<td>(1) Individuals who are holders of Authorised Trader/Dealer or Transporter licences and are citizens of [Country] shall be entitled to a [%] reduction in the rate of income tax payable on their net income from activities under their licence, in accordance with the applicable tax law.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
35. Beneficiation – Processing, Trade and Transport

35.13 Incentives for Processing, Trade and Transportation of Development Minerals

35.13(c) Exoneration of Customs Duties on Regional Inputs

Customs duties on imported inputs that are necessary for the development of economic activity often have a negative effect on investment decisions because they must be paid when a plant is being built and before it is generating revenue. For this reason, it is not uncommon for countries to exonerate investors in certain targeted sectors of economic activity from the payment of customs duties on the imports that are essential to the development of their economic activity.

Exonerations from the payment of customs duties on regional inputs (i.e., development minerals imported from other member states of the AU) would be available only to the holders of Authorised Processing Facility licences and Authorised Trader/Dealer licences issued by the national Regulating Authority because they are the only licensees who would be authorised to purchase development minerals regionally under the licensing scheme envisaged by this Guiding Template.

35.13(c) Example

Article [__]

(1) Subject to the provisions of any binding international treaties or agreements on customs duties to which [Country] is a party, the holder of an Authorised Processing Facility licence or an Authorised Trader/Dealer licence issued by the national [Regulating Authority] shall be exonerated from the payment of customs duties on development minerals imported from other member states of the African Union unless the [Regulating Authority] certifies to the Customs Service that an adequate supply of development minerals for the domestic market exists nationally.

(2) Subject to the provisions of any binding international treaties or agreements on customs duties to which [Country] is a party, the holder of an Authorised Processing Facility licence or an Authorised Trader/Dealer licence issued by the national [Regulating Authority] shall be exonerated from the payment of customs duties on development minerals exported to other member states of the African Union unless the [Regulating Authority] certifies to the Customs Service that an adequate supply of development minerals for the domestic market exists nationally.

Annotation

The example establishes the straightforward principle that the licensees who are authorised to import development minerals under the licensing scheme set forth above (nationally licenced processing facilities and trader/dealers) would be exonerated from the payment of customs duties on their inputs of development minerals, in order to assure an adequate supply of such minerals for the domestic market. Likewise, they would be exonerated from any customs duties on exports of development minerals.

Because the customs exoneration on imports can be a double edged sword that can either shore up domestic supply or undercut domestic production on price, the example allows for the possibility that the exoneration can be lifted if the national Regulating Authority certifies to the customs authority that the exoneration is no longer necessary because domestic supply is adequate. Similarly, the example provides that the exoneration on exports can also be lifted if the Regulating Authority certifies that there is a shortage of supply for the domestic market.
certifies to the Customs Service that there is a shortage of supply of development minerals for the domestic market.

The ability of the national administration to implement the exoneration of customs duties on regional inputs and exports may be limited by binding international treaties or agreements on trade that set the customs duties on development minerals within the customs union or trading block such that the individual member country cannot change them unilaterally. Hence the introductory language in the example provides that the exoneration provision is subject to any such treaties or agreements.

35. Beneficiation – Processing, Trade and Transport

35.13 Incentives for Processing, Trade and Transportation of Development Minerals

35.13(d) Royalty Exemption

Holders of licences for the exploitation of development minerals generally pay royalties in an amount of local currency per unit volume of the minerals extracted or sold. In some cases, the royalty could be paid by an Authorised Processing Facility or an Authorised Trader/Dealer.

The royalty paid to the government for minerals extracted is intended to compensate the nation for the appropriation of an asset that belongs to the nation. Importantly, part of the royalty payment should be paid or allocated to the local community situated closest to the mineral deposit and/or related processing plant, because it is the group most directly impacted by the activity of extracting and/or processing the minerals. These considerations should be kept in mind when designing any exemption from the obligation to pay royalties on development minerals, which should always be a partial exemption at most.

35.13(d) Example

Article [...]

(1) For development minerals that are exported for sale, royalties shall be payable on the terms set forth in the section of this law on fiscal terms.

(2) For development minerals that are sold in the domestic market ([Country]) by the holders of exploitation licences for such minerals issued by the [Regulating Authority], the holder of the exploitation licence shall be exempted from one half of the national share of the applicable royalty calculated as set forth in the section of this law on fiscal terms. There shall be no exemption from the provincial/state or local community share(s) of

Annotation

The example in this case sets out three different levels of partial exemption from the royalty payment obligation. It is expected that all of these would apply to the holders of exploitation licences for development minerals.

The first level of exemption is zero for exported development minerals. If you exploit the nation’s mineral resources in order to ship them abroad for payment, you have to compensate the nation for the permanent loss of its non-renewable resources.

The second level of exemption is 50% of the national share of the royalty...
the royalty payment obligation.

(3) For development minerals that are sold in the domestic market (within [Country]) by the holders of exploitation licences for such minerals issued by the [provincial/state regulating entity], the holder of the exploitation licence shall be exempted from all of the national share of the applicable royalty calculated as set forth in the section of this law on fiscal terms. There shall be no exemption from the provincial/state or local community share(s) of the royalty payment obligation.

(4) In the event that the exploitation licence holders referenced in paragraphs 2 and 3 above sell their mineral output to Authorised Trader/Dealers licenced by the national Regulatory Authority who export the development minerals, such Authorised Trader/Dealer licence holders shall pay the amount of the national share of the royalty payment that was not paid by the exploitation licence holder.

payment when the exploitation licence holder is licenced at the national level and sells into the domestic market. This assumes that the mining law distinguishes between that part of the royalty payment that is allocated to the central administration and that part that is allocated to the province/state or community where the exploitation takes place. Because the nation’s non-renewable resources are not permanently exiting the national territory, but are simply being transformed from a latent asset to a useful tangible asset with current economic value to the nation, the nation is benefiting from the exploitation and the nation’s share can be foregone in part.

The third level of exemption is 100% of the national share of the royalty payment, when the exploitation licence holder is licenced by the province/state and sells into the domestic market (as the holder is required to do). In this case, the development minerals are being exploited under provincial/state authority and are being sold for utilization locally. In this case, the nation essentially has no interest other than the well-being of the province/state as a part of the nation, so a total exoneration from the obligation to pay the national share of the royalty seems appropriate.

In all three cases, there is no exemption from the obligation to pay the local community’s share of the royalty.

Finally, if an exploitation licence holder sells to a nationally licenced Authorised Trader/Dealer in an ostensibly domestic sale, and therefore is exonerated from half or all of the national share of the royalty payment obligation, the Authorised Trader/Dealer must pay the amount of the national share of the royalty that was not paid by the exploitation licence holder if the Trader/Dealer exports the minerals.

35.13(e) Allocation of Royalty Payments to Local Community

This section relates to payment of royalty to the local communities where the development mineral is mined. It is the expectation that local communities should benefit directly from development minerals mined within their areas. However, even in countries that provide for a share of royalty payments to be distributed to the local communities directly impacted by a minerals exploitation project, the distribution mechanism is often slow and unreliable.
An allocation of royalty payments to the local community can be handled in different ways. One way is for the community’s share of the royalty to be paid directly to it by the exploitation licence holder. This, however, requires that the local community have a bank account and the ability to account for and manage the royalty payments which may or may not be the case.

Another way to allocate royalty payments to the local community is to have them paid in the first instance to a central clearing-house which accounts for the payments and distributes their respective shares to the local community, the national government and any other beneficiaries.

A third way to allocate royalty payments to the local community is to have them paid to a special account of the national treasury where they will be accounted for and immediately segregated into an account of, or for the benefit of, the local community.

Each of the aforementioned allocation methods has pros and cons. The choice of the best approach depends on the capabilities and administrative structure and culture of each country.

It is preferable to have regulations with respect to the allocation of royalty payment towards development projects in the respective areas. However, these will need to be covered in national laws on development projects.

### 35.13(e) Example

**Article \[\] (1) A percentage of each royalty payment due on development minerals exploited under a licence issued under this [Act][Code][Law]shall be allocated to the local community or communities directly affected by the development minerals exploitation project, as set forth in the section of this [Act][Code][Law] on fiscal terms.**

**Annotation**

This example first establishes the principle that a percentage of each royalty payment should be allocated to the community or communities directly affected by a development minerals exploitation project. The percentage is to be set elsewhere in the Act.

Next, it provides for the regulations to set forth a procedure for certifying which communities qualify to receive the percentage of royalty payments from particular development minerals exploitation projects.

It then provides for nationally licenced exploitation projects to pay their royalties to the Regulating Authority on behalf of the National Treasury, which is to determine the amount allocated to the local communities and to allocate it to an account in their name which shall be available to them on terms to be agreed among the National Treasury, the provincial authority and the representatives of the local community.

A parallel procedure applies at the provincial/state level for the holders of
(4) Subject to paragraph (5) below, each royalty payment by the holder of a mining right licence issued by the provincial/state regulating entity for the exploitation of development minerals shall be made to the regulating entity on behalf of the provincial/state Treasury. The provincial/state Treasury shall, within two weeks of the royalty payment made by the mining right licence holder, determine the share of such royalty payment that is allocated to the certified local communities directly affected by the development minerals exploitation activities and shall allocate that amount in an account of the local communities to be made available to them pursuant to procedures to be agreed upon between the provincial/state authority and the duly constituted representatives of the local communities.

(5) Upon the certification to the National Treasury or the provincial/state Treasury by the [Regulating Authority] or by the provincial/state regulating entity, respectively, that the certified local communities have the means and the capability to manage their own finances – at which point the National or Provincial/state Treasury is to instruct the licence holder to thereafter make payments directly to the entity or account designated to receive the community’s share of the royalty directly.

Payment of royalties and related payments should be published by the licenced authority or certified local community which will be receiving such payments. This will help in encouraging transparency that can be measured against concrete developments within the local communities.

It should be kept in mind that the royalty payments on development minerals will tend to be modest – except in the case of very large quarries.

certified local communities directly affected by the development minerals exploitation activities and shall allocate that amount in an account of the local communities to be made available to them pursuant to procedures to be agreed upon among the national Treasury Department, the provincial/state authority and the duly constituted representatives of the local communities.

NOTE: This Document is part of a multi-part document, Parts A - E
### 36. Fiscal Terms

The fiscal terms, or fiscal regime, refer to the set of instruments or tools that determine how the revenues from mining projects are shared between the state and companies and may include royalties, bonuses, state equity participation, resource rent taxes, surface area fees, income taxes, withholding taxes and other types of duties or fees.

Often, fiscal tools specific to the mining sector, such as royalties, bonuses, state equity participation and surface area fees are included in the mining law. These payments may be collected by the mining ministry or state-owned mining company or other entity which holds equity in a mining project on behalf of the state.

On the other hand, income taxes, withholding taxes, and provisions to address tax loopholes, which may be standard across all sectors, are often included in the tax laws and administered and collected by the tax authority. Tax laws may also include provisions specific to the mining sector, such as depreciation rules, loss carry-forward rules, and the separate taxing of individual projects, known as ring fencing.

It may be advantageous to keep all tax provisions within the tax law, while non-tax provisions that do not fall under the purview of the tax authority may be included in the mining law. The mining law may make reference to the tax law and explicitly provide that, in addition to the non-tax provisions included in the mining law, companies must pay income taxes, customs duties and other fees in accordance with generally applicable tax laws. This may help avoid incoherence and inconsistencies between the tax law and the mining law and avoid confusion over which parts of the tax laws are applicable to mining companies.

It may also be advantageous to set the fiscal regime in legislation and regulations, with limited allowance for variation from project to project, rather than setting the fiscal regime entirely in contracts with bespoke arrangements for each project. Given that contracts may not always be disclosed, setting the regime in law provides certainty and transparency for investors and other stakeholders alike, including the authorities who must administer the regime. Setting the fiscal regime in law also limits the scope for negotiation, where governments may be at a disadvantage vis-à-vis companies who may have a better understanding of the mineral resource, and can help limit the possibility of corruption. A fairly standard fiscal regime across mining projects is also easier to administer than multiple fiscal regimes with wide variation across them.

In choosing the mix of fiscal tools to be used in the sector, a government should consider:

- **Timing** - tools such as bonuses and royalties are paid early in the life cycle of a mining project, either at signing of a mining contract (in the case of a signature bonus) or once production begins (in the case of royalties or bonuses related to the attainment of certain production
milesstones), while profit-based taxes are only paid once the project makes a profit, which may take several years;

- *Progressivity*-progressive fiscal regimes give the government a larger share of the profit when profits increase, neutral regimes give the state the same share regardless of changes in profitability and regressive tools give the government a lesser share as profits increase. Neutral and regressive regimes can ensure a steady flow of income to the state but are less attractive to investors as they require payment even if costs exceed revenues and may be politically unpopular at times of soaring prices if the country loses out on capturing the resulting super profits;

- *Risk*- tools that are based on profits, such as income taxes, or tools such as state equity participation that may require the state to contribute to costs of the project while receiving a share of dividends only if there are dividends to be paid carry more risk for the state in the event that the project is not profitable.

### 36. Fiscal Terms

#### 36.1 State Equity Participation

State equity participation refers to provisions that mandate or allow the State to hold a percentage of equity or ownership in corporate entities engaged in mining activities. State equity participation can take many forms including:

- *Fully paid* interest meaning the State fully pays for its share of expenses in proportion to its percentage ownership in the mining company. The State may also make a non-cash contribution for its equity share, for example, through provision of infrastructure.
- *Carried* interest in which the investor pays the State’s share of project costs until the production phase and then the State forgoes dividend payments until those costs plus interest are paid off.
- *Free* interest in which the State pays nothing for its share.

It should be noted that mandatory “free” state participation in the equity of mining licence holders is a policy in the members of the WAEMU (UEMOA in French), but this is generally not the case among SADC members.

The State’s equity may be held through a state-owned company, the ministry responsible for mining or through other government institutions. State equity may be seen as another tool via which the State can share in the revenues from a mining project (through receipt of dividends as a shareholder). Particularly when equity is held through a state-owned company, state equity participation can be seen as a means to transfer knowledge and technology and develop the capacity of the state-owned company to eventually carry out mining operations. The goal might be to
indigenize the sector and reduce reliance on foreign partners as part of a broader industrial development plan. State equity may also be seen as a means to ensure greater state participation in decision-making around the project and enhance the government’s ability to monitor the activities of private mining companies. Countries such as Botswana have had some success in the use state participation in the joint venture company Debswana (formerly De Beers Botswana Mining Company). The government was initially a minority holder but now holds a 50% share of the company. Debswana has become a major private sector employer, has contributed significantly to Botswana’s economy, and employs an almost entirely local staff. In a similar manner, Chile’s Codelco and Morocco’s OCP have also become world leaders in copper and phosphate production respectively.

Nevertheless, it is important to note that state equity participation may present some disadvantages. To begin with, the State is acquiring a stake in an undiversified local subsidiary of an international firm whose holdings are limited to the mining project. This means the investment poses a substantial risk that a country with budget constraints might be ill-equipped to bear. For fully paid equity, the State would be contributing to exploration and development costs before being sure how profitable the mine will be. For a country with pressing infrastructural and other development needs, the State would need to consider whether this is the best use of state funds given the needs of the country. For carried interest, there is still the issue of use of funds to cover project costs (through forgoing dividends until costs plus interest are paid back) that could be used for other potentially more pressing needs of the country. Free interest may still require the State to contribute if cash calls to equity holders are made to cover costs during the production phase (e.g. for mine upgrades). Free interest would also need to be considered in light of the other components of the overall fiscal regime. From a purely fiscal perspective, the State may be able to get as much of a share via use of other fiscal tools and free interest may serve as a disincentive to marginal investment or the government may have to sacrifice other negotiable terms in return for the free equity. Further, dividends may not always be distributed, as, depending on the strength of minority shareholder protections, the majority holders can make decisions concerning use of income (for example, reinvesting the funds in upgrades to the mine infrastructure) that result in limited or no dividends being distributed. From a fiscal perspective, royalties may be used to achieve the same result.

Concerning knowledge transfer and development of local capacity to manage the mineral sector, the State may use other strategies including requiring or incentivizing companies to provide company internships, scholarships or trainings for government officials, to hire and train locals for skilled and managerial positions, to carry out research and development locally, and more. The State might also require observer status on the board of the company with full access to all papers and documents provided to the board.

State equity also may not yield the expected benefits in decision-making power if the State is a minority shareholder. In this case, the State may need to negotiate a shareholder agreement with strong minority rights to protect against the majority owner making most of the decisions without minority consent. Shareholder agreements could provide for a minimum list of critical decisions that require the consent of all owners, for the right to access company books and records and dividend policy. The government may also choose to have a special share (Ghana’s Mining Act provides
In countries where it is the policy of the State to participate in the equity of each mining project, the following factors should be considered for inclusion in law or regulations (the latter of which may provide better flexibility to governments):

1) At what stage the State will become a participant in the equity of the project company (exploration or production?) Most countries that require State equity participation impose the requirement at the production stage.
2) How and when the State will acquire its equity participation in the company that holds the mining licence.
3) Whether the State’s participation will be “free equity”, “carried equity” or fully paid. If further optional State participation on a paid basis is contemplated, how the price of the additional shares will be determined.
4) Whether the State’s equity will be entitled to representation on the company’s board of directors, or to any preferred distribution of dividends or other economic or voting rights. Most State equity provisions stipulate that the State’s equity shall not be subject to dilution in the event of issuance of additional shares of the company.
5) Which institution will hold and manage the State’s equity participation in the project company.

### 36.1. Example 1:

<table>
<thead>
<tr>
<th>Article (1)</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Each time a mining title holder decides to mine a deposit, on the basis of a feasibility study, they are to start procedures for the creation of an operating company, to which the mining title relating to the operations shall be issued. The granting of said mining title by a member State gives the State the right to a 10% stake the share capital of the Operating Company for the entire period during which the mine operates. This shareholding, which shall have no charge attached to it, may not be diluted in the event of a capital increase.</td>
<td>Drawn from the West African Economic and Monetary Union (WAEMU) Common Mining Code, this provision imposes the following rules of State equity participation:</td>
</tr>
<tr>
<td>(2) For a member State to hold any addition share of an Operating Company's share capital, this is to be done through contributions and shall be negotiated.</td>
<td>(1) Each time the holder of a mineral licence decides to develop a deposit, the holder must create a new mining company to which the mining license will be given.</td>
</tr>
<tr>
<td></td>
<td>(2) The issuance of the mining licence by the State entitles the State to 10% of the equity of the mining company for the entire life of the mine.</td>
</tr>
<tr>
<td></td>
<td>(3) The State’s equity share is free of charge and not subject to dilution when additional share capital is raised.</td>
</tr>
<tr>
<td></td>
<td>(4) Any additional state equity participation will be purchased pursuant to negotiation.</td>
</tr>
</tbody>
</table>
36.1. Example 2:

Article […]

(1) From the effective date of this [Code][Act][Law], the grant by the State of an exploitation licence immediately gives the State an ownership interest, at no cost, of up to a maximum of fifteen per cent (15%), in the capital of the company holding the licence.

(2) This provision does not automatically apply to mining concessions signed and ratified before the effective date of this [Code][Act][Law]. Its implementation in relation to the said mining concessions (signed and ratified) is subject to the conditions provided in Article […] (addressing the specifics of pre-existing mining concession agreements) of this [Code][Act][Law].

(3) This interest cannot be diluted by eventual increases in capital. This participation is also free from all charges and this interest is free carry. This interest is obtained upon the signature of the exploitation licence.

(4) This interest, which is at no charge to the State, can neither be sold, nor become the subject of a pledge or mortgage. It confers on the State all the rights conferred on to shareholders by the OHADA Uniform Act relating to commercial companies and economic interest group.

(5) The State has the right to acquire a supplementary participation, in cash, according to the terms agreed with each relevant mining company within the scope of the mining agreement. This acquisition option may be scheduled over time, but may be exercised only once. The total participation held by the State under this article may not exceed thirty-five per cent (35%).

(6) The table below defines, per mineral substance and with the basic limit of thirty-five per cent (35%), the levels of State participation in the capital of companies holding a mining operation licence.

Annotation

Drawn from Guinea’s mining code (2011 – as amended in 2013), this provision grants the State free equity and the provision includes a requirement for the shareholders to sign an agreement that defines decisions which are not to be made without the prior consent of the State. This provision seeks to both provide the State a means to participate in the dividends and a means to participate in key decision-making (depending on how the shareholders’ agreement is drafted). The effectiveness of the latter goal would depend on the strength of the shareholders’ agreement.

It is worth noting that Guinea’s Code also reflects the idea that from a purely fiscal perspective, state equity participation may be interchangeable with other tools. The Code allows for a mining company to opt for a reduction in the additional equity the State is entitled to purchase, in exchange for an increase in the tax on the extraction of mine substances (a royalty) of equal value. However, it should be noted that apart from adding some degree of perhaps unwarranted complexity, this creates a consistency problem, with royalty rates potentially varying across projects. In practice, the government could decide to simplify its fiscal regime by getting rid of state equity altogether and opting for a higher royalty rate. If such an either equity/or higher royalty or tax rate feature were to be included in law, it would be advisable to include requirements for transparency on the use of this feature to avoid abuse.
(7) Levels of State participation in companies holding a mining operation licence:

<table>
<thead>
<tr>
<th>Mineral products and derivatives</th>
<th>Non-dilutive Shareholders’ Rights%</th>
<th>Supplementary Cash Interest (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bauxite</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Bauxite-alumina (integrated project*)</td>
<td>5</td>
<td>30</td>
</tr>
<tr>
<td>Alumina</td>
<td>7.5</td>
<td>27.5</td>
</tr>
<tr>
<td>Aluminium</td>
<td>2.5</td>
<td>32.5</td>
</tr>
<tr>
<td>Iron ore</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Steel</td>
<td>5</td>
<td>30</td>
</tr>
<tr>
<td>Gold and diamond</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Radioactive ore</td>
<td>15</td>
<td>20</td>
</tr>
<tr>
<td>Other mineral substances</td>
<td>15</td>
<td>20</td>
</tr>
</tbody>
</table>

*financing of a bauxite mine and alumina refinery.

(8) At the request of a holder of an exploitation licence, the right of the State to acquire an additional interest in cash in the capital of a company holding a mining operation licence can be reduced in exchange for an increase of equal value, determined by an independent expert selected by mutual agreement, and according to the mineral substance concerned, of
the tax rate on the extraction of mine substances other than the precious metals indicated in article [...] (addressing the type and scope of minerals classified as precious metals) or of the tax on the industrial or semi-industrial production of precious metals indicated in article [...] (classifying semi-industrial precious metals) of this [Code][Act][Law], for which such company is liable.

(9) The interest of the State that is payable in cash is assignable and may be sub-leased. The State reserves the right to auction, in an open and transparent process, all or part of its interest that is payable in cash, with no right of pre-emption for the other shareholders of the company holding the exploitation licence.

(10) The decision relating to the assignment of all or part of the State’s interest that is payable in cash, and the terms thereof, must comply with the provisions of the act relating to withdrawal by the State.

(11) The shareholders of the company holding the exploitation licence must sign a shareholders’ agreement that defines, inter alia, decisions which are not to be made without the prior agreement of the State.

(12) A public limited company, with the State as the sole shareholder, is hereby established to direct the management of mineral resources.

(13) This company is mandated to diligently manage the State’s ownership interests in companies holding an exploitation licence. In so doing, this company acts in the name of and on behalf of its sole shareholder, the State.

(14) This public limited company in charge of mineral resource management is obligated to pay out in the form of dividends to its sole shareholder, the State, the products and dividends received.

(15) The powers and functioning of this public limited company in charge of the management of mineral resources are determined by regulation.
### 36. Fiscal Terms

#### 36.2 Royalties

Royalties refer to payments made by mining license holders to the government for the privilege of extracting minerals from the area defined under the mining license. Sometimes royalties are referred to as “mineral tax”, “extraction tax” or “export tax”. However, they are not a tax in the strict sense of the term; their purpose is to compensate the owner of the mineral resource for the loss of a non-renewable asset regardless of the profitability of the project. Therefore, it is critical to price royalties at the right level.

There are three main types of royalties:

- **Fixed-rate (ad-valorem) royalties** charge a fixed percentage of the value of extracted resource, or the value less some allowable costs.

- **Variable-rate (ad-valorem) royalties** charge a rate that varies according to some defined factor, usually the market price of the commodity. This rate is applied to the value of extracted resource, or the value less some allowable costs.

- **Per-unit royalties** charge a fixed fee for each unit of production (for instance, five dollars per ton). This type of royalty is less common than ad-valorem royalties, except for low value commodities, such as gravel.

Beyond setting the royalty rate, defining the base (how the value of the extracted resource is calculated) rigorously is critical for mining legislation. In some countries the sales price is used, however, the sales price may not always reflect the market value of the minerals. A mining company may sell its minerals to an affiliated company (generally, another company that is part of the same group of companies as the license holder) at an artificially low sales price in order to reduce its declared revenues and thus the size of its royalty or income tax obligations. Governments may get around this by specifying in law that the value of minerals will be calculated using international index prices. The law should then further specify that minerals sold to an affiliated company for which there is no international reference price will be on the basis of the “arm’s length principle”, that is, the price at which the transaction would take place if the buying and selling entities were not related. The OECD Transfer Pricing Guidelines propose five major transfer pricing methods to apply the arm’s length principle and are regarded as the international authority on common practices and methods in the area of transfer pricing with more than 100 countries referring to these guidelines in their domestic legislation. In 2013 the United Nations released its own transfer pricing manual that attempts to adapt transfer pricing guidance to the circumstances, priorities, and administrative capacity of non-OECD countries. Another practical option for valuation of minerals where an international reference price does not exist is a provision in law requiring independent third-party valuation at the company’s expense. This issue
of abusive transfer pricing (buying or selling from related parties at an artificially high or low price to shift taxable income out of the country where mining is taking place) is discussed further in the transfer pricing section in this Guiding Template.

It should be noted that law or regulations should also spell out further details on the implementation of the royalty provisions, such as point of valuation (e.g. whether at the mouth of the mine or at the point of sale) and any allowable deductions or “netbacks” for costs incurred between the point of extraction and the point of sale (such as transportation costs or processing costs). Disallowing any netbacks is the simplest administratively but may result in royalties imposed on a higher value than what the license holder actually received for the minerals, even in an arm’s length transaction, and may make the overall fiscal regime less attractive for investors. Note that deductions for costs may also be susceptible to transfer pricing abuses. See section on transfer pricing in the Guiding Template. The law or regulations should also specify which entity is responsible for collection of royalties.

Thorough financial modelling and market and legal analysis, along with industry consultations, will be necessary to find the right level of royalty obligation, in order to provide a stable revenue stream for both the state and the investor and compensate the state for the costs of extraction in a manner that takes into consideration the cyclical fluctuations in commodity prices.

Specific royalty rates are sometimes provided in contracts or in regulations with the law broadly providing that mining companies will be required to pay royalties. Another option is to set the required range within which royalties must fall in law, for example, 3-5% for a particular metal. Providing a band sets a floor and a ceiling, but still allows for some flexibility for variation based on the nature of the market and the project. As stated before, setting as much of the fiscal regime in law or regulation as possible facilitates a transparent and predictable regime that is easier to administer and monitor and provides potential investors with clarity.

### 36.2. Example 1:

#### Article [...]

(1) A holder of a mining licence shall pay a mineral royalty at the rate of nine percent for open cast mining operations and six percent for underground mining operations of—

(a) the norm value of the base metals or precious metals produced or recoverable under the licence; and

(b) the gross value of the gemstones or energy minerals produced or recoverable under the licence.

#### Annotation

Drawn from the Zambia’s mining code (2015), this is a good example of a fixed-rate ad-valorem royalty provision.

The code uses both sale value of minerals and international index prices for valuation of the minerals (note that international index prices for gemstones and energy minerals like uranium may not always be available, whereas index prices are available for most base and precious metals). But where the sale value is used to calculate royalties, the code also provides for a mechanism of correction if the tax regulating entity determines that minerals were sold for less than market (“arm’s length”) prices, which may indicate abusive transfer pricing (see discussion on transfer pricing above and in the section on the
(2) The mineral royalty payable on industrial minerals shall be at six percent of the gross value of the minerals produced or recoverable under the licence.

(3) A person who is not a holder of a mining licence and who is in possession of minerals extracted in [Country] for which mineral royalty has not been paid is liable to pay mineral royalty at the rate of

(a) nine percent of the norm value for base metals or precious metals;
(b) nine percent of the gross value for gemstones or energy minerals; and
(c) six percent of the gross value for industrial minerals.

(4) Where the [Tax Regulating Authority] determines that the realised price does not correspond to the price that would have been paid for the minerals if they had been sold on similar terms in a transaction at arm’s length, between a willing seller and a willing buyer, the [Tax Regulating Authority] may give a notice to that effect to the licensee and the amount of the gross value shall be determined in accordance with the mechanism contained in sections [_] of the [Income Tax Code].

(5) In this section—

“ gross value ” means the realised price for a sale free on board at the point of export from [Country] or point of delivery within [Country];

“ norm value ” means—

(a) the monthly average London Metal Exchange cash price per tonne multiplied by the quantity of the metal or recoverable metal sold;
(b) the monthly average Metal Bulletin cash price per tonne multiplied by the quantity of metal sold or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange; or
(c) the monthly average cash price per tonne, at any other exchange market approved by the [Commissioner-General], multiplied by the quantity of the Guiding Template on transfer pricing). Such a provision can be quite robust, if a country has the means to assess whether companies are engaged in unfair pricing of their commodity exports.

If international index prices are used, valuation should be based on the actual mineral content. If not, then a lower rate of royalty can compensate for a cruder measure of the base, as has been used for bauxite in Guinea. However, this is not necessarily considered best practice.

In addition, article 138 of the Zambian mining code leaves the actual implementation of the royalty provisions to be specified in the Income Tax Act. This leaves the finance and tax regulating entities authority with more authority to administer the royalty in the most efficient way possible.
metal or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange or Metal Bulletin; and

“Open cast mining operations” includes winnings from tailing dumps or similar dumps and leaching.

36.2. Example 2:

Article [...] Royalty payable for minerals

(1) Definitions

In this part, average market price, for a prescribed mineral, means the average for a return period of the following price, converted to [Australian dollars] at the hedge settlement rate for each day of the return period—

(a) for cobalt, copper, lead, nickel or zinc—the spot price quoted on the London Metal Exchange;

(b) for gold—the p.m. fix price quoted on the London Bullion Market;

(c) for silver—the fix price quoted on the London Bullion Market.

reference price 1, for a prescribed mineral, means—

(a) for cobalt—$55,115 for each tonne; or

(b) for copper—$3600 for each tonne; or

(c) for gold—$600 for each troy ounce; or

(d) for lead—$1100 for each tonne; or

(e) for nickel—$12,500 for each tonne; or

(f) for silver—$9 for each troy ounce; or

(g) for zinc—$1900 for each tonne.

Annotation

Drawn from Queensland Australia’s Mineral Resources Regulation (2013), this provision offers an example of a variable rate ad-valorem royalty. The rate varies between 2.5% and 5% of the value of the ore, depending on market prices. Having variable rates can make royalties more palatable to investors, as they are more progressive than fixed rate royalties: that is, in theory they require the mining company to pay more when their capacity to pay increases with the price of commodities and less when prices are low (though an increase in prices alone may not reflect increased profits for companies). However, it requires additional efforts from the regulating entity to monitor and publish Quarterly and annual metal prices and variable rates, so that companies know what they have to pay. This approach may not be practical for countries that have limited administrative capacity.

The reference prices (here in Australian dollars) are used as a threshold to determine whether the average market prices are “high” or low”. The reference prices a country uses could be based on moving historical averages. In this case, the establishment of these reference prices in regulation allows for them to be adjusted by the regulating ministry more regularly than legislation to reflect changes in market price trends over time and inflation or changes in exchange rate.

Queensland’s regulations allow for deductions of some expenses from gross revenues for calculation of royalties, including late dispatch costs (for coal only), ocean freight and insurance costs, loss of metal content in processing (for certain minerals) and other approved deductions. As noted, it is administratively simplest to disallow any deductions as their allowance creates the potential for companies to inflate these costs and thereby reduce their
NOTE: This Document is part of a multi-part document, Parts A - E
where—

*PP* is the prescribed percentage.

*PD* is the difference between the average market price and reference price 1 for the prescribed mineral.

*RFD* is the difference between reference price 2 and reference price 1 for the prescribed mineral.

Example— If, for a return period, the average market price for copper is $8300 for each tonne of copper, the royalty rate for copper for the return period must be worked out under subsection (1)(b), given the average market price is higher than reference price 1 for copper ($3600) but lower than reference price 2 for copper ($9200). The royalty rate would be 4.58%, being the amount (4.598214%) worked out by using the formula in subsection (2), definition prescribed percentage, rounded down to the nearest increment of 0.02%.

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### 36. Fiscal Terms

### 36.3 Taxes

#### 36.3(a). Income

Corporate Income Tax, or Profit tax, is a percentage of a business’s profits due to the tax regulating entity, where profits are generally calculated as gross revenues minus allowable deductions for expenses and minus any unrecovered losses from previous periods that may be carried forward. Generally, the corporate income tax rate is standard across all sectors to avoid distortion in investment decisions (however, the possibility of including exemptions to encourage investment as part of a strategy to develop the mining sector is discussed further under the sections on exemptions (section 25.4) and tax holidays (section 25.5)). As discussed in the overview on fiscal terms it may be advantageous to keep all tax provisions within the tax law, to avoid inconsistencies and incoherence in the legal framework. Non-tax provisions that do not fall under the purview of the tax authority may be included in the mining law. The mining law may make reference to the tax law and explicitly provide that, in
addition to the non-tax provisions included in the mining law, companies must pay income taxes, customs duties and other fees in accordance with generally applicable tax laws.

A government might also consider including a “ring fencing” provision in the tax law. This is the separation of mining projects (by, for example, requiring separate mining companies to be established for each project) for the purposes of calculating income tax instead of the consolidation of income and losses across projects for calculating taxes. Without such a requirement, profits in a producing project can be offset by losses from a project in the exploration or development phase thereby delaying or reducing taxes paid to the government. The legislation would also need to define “project” for the purposes of ring fencing; for example, the area defined in the license.

However, note that the ability to apply losses from projects in the exploration or development phase against the taxable income of a profitable project can make investing in new projects less risky for an investor. For this reason, some countries may choose not to use ring fencing in order to encourage investment in new mines. That said, it should also be noted that the companies that might be incentivized to invest in new mines by a “no ring fencing” policy would be those companies already operating mines within the country. A country may seek to attract investment from various companies and avoid heavy reliance on a small number of companies for developing the mining sector. Ring-fencing also does pose some administrative challenges, particularly on allocation of shared costs across several projects held by the same investor. The pros and cons of a ring-fencing policy should therefore be carefully considered.

Though not specific to mining, it is also important for governments to address tax loopholes and combat abusive tax planning and tax avoidance, which can negatively impact revenues to governments. These issues are dealt with further under the sections in the Guiding Template on royalties, deductions and transfer pricing. Governments might further consider the necessity of including a strong general anti-avoidance rule in the tax law, which enables revenue authorities, subject to judicial review, to deny companies the benefit of arrangements that have been entered into for impermissible tax avoidance purposes. Governments, however, should be aware that such provisions can create uncertainty for companies, given their inherent generality. Extensive guidance to companies on the application of the rule, including examples of taxpayer behaviour of interest to the authorities, could help limit uncertainty. South Africa’s general anti-avoidance provisions in sections 80A to 80L of its Income Tax Act may serve as a starting point for government consideration.

As a general matter, it is also very important to carefully consider tax treaty policy and its impact on tax revenues. Tax treaties may create exemptions or reductions in tax rates and can have the effect of reducing revenues to a host country without an equivalent offsetting benefit. Governments may consider limiting such treaties to provision for information exchange and dispute resolution. In any event, governments should consider:

- explicitly limiting benefits from such treaties to inhibit treaty shopping, through, for example, restricting benefits to particular taxpayers,
disallowing the benefits of the treaty if the principal purpose of the transaction is to obtain a tax benefit, or disallowing the benefit if the beneficial owner of the company is not a resident of the treaty partner - ensuring that the right of taxation is preserved over income generated in the country, including through withholding tax and capital gains tax.

The African Tax Administration Forum’s model double taxation agreement may provide guidance on good practice for tax treaty design.

36.3(a). Example 1:

Article [...]

In addition to taxes, royalties and duties provided in the Tax [Code][Act][Law], the holder of a mining right or authorisation is subject, for its activities in [Country], to the payment of duties and royalties provided in [relevant articles] of this mining code. Except as otherwise provided, the procedure to be applied for the collection and control of these duties and royalties is that of common law. In particular, the principles and concepts set out in the [Tax Code] or in the [Customs Code] automatically apply for the purposes of this [Code][Act][Law].

Annotation

Drawn from Guinea’s mining code (2011), this provision follows the model of including all tax obligations in the general tax laws, while explicitly stating in the mining law that, in addition to royalties and other non-tax payments required under the mining law, tax obligations under the general tax laws will apply to mining companies. However, in other articles, Guinea’s mining code does break the general rule of a standard tax rate for all sectors by granting a preferential rate of corporate income tax and withholding tax for mining companies.

36.3(a). Example 2:

Article [...]

(1) The chargeable income for any year of assessment of a holder of a large-scale mining licence shall be calculated separately for each large-scale mining licence under which licence such holder shall maintain separate balance sheets, statements and books of accounts for each large-scale mining licence under which mining operations are carried on.

(2) A holder of a mining right, other than a large-scale mining licence may elect, by informing the [Tax Regulating Authority] in writing, to have the provisions of the subsection (1) apply to him in respect of his mining right.

(3) A holder of a mining right to whom this Act applies may, on application for the relevant mining licence, elect to maintain his accounts and be assessed for...
36. Fiscal Terms

36.3 Taxes

36.3(b). Withholding Taxes on Payments to Non-Resident Persons

Withholding taxes are a share of payments made to non-residents of the country (for example, payments for services, interest, dividends, private sector royalties, etc.) which are “withheld” and transferred to the government. Withholding taxes makes it possible for the government to tax income generated within the country by those who are not based in the country.

As with income tax, withholding taxes (on dividends, interest, royalties, fees and various types of income) should generally be provided in the tax law and should be standard across all sectors.

36.3(b). Example 1:

Article [__]

(1) Subject to the satisfaction of their obligations set forth in this [Code][Act][Law], all holders of mining rights are guaranteed free repatriation abroad of dividends and income from invested capital, as well as the proceeds of liquidation or sale of their assets.

(2) However, profits distributed by a [Country national] company to non-residents are subject to withholding and at the rate set forth in [Tax Code], subject to the preferential rates for income derived from investments for the mining sector, set forth in this [Code][Act][Law], or tax treaties which offer a more favourable rate. This withholding is to be liquidated by the [Country national] company making the distribution.

Annotation

Drawn from the Guinean mining code (2011), this provision has the advantage of referring withholding taxes on dividends to the general tax code. However, Article 176 of the Code provides for a reduced rate of 10% of withholding tax on dividends for non-resident investors in mining ventures. This may make it more difficult for the tax regulating entity to enforce the tax, especially if some foreign investors receive dividends from both mining and non-mining entities in Guinea.

In addition, this example highlights a potential loophole in the tax regime: bilateral investment treaties may result in exemption from, or a reduced rate for, withholding tax on dividends and interest.
(3) Foreign workers residing in [Country] and employed by holders of a mining right or authorisation, are guaranteed the free conversion and repatriation to their home country of all or part of their salaries or other forms of remuneration due to them, subject to their income and other taxes having been paid in accordance with the provisions of this [Code][Act][Law] and the [Tax Code].

Countries may want to consider in negotiating such treaties a provision that allows income generated in the country to be taxed before it is repatriated to the investors’ home country.

36.3(b). Example 2:

Article [...] (1) The rate of tax applicable to a payment to a non-resident person or partnership and the rate of withholding tax applicable to such a payment is:

(a) in the case of dividends and interest, 10%;
(b) in the case of royalties, natural resource payments, and rents, 15%; and
(c) in the case of endorsement fees or management and technical service fees, 20%.

Annotation

Drawn from Ghana’s Internal Revenue Act (2000), this provision follows good practice by including withholding taxes on payments to non-residents in the general tax legislations. These provisions apply to companies both in the mining and non-mining sectors.

36. Fiscal Terms

36.3 Taxes

36.3(c). Customs Duties

Customs duties are a tax or levy imposed on imported (and sometimes exported) goods, usually calculated as a percentage of the value of the goods. These duties enable a country to protect its domestic industries, and economy, by controlling the flow of goods into and out of the country.

Rules and procedures for custom duties on imports of mining companies should follow the general customs legislation. However, given the capital intensive nature of mining activities, and the very specialized equipment that is needed and often not available within the host country, most countries grant some form of exemptions on certain imports, during the exploration and construction phase, and sometimes during the exploitation.
PART C: Fiscal Terms

phase. Countries should ensure that such duties exemptions only apply to goods that are not available in country and apply without discrimination across all mining companies, foreign and local. Countries should be careful of exemptions discriminating against the local companies who may not benefit from customs exemptions.

An informed discussion between the regulating entity, the customs authority and the mining industry is advisable to design an adequate regime for imports of mining companies.

As a word of caution, it is advised to record and rigorously audit all imports from mining companies, even if they are exempt from custom duties, as these imports will constitute deductible costs against future profits.

### 36.3(c). Example 1:

**Article [...]**

All materials, machinery and equipment referred to in the present Act, which has been imported by a prospecting or operating licence holder, or their authorised subcontractors, and which may be re-exported or sold after use, shall benefit from the temporary admission regime, with statistical fees to be paid (RSTA).

**Article [...]**

(1) During the implementation phase for the initial investments and the expansion of the production capacity of an existing mine, an operating licence holder shall be exempt from customs duties, including VAT, collected on imports of materials, components, machinery and equipment as well as spare parts included in the approved programme and intended to be used directly and definitively for mining operations.

(2) For the purposes of the exemption provided for in the present Article, the value of the parts may not exceed 30% of the overall value of the Cost, Insurance and Freight (CIF) for the imported machinery and equipment.

(3) A list of materials, components, machinery and equipment, as well as parts and spare parts, which may benefit from the exemption shall be annexed to the

**Annotation**

Drawn from Côte d’Ivoire’s Mining Code (2014), this provision offers one way to facilitate import of the required sophisticated equipment that is only needed during the development phase, allowing for a special “temporary admission regime.” Such specified equipment that is needed temporarily and will be exported later can be imported free of duties.

However, if the company sells the equipment in Côte d’Ivoire rather than exporting it, it should be subject to customs duties as well as VAT on its import value so as not to distort competition among importers.

It should be noted that the law provides for a pre-approved list of the materials and equipment that benefit from the exemption, which shall be attached to the exploitation permit, which can be used as a means to prevent abuse of exemptions. However, given the long duration of mining projects and the possibility for changes to inputs needed or changes to availability of inputs in country, it may be necessary to review this list periodically (for example, every [X] years).

The provision highlights the goal of the application of customs duties: materials and equipment which can be found in Côte d’Ivoire at comparable price and quality do not benefit from the duties exemption.
(4) Authorisation for temporary admission shall be given for utility vehicles which feature on the list mentioned above.

(5) The following components, materials and equipment may not give rise to the exemption on imports:

(a) vehicles used to transport people and merchandise other than extracted mining products;

(b) materials, components, machinery and equipment where it is possible to find an equivalent made in Côte d’Ivoire or which are available under the same conditions with regard to price, quality and guarantees, amongst others, as those of the same goods of foreign origin;

(c) household furniture or other household effects;

(d) goods which are not eligible for deductions, in application of the provisions of [the General Tax Code].

(6) An operating licence holder shall retain the right to sell their imported materials, components, machinery and equipment in Côte d’Ivoire, provided that they pay the duties and taxes which are applicable on the date of the transaction, on the value of the sale, and comply with the formalities prescribed in the regulations which are in force.

(7) The period during which the holder may benefit from exemptions on imports may not exceed the deadline provided for in the decree allocating the operating licence, for carrying out the work relating to the initial investments, and two (2) years for investments relating to the expansion of production capacity. These time limits may be extended under the terms laid down by decree.

### Example 2:

36.3(c). Example 2:

**Annotation**

Drawn from Burkina Faso’s mining code (2015), these provisions are similar.
### Article [__] 

Any holder of a mining title or permit who has imported equipment exempt from customs duties and taxes and who wishes to reassign them to the State or to a third party shall be required to request authorisation in advance from the Customs Department (Administration des douanes) to put said equipment on the market, failing which, they shall be penalised for not complying with the regulations which are in force.

### Article [__]: Customs and tax benefits during the prospecting phase

Materials, raw materials, and materials intended for prospecting activities, and which must be imported in order to carry out the prospecting programme, shall be subject to the payment of:

- (a) Category I customs duties under the Customs Tariff, at a rate of 5%;
- (b) statistical fees at a rate of 1%;
- (c) a community solidarity levy at a rate of 1%;
- (d) a community levy at a rate of 0.5%;
- (e) any other community levy.

The taxation on imports also extends to parts and spare parts for machinery and equipment. In any event, the value of the parts and spare parts may not exceed 30% of the overall value of the Cost, Insurance and Freight (CIF) for the imported machinery and equipment.

The taxation on imports extends to lubricants and fuel supplying the fixed installations, drilling materials, machinery and other equipment intended for prospecting activities.

### Article [__]

A list of items which may benefit from the tax regime indicated above shall be to those provided under the law of Cote d’Ivoire. These provisions provide more detail on the formulation of the duties exempt list, which requires a joint order of the minister of finance and minister of mines.

Note that the only period of total exemption of import duties for materials and equipment is the development phase, during which a majority of the heavy and specialized equipment would be imported for construction of the mine. This period of exemption must end no later than the start of commercial production. Imports during the exploration and exploitation phase are subject to a single rate, except that imports of materials and equipment during the exploitation phase that are “temporarily admitted” and will be later exported are also exempt from duties.

As under Cote d’Ivoire’s mining code, if such temporarily admitted materials or equipment are transferred within the country, duties must then be paid.
established by a joint decree from the Ministers for Mining and Finance, respectively. When a prospecting licence is issued, this list shall be attached and shall form an integral part thereof. If certain items which must subsequently be imported do not feature on said list, a list of added items may be drawn up by the Ministers for Mining and Finance.

Article [__]

(1) Materials used for prospecting, imported professional equipment, special purpose or work site vehicles, excluding private vehicles, as well as machinery, shall benefit from the temporary admission regime for the duration of the prospecting phase.

(2) Prospecting licence holders shall be required to provide the Customs Department with a statement of materials admitted under the temporary admission regime, within the first quarter of each year.

Article [__]

Materials, components and equipment, where it is possible to find an equivalent made in Burkina Faso and which are available under purchasing conditions which are at least equal to those for goods to be imported, as well as vehicles used or imported solely for personal or family purposes may not benefit from the tax regime indicated above.

Article [__]

Geo-services companies offering services related to prospecting and operating activities, and which work exclusively for mining companies, shall benefit from the tax regime provided for in Article 149 above, insofar as they act as subcontractors for a holder.

Article [__]: Customs and tax benefits during the period for preparatory work

(1) During the period of preparatory work for mining operations, which shall not exceed three years, industrial operating licence holders shall be exempt
from customs duties when importing materials, raw materials, components, fuel and lubricants intended to produce energy and for the functioning of special-purpose or work site vehicles, excluding private vehicles, and equipment relating to said work, and also their related parts and spare parts, excluding:

(a) statistical fees at a rate of 1%;
(b) ta community solidarity levy at a rate of 1%;
(c) a community levy at a rate of 0.5%;
(d) any other community levy.

(2) They shall also benefit from the temporary admission regime for equipment and materials imported for the purposes of carrying out said preparatory work.

Article [...]  

(1) A list of materials, components, machinery and equipment, as well as parts and spare parts, which may benefit from the customs exemption shall be annexed to the operating licence and shall be an integral part thereof.

(2) Materials, components, machinery and equipment which were used in the prospecting phase and which are to be used in the operations phase, shall be included in the list of equipment for the operations.

Article [...]  

(1) The time period for the exemptions provided for in Articles 154 and 155 above must not exceed two years for mines.

(2) However, a single extension of one year from the date on which the exemption period expires may be granted by order of the Minister for Mining, where the level of investment which has been made is at least 50% of the planned investment. In all circumstances, these exemptions shall end on the day of the first commercial production. The end of the period for preparatory
work shall be noted in a joint order from the Ministers for Mining and Finance.

Article [...]  

(1) The benefits provided for in Article 155 shall extend to the subcontractors of an operating company, which work exclusively for mining companies, provided that they present the Customs Department with a contract which has been duly registered and concluded as part of the preparatory work.

(2) This contract shall be subject to the formality of registration at the rate provided for legal instruments not regulated by legislation.

Article [...]  

In the event that the goods or equipment which benefited from the customs exemption regime or the temporary admission regime are assigned or sold, customs duties and taxes shall be collected in accordance with the regulations in force at the time of the sale.

Article [...] : Customs and tax benefits during the operations phase  

In the operations phase, from the date of the first commercial production, when any holder of an industrial operating licence imports materials, raw materials, fuel and lubricants intended to produce energy and for the functioning of special-purpose or work site vehicles, excluding private vehicles, and equipment, they are to pay the Category I duties and taxes under the Customs Tariff, including:

(a) customs duties at a rate of 5%;

(b) statistical fees at a rate of 1%;

(c) a community solidarity levy at a rate of 1%;

(d) a community levy at a rate of 0.5%;

Article [...]
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>36. Fiscal Terms</strong></td>
<td></td>
</tr>
<tr>
<td><strong>36.3 Taxes</strong></td>
<td></td>
</tr>
</tbody>
</table>

(1) Holders of operating licences for semi-mechanised operations shall benefit from the tax regime provided for in the above Article for the entire operating life of the mine.

(2) Companies which hold operating licences relating to quarry materials, excluding artisanal operators, shall benefit from this tax system solely for the equipment required for production and for the first batch of spare parts which comes with said equipment. The list of materials, components and equipment which may benefit from this tax system shall be annexed to the licence and shall form an integral part thereof.

Article [...]  

(1) Notwithstanding the special arrangements provided for in Article [...] of this [Code][Act][Law], the holder of an operating licence relating to mining materials may benefit from the temporary admission regime.

(2) In the event of the assignment or resale of an item under the temporary admission regime, mining title or permit holders in the operations phase shall become liable for all duties and taxes as at the date of assignment or resale.

Article [...]  

(1) The customs benefits provided for in the operations phase shall extend to the operating company’s subcontractors, working exclusively as part of the mining of mineral substances and who have contracts duly registered with the Tax Administration.

(2) This contract shall be subject to the formality of registration at the rate provided for legal instruments not regulated by legislation.
36.3(d). Property Tax

Property taxes are a levy on property that the owner is required to pay, where the property may be land, improvements to land (such as buildings), personal property (movable man-made objects) or intangible property. It may also include stamp duties or other transfer taxes, which are generally charges imposed on the legal transfer of property from one person to another. These taxes may be collected at the national or subnational level. It is also possible for more than one jurisdiction to tax the same property.

In theory, these taxes should also be standard across all sectors of the economy. All references in the mining legislation should reference the general tax legislation.

In practice, in many countries mining investments are by far the largest capital investments in their regions, and because property taxes tend to be considered non-tax revenue and collected (or even spent) at a different level than other taxes, they become the focus of attention by those agencies that directly collect or benefit from them.

A strong, predictable fiscal regime for the mining sector should focus on the major fiscal tools (royalties, income tax, resource rent tax), and try to minimize special emphasis on other fiscal obligations, aligning them to the general legislation. This will simplify tax administration, avoid unnecessarily discriminatory treatment of the mining sector, and remove such taxes from the scope of negotiation, during which governments may be negotiated downward.

36.3(d). Example 1:

Article [_] Taxation

(1) Unless otherwise provided by this Constitution or the laws of [Country]:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this [Code][Act][Law] or by statute authorized by this [Code][Act][Law], the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

Annotation

Drawn from California’s Constitution (as amended in 1974), this provision provides the state the right to impose property taxes and also sets a limit on the property tax rate and defines the property tax base.

California’s revenue and taxation code then specifically defines “real property” to include “mines, minerals and quarries in the land.”

Rule 469 of California’s Board of Equalization Property Tax Rules (not reproduced here) then provides detailed instructions to assessors on valuation of mines.

This is an example of taxation on the value of property, where the property is
### Part C: Fiscal Terms

**Article [...] Tax Limitation**

1. The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

2. The “full cash value” means the county assessor’s valuation of real property as shown on the 1975-76 tax bill under “full cash value” or, hereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

3. “Real estate” or “real property” includes:
   - The possession of, claim to, ownership of, or right to the possession of land.
   - All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.
   - Improvements.

**Annotation**

Drawn from Ghana’s Stamp Duty Act (2005), this provision imposes a tax on documents created for the purposes of recording a transaction. Stamp duties are payable on conveyance or transfer on sale of property or on leases as a percentage of the consideration for the conveyance or lease.

In addition, stamp duties are also payable in fixed amounts for documents granting a concession or mining lease.
## AMLA GUIDING TEMPLATE
### PART C: Fiscal Terms

<table>
<thead>
<tr>
<th>Value of Consideration</th>
<th>Duty Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000,000 or less</td>
<td>0.25%</td>
</tr>
<tr>
<td>$100,000,000 but does not exceed $500,000,000</td>
<td>0.5%</td>
</tr>
<tr>
<td>$500,000,000 or more</td>
<td>1%</td>
</tr>
</tbody>
</table>

### Lease

**For a definite term up to three years:**

(i) Where the rent for such term does not exceed $500,000.00 | 0.5%  

(ii) Where the rent for such term exceeds $500,000.00 | 1%  

**For any other definite term:**

Where the consideration, or a part of the consideration, moving either to the lessor or to any other person, consists of money, stock or security:

(c) In respect of such consideration—the same duty as a conveyance on sale for the same consideration, where the consideration or any part of the consideration is rent then in respect of such rent:

<table>
<thead>
<tr>
<th>Term Duration</th>
<th>Duty Rate</th>
</tr>
</thead>
</table>
| Less than 5 years | 0.5%  
| Less than 21 years | 0.5%  
| More than 21 years | 1%  

**Lease of any other kind not described in this Schedule** | 1%  

**Natural resources leases or licences:**

In addition to the duty otherwise payable under this Act on a concession or a
### 36. Fiscal Terms

#### 36.3 Taxes

##### 36.3(e). VAT

Value-added tax (VAT) is a form of consumption tax charged on the amount by which the value of an article has changed as it passes from one stage of production or distribution to another. In essence, the tax is charged on the difference between an article’s resale price and the price at which the seller purchased the item. VATs apply to domestic consumption, and thus VAT is generally paid on imports but not on exports.

All corporations in a country that applies VAT are subject to the tax, which they pay on their purchases and collect on their sales. In theory,

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining lease granted under an enactment:</td>
<td></td>
</tr>
<tr>
<td>Mineral lease</td>
<td>€ 250,000.00</td>
</tr>
<tr>
<td>Offshore lease</td>
<td>250,000.00</td>
</tr>
<tr>
<td>Timber lease</td>
<td>125,000.00</td>
</tr>
<tr>
<td>Timber licence</td>
<td>50,000.00</td>
</tr>
<tr>
<td>Prospecting licence</td>
<td>25,000.00</td>
</tr>
<tr>
<td>Exclusive prospecting licence</td>
<td>50,000.00</td>
</tr>
<tr>
<td>Quarrying licence</td>
<td>25,000.00</td>
</tr>
<tr>
<td>Diamond digging licence</td>
<td>25,000.00</td>
</tr>
<tr>
<td>Leases under section 12(2)(c) of the Administration of Lands Act, 1962 (Act 123)</td>
<td>5,000.00</td>
</tr>
<tr>
<td>(5) Power of attorney or other instrument in that nature</td>
<td>20,000.00</td>
</tr>
</tbody>
</table>
mining companies should simply be subject to the general VAT system in the country.

However, mining companies generally export much of their production and in common with other exporters are not required to charge VAT on their export sales; there is a reverse charge in the importing country. Since there is no output tax against which to offset VAT, mining companies will incur a VAT cost on their VATable purchases that will not be offset by their sales. They should therefore be able to reclaim their VAT on their VATable purchases. However, in practice governments are often late in reimbursing companies, which can create negative cash flows and lead to lengthy and costly tax disputes.

Some countries have addressed these problems by exonerating mining companies from VAT altogether. If governments want to follow this model, they should:

- Allow a 0% VAT on imports, rather than an exemption. That way, all necessary forms and declarations are filed, which allows the tax regulating entity to control against abuse and enforce a country-wide VAT system.
- Maintain full VAT obligations on domestic purchases. Otherwise, companies’ domestic contractors will then be the ones having VAT claims on the tax regulating entity, which may put their financial situation at risk. It also risks undermining the whole VAT system in the country if mining is the dominant sector in the economy.

If companies are exempt from VAT on imports but not on domestic purchases, it could make imports otherwise available locally cheaper and disincentivize local sourcing of goods and services. Rules on VAT should be designed taking into consideration the government’s local content policy, if applicable, and the existence of reliable domestic providers of goods and services needed by the mining industry.

In general, governments’ tax regulating entities should prioritize timely reimbursements of companies’ VAT claims, whether in the mining sector or other sectors. This will improve the overall business environment. If timely reimbursement proves difficult, an option could be for companies to pay VAT on imports into an escrow fund ring-fenced from budgetary pressures, or in certain circumstances by allowing companies to deduct their VAT claims from taxes owed to the tax authority.

36.3(e). Example 1:

Article [...] (1) An operating licence holder shall be exempt from VAT on their foreign services and imports, on the purchase of goods and services for use in the Ivory Coast and on sales related to mining operations, until the date of the first Annotation

Drawn from Cote d’Ivoire’s mining code (2014), this provision exonerates companies from payment of VAT on imports that are already exempt from custom duties, such as most capital goods during the exploration and development phases.
commercial production.

(2) During the implementation phase for the initial investment and the expansion of the production capacity of an existing mine, an operating licence holder shall be exempt from customs duties, including VAT, collected on imports of materials, components, machinery and equipment as well as detached parts included in the approved programme and intended to be used directly and definitively for mining operations.

(3) An operating licence holder, their affiliates and authorised subcontractors shall benefit from:

(a) an exemption from customs duties payable on the gas or liquid fuels, lubricants, and chemicals or organic materials required for ore processing, including VAT, for the duration of the mine's operations;

Countries that produce little or no oil sometimes grant VAT and duties exemptions on fuel imports, so as to reduce the burden on mining companies and the total VAT claims on the tax authority. In such cases, custom authorities should closely monitor fuel imports, to prevent companies from abusing the system and importing more fuel than is needed for mining operations and reselling excess fuel.

36.3(e). Example 2:

Article [...]  

(1) Holders of exploration permits are entitled throughout the period of exploration, to an exemption from:

(2) TVA or Value Added Tax (VAT) on imports of equipment, materials, machines and consumables indicated in the mining list submitted, before the beginning of the Exploration Phase, on condition that such mining list has been approved in compliance with provisions of [relevant article] of this [Code][Act][Law]. However, imports of goods which are excluded from the right of deduction pursuant to the provisions of the [Tax][Code] are not exempt from VAT, even when these goods were included in the duly approved mining list.

Annotation

Drawn from Guinea’s mining code (2011), this provision allows for companies in the exploration phase to be exempt from VAT on their imports in the same way that they are exempt from custom duties. The good practice here is that it provides for the General Tax Code to limit this exemption, if the finance regulating entity finds that some imports should not benefit from VAT exemptions.

36. Fiscal Terms

36.3 Taxes
Deductions are costs that may be deducted from gross revenues before corporate income tax is applied to the remaining revenues net of costs.

Which kinds of costs are deductible and which are not should generally be detailed in a law. For example, a government may want to consider specifying whether costs outside of a company’s normal business, such as community development spending, will be deductible. The law might also specify how rehabilitation costs will be treated, including whether contributions to rehabilitation funds will be deductible, whether actual rehabilitation costs will be deductible, and tax treatment of monies withdrawn from the fund for rehabilitation activities or unused monies returned from the fund to the company (for example, Kenya’s Income Tax Act addresses such issues). Countries can use legislative means to further the government interest in controlling company cost.

Generally, legislation and rules addressing deductions should include provisions for:

- Determining the size of these deductions
- Determining the timing of these deductions
- Incentivizing desired behaviour by companies.

Concerning size, it is important that laws and regulations address the risk of companies inflating costs in the host country through related party transactions that reduce taxable income in the host country and shift income to a lower tax jurisdiction, thereby lowering overall tax liability. Costs may be inflated by overpaying for goods and services purchased from affiliates, which is addressed further under the section on transfer pricing in the Guiding Template.

Companies may also reduce taxable income via excessive interest payments. This may be done by borrowing at higher than market interest rates. This may also be done through “thin capitalization”, a practice whereby international investors fund projects with a small portion of equity and a large portion of loans from affiliated companies. By using more loans than equity, investors may reduce their taxable income by deducting the interest paid on these loans as costs.

Countries may address the issue of excessive interest payments by different means, including:

- **Limiting allowable debt to equity ratio for purposes of interest deductions.** Rules may provide that interest payments on loans in excess of the allowable debt to equity ratio may not be deducted for tax purposes. It may be advisable to specify in law or regulations whether the
AMLA GUIDING TEMPLATE
PART C: Fiscal Terms

debt-to-equity ratio restriction only applies to debt from related parties (if only applicable to related-party debt, the law may need to address the risk that debt is routed through an unrelated party; see the Ghana example below) and the definition of debt (for example, whether average debt over a period of time or debt at any given point in time and whether debt includes other debt instruments apart from loans).

- **Limiting deductible interest to some percentage of earnings before interest.** For example, Action 4 of the OECD final Base Erosion and Profit Shifting (BEPS) report recommends that countries adopt the “earnings stripping rule” that restricts interest deductibility to between 10 percent and 30 percent of a company’s earnings (defined as EBITDA – earnings before interest, tax, depreciation and amortization).

- **Limiting use of excessive interest rates, by providing that rates may not exceed a certain percentage above a quoted benchmark rate,** such as London Interbank Offered Rate (LIBOR). Use of interest rates above market rates for loans from affiliates may also be generally addressed under transfer pricing rules that require pricing for transactions between affiliates to be based on “arm’s length prices.”

Concerning **timing,** laws and regulations should address the rules for depreciation and loss carry forward.

Depreciation is an accounting method of allocating the cost of a tangible asset over its useful life. Amortization is the equivalent for intangible assets. Depreciation/amortization rules determine what portion of the cost of the asset may be deducted as a cost in a given year and is meant to reflect the loss in value of the asset over its useful life. Accelerated depreciation/amortization allows investors to deduct a larger portion of the cost of the asset in earlier years, versus straight-line depreciation rules, which spread the cost of the asset evenly over the asset’s useful life. Accelerated depreciation reduces tax liability in earlier years, deferring tax payments to later years. This is generally preferred by investors as it allows them to retain more money in the present and, all other things being equal, that money in the present is more valuable than the same amount in the future due to its potential earning capacity (the concept of the time value of money).

Loss carry forward rules dictate whether or not unused losses from a previous year may be deducted from profits in later years to reduce taxable income. That is, a company making a loss of $10 million in year 1 and a profit of $5 million in year two, may deduct that loss in year 1 from the profit in year 2 such that net taxable income is - $5 million. In year three, it may then deduct the unused loss of $5 million in year 2 from the profit in year three and so on until the loss is fully recovered. The ability to carry losses forward again defers tax liability. Some countries allow indefinite loss carry forward; that is, losses may be carried forward for an unlimited number of years until fully recovered. Many countries limit loss carry forward to a certain number of years, usually 5-7 years.

Concerning **incentivizing** desired behaviour, governments may allow for accelerated depreciation for certain kinds of capital expenditures in order to incentivize companies to make such investments.

36.3(f). Example 1:  

| Annotation | 

NOTE: This Document is part of a multi-part document, Parts A - E
### Article [...]: Capital allowances

1. Any licence holder eligible under the provisions of this Part of this [Code][Act][Law] shall be entitled, in determining its total profits, to deduct from its assessable profits a capital allowance of ninety-five percent of qualifying capital expenditure incurred in the year in which the investment is incurred-
   
   (a) all certified exploration, development and processing expenditure, including feasibility study and sample assaying costs; and 
   
   (b) all infrastructure costs incurred regardless of ownership and replacement.

2. The amount of any loss incurred by any person eligible under the provisions of this Part of this [Code][Act][Law] shall be deducted as far as it is possible from the assessable profits of the first year of assessment after that in which the loss was incurred and in so far as it cannot be so made, then from such amounts of such assessable profits of the next year of assessment, and so on up to a limit of four years after which period any unrelieved loss shall lapse.

#### 36.3(f). Example 2:

**Article [...]: Thin Capitalisation**

1. Where an exempt-controlled resident entity which is not a financial institution has an exempt debt-to-exempt equity ratio in excess of 2 to 1 at any time during a basis period, a deduction is disallowed for any interest paid or foreign currency exchange loss incurred by that entity during that period on that part of the debt which exceeds the 2 to 1 being a portion of the interest or loss otherwise deductible but for this subsection.

2. In this section “exempt-controlled resident entity” means a resident entity in which fifty per cent or more of the underlying ownership or control of the entity is held by an exempt person, in this section referred to as the "exempt controller", either alone or together with an associate or associates; “exempt debt”, in relation to an exempt-controlled resident entity, means the greatest

### Annotation

Taken from Ghana’s Internal Revenue Act (2000), this provision is meant to address thin capitalization by placing a cap of 2:1 on the ratio of debt to equity with respect to financing of the mining company by a related party. Interest payments with respect to related party debt in excess of the ratio may not be deducted for tax purposes.

The provision goes on to define related party debt and equity (“exempt debt” and “exempt equity”).

Note that the related party debt also covers debt owed to unrelated parties who have made a loan of a similar amount to a related party of the mining company. This provision allows the law to capture related party debt that is passed through an unrelated party before being issued to the mining company.
amount, at any time during a basis period, of the sum of:

(a) the balance outstanding at that time on any debt obligation owed by the exempt controlled resident entity to an exempt controller or an exempt person who is an associate of the exempt controller with respect to which i. interest is paid which is, or ii. in the case of a debt obligation denominated in foreign currency, any foreign currency exchange loss incurred is, or if incurred would be, deductible to the exempt-controlled resident entity and the interest or foreign currency exchange gain is not or would not be included in ascertaining assessable income of the exempt controller or associate; and

(b) the balance outstanding at that time on a debt obligation owed by the exempt controlled resident entity to a person other than the exempt controller or an associate of the exempt controller where that person has a balance outstanding of a similar amount on a debt obligation owed by that person to the exempt controller or an exempt person who is an associate of the exempt controller; “exempt equity”, in relation to an exempt-controlled resident entity and for a basis period, means the sum of the following amounts:

(i) so much of any amount standing to the credit of the capital accounts of the entity at the beginning of the period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time;

(ii) so much of the accumulated profits and asset revaluation reserves of the entity at the beginning of the basis period as the exempt controller or an exempt person who is an associate of the exempt controller is entitled to or would be entitled to if the entity were wound up at that time; reduced by the sum of the balance outstanding at the beginning of the period on a debt obligation owed to the entity by the exempt controller or an exempt person who is an associate of the exempt controller; and

(iii) where the entity has accumulated losses at the beginning of the period, the amount by which the return of capital to the exempt controller or an exempt person who is an associate of the exempt controller would be reduced by virtue
36. Fiscal Terms

36.3 Taxes

36.3(g). Capital Gains Tax

Capital gains tax is a tax on the gain or profit made on the sale of a non-inventory asset. In the extractive sector, it is a tax on the gain made on the transfer of a mining license or interest in a mining license.

Countries approach natural resource rights transfers in various ways. A minority of countries choose not to tax the capital gains from such transfers at all (e.g. Norway), on the rationale that such transfers do not affect overall tax revenues to the state from the project. In such cases, the seller does not pay a capital gains tax, but the buyer is also not allowed to deduct the cost of the asset from future taxable income. Most countries tax the capital gain made by the transferor and allow the transferee to deduct the cost of the asset from taxable income by depreciation. Others both impose a capital gains tax and disallow corresponding depreciation of the costs, which has a strong negative impact on investors’ returns and can be seen as deterring investments.

Capital gains taxes are a sensitive issue and there are arguments both for and against imposition of such taxes.

On the one hand, transfers in mining licenses can involve large sums of money and the country may be seen to be missing out on this boon to the seller of the license if it is not taxed, especially if it is believed that the government got a bad deal in the original terms agreed with the seller. In reality, if a corresponding tax deduction is allowed from the buyer’s taxable income, the overall tax to the government from the project remains the same. However, imposing a capital gains tax allows the government to capture a share of the overall taxes earlier, which is advantageous to the
government given the time value of money.

On the other hand, capital gains taxes can be difficult to administer and a country may seek to encourage transfers of licenses to investors best able to develop them.

If a government chooses to impose a capital gains tax, it should consider:

- Treatment of indirect transfers and farm-outs
- The impact of tax treaties
- Enforcement of capital gains tax provisions against non-residents

If legislation only imposes gains on direct transfers of the asset itself, companies may avoid the taxes by instead transferring the shares in a non-resident holding company, which owns or controls the resident subsidiary that holds the mining license. Governments may get around this by providing in law that capital gains tax also applies to gains made by the sale of shares in an entity that indirectly holds an interest in the license. Governments should consider what kind of information on ownership and ownership changes it should require companies to submit to properly identify events that trigger capital gains tax. Disclosure of beneficial ownership of license holders, now required under the 2016 Extractive Industry Transparency Initiative Standard, may be a useful tool for administering capital gains taxes. Governments should also consider the treatment of farm-out agreements (more common in oil and gas), where a portion of the interest in a mining license is assigned to another entity who pays a share of the ongoing costs. Often, no cash is transferred for the assignment. In determining how or whether to subject farm-outs to capital gains taxes, governments must balance the risk of farm-outs being used to avoid capital gains tax against the risk of discouraging investors from adding partners, which allows investors to spread the risk and increases the chances of the mining project moving forward to development.

Governments should also consider the impact of tax treaties on the ability to impose capital gains taxes on indirect transfers (where both buyer and seller are non-resident). Tax treaties may restrict the imposition of capital gains taxes on residents of a country with which the government has a treaty. Governments should consider whether the domestic legal framework allows for the overriding of treaties by legislation and the potential impacts of such a treaty override.

Enforcing capital gains taxes against non-residents may also be difficult. For this reason, some countries choose to deem the gain and the cost of the transfer as being incurred by the corporate entity resident in the country.

Capital gains taxes have often led to tax disputes between governments and investors. The best way to avoid such costly conflicts is to have strong and clear provisions in general legislation and regulations, as investors will factor in payment of capital gains taxes in the pricing of a transfer. Such provisions should be clear on whether the capital gains taxes extend to indirect transfers and provide exemptions for publicly traded
companies, where shares are bought and sold on an open market.

### 36.3(g). Example 1:

Article [__]

(1) Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is the whole of a gain which accrues to a company or an individual on or after 1st January, 2015 on the transfer of property situated in [country], whether or not the property was acquired before 1st January, 2015.

(2) Subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty per cent or more of its value, directly or indirectly, from immovable property in [Country].

(3) “Net gain”, in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest.

(4) A licensee or a contractor shall immediately notify the [Regulating Authority], in writing, if there is a ten per cent or more change in the underlying ownership of a licensee or contractor. If the person disposing of the interest to which the notice above relates is a non-resident person, the licensee or contractor shall be liable, as agent of the non-resident person, for any tax payable under this Act by the non-resident person in respect of the disposal.

(5) For the purpose of section 3(2)(g), the amount of the net gain to be included in income chargeable to tax is-

(a) if the interest derives more than fifty per cent of its value, directly or indirectly, from immovable property in [Country], the full amount of the net gain; or

(b) for any other case, the amount computed according to the following formula-

\[ A \times B / C \]

### Annotation

Drawn from Kenya’s Income Tax Act (as amended in 2014 and 2015), these provisions cover several of the issues surrounding taxation of capital gains.

The provisions allow for taxation of the gains from both direct and indirect transfers. The amount of the gain to be taxed is based on the extent to which the transferred interest derives its value from immovable property in Kenya.

The provision addresses the difficulty of enforcing capital gains taxes against non-resident persons, in the case of indirect transfers, by providing that the license holder in Kenya shall be liable for payment of such taxes.

Finally, an exemption is made for publicly traded securities.
### AMLA GUIDING TEMPLATE
**PART C: Fiscal Terms**

<table>
<thead>
<tr>
<th>(1) Where –</th>
</tr>
</thead>
</table>
A is the amount of the net gain; 
B is the value of the interest derived, directly or indirectly, from immovable property in [country]; and 
C is the total value of the interest

(a) A gain on transfer of securities traded on any securities exchange licensed by the [Regulating Authority] is not chargeable to tax under this section.

### 36.3(g). Example 2:

**Article [__]**

(1) At the moment the underlying ownership of an entity changes by more than fifty percent as compared with that ownership at any time during the previous three years, the entity shall be treated as realising any assets owned and any liabilities owed by it immediately before the change.

(2) Where there is a change in ownership of the type referred to in subsection (1), after the change the entity shall not be permitted to –

(a) interest carried forward that was incurred by the entity prior to the change; 
(b) deduct a loss that was incurred by the entity prior to the change; 
(c) in a case where the entity has, prior to the change, included an amount in calculating income, claim a deduction under those provisions after the change; 
(d) carry back a loss that was incurred after the change to a year of income occurring before the change; 
(e) reduce gains from the realisation of investment assets after the change by losses on the realisation of investment assets before the change; or 
(f) carry forward foreign income tax that was originally paid with respect to

**Annotation**

Drawn from Tanzania’s Income Tax Act (as amended in 2012), this provision addresses the difficulty of enforcement of capital gains taxes against non-residents by deeming an indirect transfer a disposal and reacquisition by the resident entity of all its assets and liabilities. This results in a domestic capital gain and the tax can be enforced against the resident taxpayer (the license holder).

Once the license holder experiences a direct or indirect change of control (more than 50%), the entire gain is taxed. However, note that some countries choose to tax only the part of the gain that derives its value from the immovable property in the taxing country (for example, Kenya).
| foreign source income derived by the entity prior to the change. |
| Where there is a change in ownership of the type referred to in subsection (1) during a year of income of the entity, the parts of the year of income before and after the change shall be treated as separate years of income. |
| This section shall not apply where for a period of two years after a change of the type mentioned in subsection (1), the entity — |
| conducts the business or, where more than one business was conducted, all of the businesses that it conducted at any time during the twelve-month period before the change and conducts them in the same manner as during the twelve-month period; and |
| conducts no business or investment other than those conducted at any time during the twelve-month period before the change. |

### 36. Fiscal Terms

#### 36.3 Taxes

##### 36.3(h). Windfall Profits

Resource rent taxes (RRTs) are taxes on the resource rent generated by a project. Resource rent may be defined as the surplus value generated by a project over all necessary costs including a return on capital sufficient to attract investment. For example, if a return of 15% would be required to attract investment, rent would be any return beyond 15%.

In principle, RRTs are valuable for governments in two respects. First, RRTs are tax neutral; that is, they allow the government to maximize revenue collection without deterring investment since in theory they tax returns beyond what would be necessary to attract investment in the first place. Second, RRTs provide the fiscal regime some flexibility to changing conditions by responding more quickly than legislative or contractual changes allow and reducing pressure on governments to renegotiate terms when prices soar. The greater flexibility that can be achieved by use of RRTs can reduce investors’ expectations of political risk and fear that governments will seek to change the terms after costs have been sunk.
There is no common design to an RRT, with each country applying their own approach. However, an RRT will typically have three elements:

1. A specified rate of return on investment that triggers the imposition of the tax
2. Specified tax rate on net profits once the rate of return has been exceeded; and
3. The tax base, which is typically an individual mining project (i.e. ring-fenced from other projects within a corporate entity) and allowable deductions.

In order to achieve tax neutrality governments should ideally set the rate of return trigger so that the tax is only triggered once the company’s investors are making the required return on their capital. In practice, triggers are often set in legislation and thus apply across multiple projects that are likely to have different risk characteristics and investors with different expectations of return. Further, governments should consider the impact of other tax instruments on investors’ returns and accommodate these in setting the trigger.

In principle, any return beyond that required by companies to invest could be taxed at 100%. In practice, however, governments choose much lower rates (10 to 40%) to account for not being able to accurately set triggers and tax bases that define resource rent.

Ideally the tax base to an RRT should be an individual mining project, ring-fenced from other projects, to ensure that the RRT applies to the specific rent generated by a project. In addition, governments should consider what exploration costs to include in the base.

Depending on what tax base governments set, administration of RRTs need not be any more complicated than corporate income tax. However, additional difficulties are two-fold. First, RRTs typically require monitoring accumulated profits from the beginning of a project (although a tax authority should also monitor these profits for corporate income tax). Second, choosing a tax base definition that requires additional measurement of company activities will create further tasks for the tax authority.

Lastly, some countries have levied taxes that are similar to RRTs but trade off neutrality for simplicity by, for example, using variable rate income tax (see Ugandan example below). It is also possible to emulate the effect of an RRT using certain designs of a production sharing arrangement (with the share to the government increasing if some proxy for profitability increases such as mineral price, cumulative production, or revenues divided by costs), or by acquiring equity via certain carried interest arrangements, which may allow the government to capture rents as dividends.

36.3(h). Example 1:

<table>
<thead>
<tr>
<th>Article [__]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The income tax rate applicable to companies, other than mining companies.</td>
<td>Drawn from Uganda’s Income Tax Act (2016), these provisions provide an example of taxation of mining profits using a ring-fenced Variable Rate Income Tax. Under this arrangement, the rate of tax in any accounting period</td>
</tr>
</tbody>
</table>
for the purposes of section 7 is 30 percent.

(2) Subject to paragraphs (3) and (4), the income tax rate applicable to mining companies is calculated according to the following formula-

$$70 - \frac{1500}{X}$$

Where $X$ is the number of the percentage points represented by the ratio of the chargeable income of the mining company for the year of income to the gross revenue of the company for that year.

(3) If the rate of tax calculated under paragraph 2 exceeds 45 percent, then the rate of tax shall be 45 percent.

(4) If the rate of tax calculated under paragraph 2 is less than 25 percent, then the rate of tax shall be 25 percent.

(5) In this Part–

(a) “gross revenue”, in relation to a mining company for a year of income, means–

(i) the amount shown in the recognised accounts of the company as the gross proceeds derived in carrying on of mining operations during the year of income, including the gross proceeds arising from the disposal of trading stock, without deduction for expenditures or losses incurred in deriving that amount; and

(ii) the amount, if any, shown in the recognised accounts of the taxpayer as the amount by which the sum of the gains derived by the taxpayer during the year of income from the disposal of business assets used or held ready for use in mining operations, other than trading stock, exceeds the sum to losses incurred by the taxpayer during the year in respect of the disposal of such assets; and

(b) “mining company” means a company carrying on any mining operations in

is derived using a formula that measures the ratio of taxable income to gross revenues. This ratio is typically designed to apply if it does not fall below or above certain fixed low and high limits. The effect of such formulas is progressive, because they take into consideration the relationship between costs and revenues in a similar manner to the rate of return calculations.
36.3(h). Example 2:

Article [__]

A tax, to be called minerals resource rent tax, shall be charged in the circumstances stated in and in accordance with the provisions of the relevant mining agreement, and at the rate or rates specified in, or determined in accordance with, that agreement. The minerals resource rent tax shall be assessed in respect of a mining area in accordance with the mining agreement. Where, for any tax year, there is only one party to the relevant mining agreement, that party shall be liable to pay any minerals resource rent tax payable in respect of that tax year. Where, for the whole or any part of any tax year, more than one person is a party to the relevant mining agreement, those persons are jointly and severally liable to pay any minerals resource rent tax payable in respect of that tax year; but without prejudice to any claim, or the enforcement of any claim, which any such person incurring any such liability may have against another person in respect of that liability.

Annotation

This constructed provision recognizes that the main trigger element of a resource rent tax (i.e. a rate of return on investment) will vary due to factors ranging from investor hurdle rates on a project-by-project basis to prevailing commercial and technological conditions during the mine development planning stage. Therefore, the trigger rate of return, specified tax rate (s) and the tax base are left to be determined by contract while the income tax law, which typically has provisions specific to mining operations, would require the imposition of a resource rent tax. The 2013 Model Petroleum Agreement of Seychelles (s. 13 on Petroleum Additional Profits Tax) can provide an example of contractual language for resource rent tax.

36. Fiscal Terms

36.4 Exemption from Certain Taxes

There may be cases in which certain exemptions from generally-applicable taxes may help a government provide useful incentives to attract mining-company investment, particularly during the risky exploration phase. Exemptions from certain taxes may also be appropriate based on the nature of the activities conducted by mining companies, as discussed in the sections on customs duties and VAT in this Guiding Template. However, where possible, the government should first seek to strike the proper balance between investor need and national benefit in the generally-applicable tax rules, before seeking to create specific exemptions for mining or for individual mining projects. See the discussion below on tax holidays and the caution that should be exercised. The same concerns apply to exemptions.

Where a government deems them necessary, it is advisable for exemptions to be narrowly tailored, and for all of the costs and benefits to be
rigorously analysed before the legislation is finalized. Rules that provide for exemptions that are overly discretionary or too broad should be avoided. It is also advisable, where exemptions are granted to extend them to the mining sector generally, rather than allowing for exemptions to be negotiated on a project-by-project basis. A more uniform approach facilitates tax administration, provides transparency and predictability for prospective investors, provides transparency to the public and oversight bodies and also narrows opportunity for corruption or for bad deals for the government to be struck during negotiations.

36.4. Example 1:

<table>
<thead>
<tr>
<th>Article [...]</th>
</tr>
</thead>
<tbody>
<tr>
<td>The period during which the holder may benefit from exemptions on imports may not exceed the deadline provided for in the decree allocating the operating licence, for carrying out the work relating to the initial investments, and two (2) years for investments relating to the expansion of production capacity. These time limits may be extended in accordance with the terms laid down by decree.</td>
</tr>
<tr>
<td>Article [...]</td>
</tr>
<tr>
<td>Save in respect of Community levies, the expatriate staff of the operating licence holder, and direct subcontractors authorised by the [regulating authority] shall, with regard to personal effects, benefit from an exemption from duties and taxes for a period of one year from the date on which they first settle in [Country].</td>
</tr>
<tr>
<td>Article [...]</td>
</tr>
<tr>
<td>An operating licence holder shall be exempt from VAT on their foreign services and imports, on the purchase of goods and services in [Country] and on sales related to mining operations, until the date of the first commercial production.</td>
</tr>
</tbody>
</table>

36.4. Example 2:

<table>
<thead>
<tr>
<th>Article [...]</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The holder of a mining right may be granted the following:</td>
</tr>
</tbody>
</table>

**Annotation**

Drawn from Côte d'Ivoire’s mining code (2014), these provisions are designed to create certain incentives during periods where heavy investment by companies is required, especially before production begins.

Note that the exemptions are generally applicable to the mining sector and the law generally limits the duration of the exemptions.

**Annotation**

Drawn from Ghana’s mining act (2006), this provision is an example of a provision that (without limiting regulations) could allow for discretionary grant
### AMLA GUIDING TEMPLATE

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| (a) exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations; | of exemptions on a case by case basis within general parameters. |
| (b) exemption of staff from the payment of income tax on furnished accommodation at the mine site; |
| (c) immigration quota in respect of the approval number of expatriate personnel; and |
| (d) personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country. |

The customs exemption is drafted particularly broadly as it does not include limitations for which imports will be granted a customs exemption (based on an agreed mining list), does not exclude imports of machinery and equipment that are available in Ghana and does not set a timeframe during which the customs duties exemption applies. See the discussion on customs duties in this Guiding Template, which provides examples of more limiting language on grants of customs duties exemptions.

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#### 36. Fiscal Terms

##### 36.5 Tax Holiday

Tax holidays are one of several tax incentives that may be granted to investors to attract investment. Tax holidays refer to exemptions a mining law may grant to a license holder from payment of some or all taxes for a defined period of time.

In general, tax holidays, like tax incentives generally, should be used with caution. Use of tax holidays can significantly reduce or delay revenues to governments. Moreover, tax holidays are open to abuse. For example, depending on the length of the tax holiday and other conditions, mines can go into full production while a tax holiday is still in effect and investors might be incentivized to maximize production while the holiday is in effect and reduce production once the holiday comes to an end. Tax holidays may also encourage abusive transfer pricing and other practices aimed at reducing tax liability by shifting profits to jurisdictions benefiting from low or no taxes. The transition to regular taxation may be administratively difficult, especially if records were not adequately kept during the holiday and the treatment of depreciating assets may not be clear.

Further, tax holidays and other incentives are used on the premise that they are necessary to attract foreign direct investment. However, research indicates that tax holidays can be ineffective in promoting the desirable activities linked to the incentive and investment decisions for foreign investors are informed by a broader set of considerations beyond tax incentives (for example, infrastructure, low administrative costs of setting up...
and running businesses, political stability and predictable macro-economic policy). Research also indicates that other tax incentives such as investment credits, investment allowances and accelerated depreciation may be more cost-effective for countries seeking to promote investment than tax holidays.

Competition for foreign investment can lead to a “race to the bottom.” Therefore, it is advised that tax holidays and other incentives, if used at all, should be used only after a careful cost-benefit analysis and coordination among regional economic communities to develop common standards and prevent a race to the bottom. The use of tax holidays should also be transparent, to avoid their use by officials unilaterally on a per-contract basis in exchange for personal benefit.

It is recommended that, to the extent used, tax holidays be structured as follows:

i. Limit the duration to the minimum time period possible but no longer than the earlier of five years or recoupment of initial capital costs.

ii. Begin at the latest at the date of first commercial production.

iii. The tax holiday should provide for a 0% tax rate during the holiday. The taxpayer should be required to file audited returns each year, taking all deductions required or allowed for that fiscal year, but paying tax at a zero rate. This will limit the administrative difficulties of transitioning to regular taxation after the holiday.

### Example 1:

<table>
<thead>
<tr>
<th>Article [ ]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Profits of companies shall be taxed at 0% for mining projects in Zone I areas for a period of the earlier of five years starting from the beginning of the first fiscal year following the commencement of commercial production or the recoupment of initial capital costs. During the duration of the tax holiday a company must file a tax return for each fiscal year, taking all deductions required by law, including, but not limited to, exploration expenses. If the result of the computation results in a tax loss in that fiscal year, the company will be allowed to carry forward the tax loss to subsequent periods subject to applicable rules on loss carry forward.</td>
<td>This constructed provision prevents the investor from carrying forward losses almost indefinitely by applying unused deductions after the holiday, which, in addition to carrying loss forward could result in the non-payment of taxes for several years. The provision is constructed as a tax incentive for investment in areas of “strategic importance.” These may be remote areas, for example, where the government wants to promote investment and associated infrastructural development. Despite the inclusion of the alternate five-year limitation, note that the term “capital costs” should also be defined for clarity. Investors might want to add financing costs, for example, or higher measures of the cost of capital, which</td>
</tr>
<tr>
<td>(2) Zone I areas are defined as areas of strategic importance for foreign investment included on a list published in regulations issued by the [Regulating</td>
<td></td>
</tr>
</tbody>
</table>

---

**NOTE:** This Document is part of a multi-part document, Parts A - E
36.5. Example 2:

Article [__]

(1) The tax relief period of a company granted mining rights under this [Act][Code][Law] shall commence on the date of operation and subject to the provisions of this Act or any other relevant financial enactment, the relief shall continue for three years.

(2) The tax relief period of a company granted a mining right under this [Act][Code][Law] may, by the end of the three years, be extended by the Minister for one further period of two years.

(3) The [Regulating Authority] shall not extend the tax relief period of a company in exercise of the power conferred under subsection (2) of this section unless the [Regulating Authority] is satisfied as to-

(a) the rate of expansion, standard of efficiency and level of development of the company in mineral operations for which the mining right was granted;

(b) the implementation of any conditions upon, which lease was granted; and

(c) the training and development of [Country’s] personnel in the operation of the mineral concerned.

36. Fiscal Terms

36.6 Fiscal Stability

Fiscal stability refers to the fixing of all or some of the fiscal terms that were in place when the mining agreement was signed between the investor and government or the date that the license was granted, for the duration of the mining project or for a set number of years.

Annotation

Taken from Nigeria’s mining code (2007), this provision does not provide blanket tax relief for all mining companies, but sets some parameters for the grant of tax relief, including that it must begin on the “date of operation” and may be granted for up to five years.

Since the provision does not apply to all companies, some transparency in the grant of tax relief (for example, disclosure of contracts) and extension of tax relief may be warranted.

If such a general provision were used in law, regulations would need to spell out more details of the nature of the tax relief (whether just corporate income tax or other taxes and whether the rate is 0% or simply a rate below the generally applicable rate), the basis upon which it may be granted (for example, to promote investment in certain high risk areas), on meaning of “date of operation” and on the administrative obligations of the company during the period of tax relief with respect to filing tax returns. As in the example above, regulations should also provide clarity on application of deductions and use of loss carry forward during the tax holiday period.
Investors make calculations as to the likely profitability of a mining project and, therefore, whether or not to invest, based in part on the fiscal terms being offered for a project. A mining project can require significant investment of up to billions of dollars and can last several decades. An investor has a strong interest in ensuring that fiscal terms will not be later changed to reduce the investor’s share of the revenues from a mining project after investment decisions have already been made and billions of dollars expended.

A government seeking to attract foreign investors, especially one with weak institutions or with a history of political instability, might seek to reassure investors that the rules will not be suddenly changed.

One means to reassure investors is by the use of stabilization clauses, in mining agreements or in law, which broadly provide that certain changes to the law will not apply to agreements signed before the change in the law.

Stabilization clauses may be very broad and provide that no changes in the law will apply. Such clauses are increasingly out of favour as they prevent the application of advances in health and safety, environmental or labour laws to a mining project which may last several decades. For example, significant advances on global practice in mine safety, which may be incorporated into law or regulation in a country, would not apply in the event of a broad stabilization law.

More favoured are stabilization provisions that fix specific key fiscal terms (not all terms) for a specific period of time (not indefinitely).

“Economic equilibrium” terms are also more widely used today. Such terms do not provide that changes in the law will not apply. Instead, they provide that changes in law that change the economic equilibrium between the parties will require negotiations between the state and the investor to restore that balance or will require the state to compensate the investor to restore the investor to the same economic position the investor would have been in had the change to the fiscal regime not occurred.

The law may also require that contracts include a provision requiring the parties to periodically (for example, every certain number of years) re-examine the financial terms and conditions to ensure economic equilibrium. “Economic equilibrium” should be defined but should generally make reference to fundamental changes in conditions and assumptions existing at the time the parties entered into the agreement.

Some countries have provided for stability only if the investor agrees to higher base rates at the outset.

It should be noted that use of stabilization clauses can pose serious challenges to tax regulating entities. Their use multiplies the number of fiscal regimes that a government must keep track of. An agreement entered into in 2005 may have a separate fiscal regime from one entered into in 2010 if the law changed. If the law changes again, by 2015 the government would have three separate fiscal regimes to administer.

Ultimately, stabilization is an incentive to an investor. It would be best for a country to avoid stabilization clauses, if it could still attract the
required investment. To the extent used, a stabilization term in the law should generally seek to define and limit the scope of stabilization provisions that may be used in contracts and should ensure that such terms do not broadly freeze the law (extend to health, safety, labour, environmental, local content and other terms) but are tailored specifically to stability of fiscal terms. Further, since fiscal stability is meant to honour the assumptions upon which the deal was based, fiscal stability provisions should not allow investors to automatically benefit from generally applicable reductions in fiscal obligations while exempting them from generally applicable increases. Finally, a stability provision should allow for the use of stabilization clauses in contracts, but should not set in law that certain terms will be stabilized for all agreements entered into under the current law. In this way, stabilization clauses would only be used if and as necessary.

A time frame of 10-15 years is generally sufficient to allow investors to recoup initial capital investment.

36.6. Example 1:
Article [__]
(1) When entering into an agreement with a Chapter 6 contractor, or a Chapter 7 producer, the [State] is permitted to accept a clause stabilizing the following aspects of taxation to the terms under Code provisions for a period not to exceed 15 years from the effective date of the agreement:
(a) The income tax rate;
(b) The rate of royalty;
(c) The special rule for extended net operating loss carry forward;
(d) The special rule for depreciation and other cost recovery;
(e) The rate for withholding of tax on payments;
(f) The exemption provided in [relevant sections];

Annotation
Drawn from Liberia’s revenue code (2010), this provision allows for the use of stabilization clauses but does not itself provide for automatic stability of the fiscal regime for all contracts entered into under that law. The provision also limits the scope of such clauses both as to time and to fiscal terms that it may cover.

36.6. Example 2:
Article [__]
(1) The stabilization of the fiscal and customs regime is guaranteed to holders

Annotation
Drawn from Guinea’s mining code (2011), this provision is specific as to the scope of stabilization in terms of time and which fiscal terms are included in and excluded from the scope.
of an exploitation licence who have signed a Mining Agreement.

(2) The maximum duration of a period of stabilization of the fiscal and customs regime is 15 years. This period of stabilization runs from the date on which the exploitation licence is granted.

(3) During this period of stabilization, the rates of levies, duties and taxes will neither be increased nor reduced. These rates will remain as they were on the date the exploitation licence was granted. In addition, no new tax or levy of any kind whatsoever is applicable to the holder of the exploitation licence during this period.

(4) Specifically referred to, on a limited basis, in the stabilization clause are the rates:

(a) of the Commercial and Industrial Profit and Corporate Tax;
(b) of the Contributions to Local Development, set out in [relevant article] of this [Code][Act][Law];
(c) of the flat rate entry fee defined in this [Code][Act][Law].

(5) Also specifically referred to, on a limited basis, by the stabilization clause, are the base rates, subject to the provisions relating to the changes in indices:

(a) of tax on the extraction of Mineral Substances other than the Precious Metals indicated in [relevant article] of this [Code][Act][Law];

(b) of tax on industrial or semi-industrial production of Precious Metals set out in [relevant article] of this [Code][Act][Law];

(c) of export tax on mineral substances other than on the precious substances set out in [relevant article] of this [Code][Act][Law]

(d) of export tax on Precious Stones and Gemstones set out in [relevant article] of this [Code][Act][Law].

It is important to note that the law provides that increases in the rates of specific fiscal terms will not apply. At the same time, it also specifically prevents investors from benefiting from reductions in the rates of such terms. This could in theory protect the state from pressure from investors to benefit from reductions while at the same time being protected from increases. It is also in keeping with the general reasoning for stabilization, which is, in essence, to keep to the terms agreed to between the parties. This means that while fairness may dictate that the investor should not be made worse off by changes to the fiscal regime, the investor also should not be made better off by changes.

The disadvantage of this provision is that it provides for automatic stability rather than simply permitting use of stabilization clauses within prescribed limits. At the same time, an automatic stability provision does provide for a transparent and standardized use of stabilization across all agreements.
36. Fiscal Terms

36.7 Rents

Surface rents or surface area fees are generally payments per unit area of land for use of the land for the mining project. Provisions on surface area fees may provide for automatic adjustment for inflation. Generally surface rents are not very high and should not be seen as a significant revenue source to the government, but they do provide a consistent stream of payment to the government for the duration of the project and discourage speculative or excessive land holding.

The actual amount of the surface rent will often be left to regulations, which may be preferable as it better allows for changes to the surface rent based on inflation or land values.

Laws may also provide for surface rents specifically to private owners on which mining takes place. In such cases, these payments are not a part of the state’s fiscal regime and may not be aimed at discouraging excessive land holding. They may simply be a compensation to owners, depending on how land rights are allocated under the laws of a country.

36.7. Example 1:

<table>
<thead>
<tr>
<th>Article [...]</th>
<th>Annotation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Any holder of a mining right or permit for quarry substances which gives it</td>
<td>Drawn from Guinea’s mining code (2011), this provision fixes the actual amounts for the surface rent in legislation with respect to mining (not quarrying). The increases from award to first renewal and second renewal</td>
</tr>
</tbody>
</table>
the right to engage in mining or quarry activities, is subject to the annual payment of surface royalties, in accordance with the table below for mine substances, and a joint order from the [Regulating Authorities].

(2) This surface royalty is in proportion to the surface area described in the mining right or authorisation.

(3) The terms for declaring and paying this surface royalty are determined by joint order of the [Regulating Authorities].

(4) The rates are updated by joint order of the [Regulating Authorities].

Surface royalties by mining right:

<table>
<thead>
<tr>
<th>Name of the Title</th>
<th>Surface Royalties USD/km²</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Award</td>
</tr>
<tr>
<td>Exploration Permit</td>
<td>10</td>
</tr>
<tr>
<td>Industrial Mining Operation Title</td>
<td>75</td>
</tr>
<tr>
<td>Semi-Industrial Mining Operation Title</td>
<td>20</td>
</tr>
<tr>
<td>Mining Concession</td>
<td>150</td>
</tr>
<tr>
<td>Dredging Operation Permit</td>
<td>150*</td>
</tr>
</tbody>
</table>

* Per km

could incentive relinquishing land that is not being used at each point of renewal of a permit.

36.7. Example 2:

Annotation
Article [__]: Mining and quarry rights subject to tender

(1) If the public interest so requires, the [Regulating Authority] submits to tender, in exceptional cases, open or by invitation, mining and quarry rights relating to a deposit which has been studied, documented or possibly worked on by the State or its entities and which is considered as an asset with...

Annotation

Drawn from DRC’s mining code (2002), this provision allows for the amount of signature bonus offered to be one of the factors considered in determining the best bid. More detailed procedures, terms and conditions, including any minimum requirements for the bid, are normally spelled out in more detail in regulations.
**AMLA GUIDING TEMPLATE**

**PART C: Fiscal Terms**

Considerable known value.

(2) In this case, the [Regulating Authority] reserves the mining rights relating to the deposit to be submitted to tender.

(3) The invitation to tender, indicating the terms and conditions for the bids as well as the date on which and the address to which the tenders must be submitted, is published in the Official Gazette. It can also be published in the specialized local and international newspapers.

(4) The bids submitted in accordance with the terms and conditions of the invitation to tender are examined promptly by an Inter-ministerial Commission whose members are appointed and convened by the [Regulating Authority] in order to select the best bid, on the basis of:

   a) Plan of work proposed and financial costs relating thereto;
   
   b) Available financial and technical capacity of the bidder;
   
   c) Previous experience of the bidder in carrying out the operations proposed;
   
   d) Various other socio-economic advantages for the State, the province and the surrounding community, including the signature bonus offered.

36.8. Example 2:

   Article [...]  

(1) Bonuses paid to the [State mining company] resulting from agreements entered into with its associates shall fully revert to the State by way of the [finance mechanism].

(2) A portion of the bonuses referred to in the previous paragraph shall be spent in projects of regional and local development and promotion of [Country]'s private business community, under terms to be regulated by the [State].

and the advertisement for the bid.

It is possible to have a bid in which the only determining factor is the amount of signature bonus offered, while all other terms are fixed in law or regulation, or to include the amount of signature bonus offered as one of several factors to be considered in deciding on the best offer.

**Annotation**

Drawn from Angola’s oil and gas code (2004), this provision shows another aspect of bonus payments that may be included in legislation: rules on which public body should collect the bonus and how they should be used.
### 36. Fiscal Terms

#### 36.9 Other Fees

“Other fees” cover a range of other payments a mining company may be required to make, depending on the laws within a particular country, including fees for registering the company locally, processing of mining license applications, stamp duties, and so on. These fees tend to be relatively small but can serve to augment budgets of administrative agencies and defray their costs. They should not be seen as a main fiscal tool and, where possible, should be minimized in favour of emphasis on main tools like royalties and corporate income tax.

**36.9. Example 1:**

Article [__]

(1) The issuance of mining rights and authorisations as well as, where applicable, their renewal, extension, continuation, transfer, assignment, and lease, are subject, upon the granting of the deed conferring the rights, to the payment of a fixed fee, the amount and terms of which are determined by regulations.

(2) Collection agents, trading douses, and accredited trading agencies for the trading of diamonds, gold and other precious substances are subject to the payment of a fixed annual royalty, the amount of which is determined by regulation.

(3) No licence granting a mining right shall be issued by the [Regulating Authority] until all prescribed fees payable in relation to the grant and registration of that licence have been paid.

**Annotation**

Adapted from Guinea’s mining code (2011) and Sierra Leone’s mining code (2009), these provisions together highlight a type of fee commonly included in mining laws: administrative fees associated with certain acts of processing necessary for the progression of a project. These fees provide small revenues to the state, which can be useful during the stages before production begins.

See discussion of property tax, above.

**36.9. Example 2:**

Article [__]

An operating licence holder shall be required to contribute to the financing of capacity building and skills transfer for officials with [the regulating]

**Annotation**

Drawn from Cote d’Ivoire’s mining code (2014), this provision details a payment that companies are required to make in order to reinforce the capacity of the regulating entity. Such a fee can be a meaningful contribution, but also
### 36. Fiscal Terms

#### 36.10 Exemption from Other Fees

Countries may choose to exempt mining companies from certain fees, for various reasons (see discussion on customs duties, VAT). One basis for exemption may be to avoid undue burden to companies during the exploration phase and facilitate movement to discovery (see the example below on exemption from payment of fees related to export of samples for testing).

As with cautions under the discussion on tax holidays, exemptions from these fees should be used transparently, in accordance with provisions in law and are best standardized across the mining industry to facilitate administration.

**36.10. Example 1:**

Article [...]  
(1) Holders of exploration permits are entitled throughout the period of exploration, to an exemption from:

(a) TVA or Value Added Tax (VAT) on imports of equipment, materials, machines and consumables indicated in the mining list submitted, before the beginning of the Exploration Phase, on condition that such mining list has been approved in compliance with provisions of [relevant article] of this [Code][Act][Law]. However, imports of goods which are excluded from the right of deduction pursuant to the provisions of the [General Tax Code] are not exempt from VAT, even when these goods were included in the duly approved mining list.

**Annotation**

Drawn from Guinea’s mining code (2011), this provision provides exemption from several payments during the exploration phase only. The exemptions are meant to relieve some of the fiscal burden on companies during a period of high upfront expenditure and no revenues. Nevertheless, companies are still required to pay the administrative taxes listed.
(b) Annual Minimum Tax (IMF);
(c) business license fee;
(d) Contribution to vocational training;
(e) Single Land Tax (CFU);
(f) Apprenticeship tax.

(2) The advantage bestowed by the regime for exemption is subject to the filing, before the start of the exploration phase, of a mining list for the Exploration Phase, in compliance with the provisions of [relevant article] of this [Code][Act][Law].

(3) All other provisions of the General Tax Code apply with full effect.

(4) Petrol, lubricants and other imported petroleum products are entitled to a VAT reimbursement, within the limits of annual quotas fixed by the [Budget Regulating Authority].

(5) The duration of these exemptions is limited to the duration of the exploration phase.

Article [...] Customs duties

(1) Holders of an exploration permit are eligible for the temporary admission regime for the importation of equipment, material, machines, raw materials and consumables indicated in the mining list relating to the exploration phase.

(2) The temporary admission of these goods is only permitted if the said mining list has been filed, before the start of the exploration phase, and has been duly approved in accordance with the provisions of [relevant article] of this [Code][Act][Law].

(3) However, materials and spare parts for utility vehicles, necessary for the functioning of professional materials and equipment included in the mining list are not eligible for the exemption:
### 36. Fiscal Terms

#### 36.10. Example 2:

**Article [__]**

As part of the project, where the holder exports samples for industrial tests and analyses, this shall be exempt from all customs duties or any other contribution, of any kind whatsoever, when it leaves the national territory. Notwithstanding the provisions of Article [__] of the present [Code][Act][Law] (on exceptions for exporting samples), samples exported in violation of this Article in the present [Code][Act][Law] shall be subject to all relevant standard taxation.

**Annotation**

Drawn from DRC’s mining code (2002), this provision provides an exemption from fees for exports under certain circumstances – in this case fees and duties associated with the export of minerals extracted for testing/analysis. Again, this exemption is aimed at minimizing additional financial burden during the exploration phase.

#### 36.11. Foreign Exchange

A mining code may regulate how, when, and at what cost license holders can remove mining profits in a foreign currency, in order to manage the value of the country’s currency. Foreign Exchange provisions may require license holders to set up local bank accounts through which they must channel their profits before they are permitted to repatriate their profits abroad.

However, as a general matter, foreign exchange rules should be governed by generally applicable law.

**36.11. Example 1:**

**Article [__]**

(1) A holder of a mining lease who earns foreign exchange from mining operations may be permitted by the [central bank], to retain in an account, portion of the foreign exchange earned, for use in acquiring spare parts and

**Annotation**

Drawn from Ghana’s mining code (2006), this provision authorizes the license holder to hold a foreign exchange account in Ghana with the guarantee of the Bank of Ghana. The clause also stipulates the free transferability of foreign...
other inputs required for the mining operations, which would otherwise not be readily available without the use of the earnings.

(2) The [Regulating Authority], in consultation with the [other relevant Regulating Authorities] may, where the net earnings of a holder of a mining lease from the holder’s mining operations are in foreign exchange, permit the holder of the lease to open and retain in an account, an amount not less than twenty-five percent of the foreign exchange for

(a) the acquisition of spare parts, raw materials, and machinery and equipment, (b) debt servicing and dividend payment, (c) remittance in respect of quotas for expatriate personnel, and (d) the transfer of capital in the event of a sale or liquidation of the mining operations

(3) An account opened and operated under subsection (2) shall, with the consent of the [financial entity], be held in trust by a trustee appointed by the holder of the lease.

(4) Subject to this [Code][Act][Law], a holder of a mining lease shall be guaranteed free transferability of convertible currency

(a) through the [central bank], or

(b) in the case of a net foreign exchange holder, through the account opened under subsection (2).

36.11. Example 2:

Article []

(1) No discrimination on foreign exchange in relation to regulation, exchange rate, or other economic policy measures;

(2) Freedom on remittance of profits, dividends, financial resources and free exchange, which is required by WTO.

Annotation

Drawn from Peru’s mining law (2012), this provision provides for the complete freedom of movement of capital, but, in addition, provides assurance that the financial regulating entity will provide foreign exchange required for mining activities.
### 36. Fiscal Terms

#### 36.12 Transfer Pricing

Transfer pricing is a business practice that consists of setting a price for the purchase of a good or service between two “related parties” (e.g., subsidiary companies that are owned or controlled by the same parent company). There are various kinds of transactions that may take place:

1. Availability of foreign currency in general;
2. Free disposal of currency generated by exports in the country or abroad.
3. If the holder of the mining activity sold its production locally, the Financial Regulating Authority will provide the foreign currency required for payment of goods and services, procurement of equipment, debt service, commissions, profits, dividends, royalties, capital repatriation, fees and, in general, any other disbursement required or entitled to turn in foreign currency;
4. No discrimination in regard to the exchange rate, based on which currency is converted to the FOB value of exports and/or local sales, meaning that the best exchange rate for foreign trade transactions should be given; if there is any type of control or differential exchange system. This non-discrimination guarantees everything with regard to exchange rate matters in general;
5. Free commercialization of mineral products;
6. Special Regimes stability, when they are granted, for tax refund, temporary admission, and the like;
7. No unilateral change of the guarantees included in the contract.
between related parties, including procurement of goods, financing (see the discussion on thin capitalization under the section on deductions), support services (administrative, technical, advisory), mineral sales (see section on royalties).

Transfer pricing becomes abusive, however, if companies buy from related parties at inflated prices or sell to related parties at below-market prices in order to reduce their taxable income in the host country and shift taxable income to a lower tax jurisdiction, thereby reducing their overall tax liability. African countries depend three times as much on tax income receipts (in terms of percentage of overall tax revenue to the government) as developed economies, making abusive transfer pricing, or, transfer mispricing, a particularly serious issue for African governments.

In order to address abuses, the tax laws will often require companies to price transactions with related parties based on the “arm’s length principle”, that is, the price at which the transaction would take place if the buying and selling entities were not related. If the relevant transaction does not conform to the arm’s length principle, transfer pricing rules give governments the legal right to adjust the price in the reported profits of the company. Countries should make sure that the mining sector falls under the generally applicable legislation on transfer pricing.

The OECD Transfer Pricing Guidelines propose five major transfer pricing methods to apply the arm’s length principle and are regarded as the international authority on common practices and methods in the area of transfer pricing with more than 100 countries referring to these guidelines in their domestic legislation. Some of the five methods are based on comparing similar transactions between non-affiliated companies. Others compare the profit margins made by each subsidiary on a transaction. In 2013 the United Nations released its own transfer pricing manual that attempts to adapt transfer pricing guidance to the circumstances, priorities, and administrative capacity of non-OECD countries.

To effectively implement transfer pricing rules, regulations should provide guidance on application of the arm’s length principle, including:

- transfer pricing methodologies
- guidance on comparability analysis (i.e., use of local and/or foreign comparable data)
- transfer pricing documentation requirements and filing deadlines
- how and when transfer pricing adjustments will be made by the revenue authority
- how taxpayer disputes will be resolved
- fines and penalties
- (optionally) specific guidance on particular related party transactions

Further, it is important for governments to invest in improved capacity in regulating authorities to address transfer pricing issues, particularly through equipping revenue authorities with both transfer pricing expertise and technical knowledge of the mining sector and through improving inter-agency coordination and sharing of information.
Part C: Fiscal Terms

It should be noted that to properly implement OECD transfer pricing methods, governments need access to data on comparable transactions, which can be challenging for African governments. In the absence of comparable data, data from very different contexts may be used and adjusted to the African context. However, this may be time-consuming, complicated and produce results that do not reflect the realities companies operating in Africa. Tax administrators may also lack the capacity to adapt the data effectively.

For this reason, governments may consider adopting alternative tax policy rules, which reduce reliance on comparable data or the arm’s length principle. Many of these methods are innovative and not widely tested. Further research on their practicality is required. They include:

- Adopting the “sixth method” with respect to pricing of minerals; that is, using international reference prices to value the minerals. However, note that for minerals without an international reference price, independent third-party valuation of the minerals could be considered (see discussion on royalties above).
- Separating tax treatment of hedging income. Hedging consists of locking in a future-selling price in order for both parties to the transaction to plan their commercial operations with predictability. For example, a company might agree to sell copper to a buyer at $3 per ton at some point in the future. Abuse may take place if companies set artificially low prices in their hedging contracts. Governments may combat this abuse by separating the gains and losses associated with hedging contracts and taxing that income separately from operating income so that hedging losses may not be used to offset profits made from unhedged sales. This strategy has been adopted in Zambia (see Zambia Revenue Authority Practice Note 1/2012).
- Capping management fees between related parties. For example, in Guinea, management fees, royalties, and similar payments to parent companies are deductible if they are reasonable and, in total, do not exceed five percent of annual turnover, or 20 percent of general expenses.
- Capping interest deductions on foreign related party loans (see discussion on thin capitalization under the section on deductions)
- Capping the value of total related party transactions as a percentage of EBITDA (earnings before interest, tax, depreciation, and amortization). For example, Ecuador has recently passed a similar rule, limiting total expenses for royalties, technical, administrative, consulting and similar services paid by Ecuadorian taxpayers to related parties to 20 percent of taxable income plus the amount of the expenses.
- Use of advance pricing agreements (APAs) and “safe harbours.” An APA is a contract, usually for multiple years, between a taxpayer and at least one revenue authority, which agrees in advance how the transfer price will be set for a number of transactions between related parties. The revenue authority will not make any transfer pricing adjustments during the period of the agreement. A safe harbour is an administrative tool that applies to a defined category of transactions. It protects taxpayers from transfer pricing audits as long as the price of their related party transactions follows the pricing formula defined in the safe harbour rules by the tax authority (see, for example, article 12 of Tanzania’s 2014 Income Tax (Transfer Pricing) Regulations).
- Use of global formulary apportionment. Formulary apportionment attributes a multinational corporation’s total worldwide profit (or loss)
In addition to the shorter examples given below, Tanzania’s 2014 Income Tax (Transfer Pricing) Regulations can provide detailed guidance for drafting of transfer pricing rules.

### 36.12. Example 1:

**Article [...]—Transfer Pricing**

(1) *In a transaction between persons who are associates, the [Regulating Authority] may distribute, apportion, or allocate inclusions in income, deductions, credits, or personal reliefs between those persons as is necessary to reflect the chargeable income or tax payable which would have arisen for these persons if the transaction had been conducted at arm’s length.*

(2) *Where, in the case of an associated resident entity of a non-resident person, the [Regulating Authority] is satisfied that some adjustment is warranted under [relevant subsection], or in the case of a permanent establishment of a non-resident person in [Country], the [Regulating Authority] is not satisfied with a return of income of that person made under [relevant section], the [Regulating Authority] may adjust the income of the permanent establishment or entity for a basis period so that it reflects an amount calculated:*  

(a) *by reference to the total consolidated income of the non-resident person and all associates of that non-resident person, other than individuals but irrespective of residence;*  

(b) *by taking into account the proportion which the turnover of the permanent establishment or entity bears to the total consolidated turnover of the non-resident person and those associates; and*  

(c) *by taking into account any other relevant considerations in determining the*
### AMLA GUIDING TEMPLATE

**PART C: Fiscal Terms**

<table>
<thead>
<tr>
<th>Proportion of the total consolidated income which should be attributed to the permanent establishment or entity.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) In making an adjustment under subsections (1) or (2), the [Regulating Authority] may recharacterise the source of income and the nature of any payment or loss as revenue, capital, or otherwise.</td>
</tr>
</tbody>
</table>

#### 36.12. Example 2:

**Article [___] Interpretation**

(1) In these Rules, unless the context otherwise requires—

- “arm’s length price” means the price payable in a transaction between independent enterprises;

- “comparable transactions” means transactions between which there are no material differences, or in which reasonably accurate adjustments can be made to eliminate material differences;

- “controlled transaction” means a transaction which is monitored to ensure payment of an arm’s length price for goods or services;

- “related enterprises” means one or more enterprises whereby—

  (a) one of the enterprises participates directly or indirectly in the management, control or capital of the other; or

  (b) a third person participates directly or indirectly in the management, control or, capital or both.

**Art [___] Purpose of Rules**

(1) The purposes of these Rules are—

(a) to provide guidelines to be applied by related enterprises, in determining the arm’s length prices of goods and services in transactions involving them; and

**Annotation**

Drawn from Kenya’s Income Tax (Transfer Pricing) Rules (2006), these provisions provide an example of the kinds of issues that should be included in regulations in order to properly implement the arm’s length principle, including definitions of “arm’s length” and “related enterprises”, the scope of the rules (the types of transactions covered), methods for calculating the arm’s length price, documentation and recordkeeping.

The rules use the OECD transfer pricing methods, which do rely upon availability of comparable data.
(b) to provide administrative regulations, including the types of records and documentation to be submitted to the [Regulating Authority] by a person involved in transfer pricing arrangements.

Article [...] Person to choose method

The taxpayer may choose a method to employ in determining the arm’s length price from among the methods set out in rule 7.

Article [...] Scope of guidelines

(1) The guidelines referred to in rule 3 shall apply to—

(a) transactions between related enterprises within a multinational company, where one enterprise is located in, and is subject to tax in, [Country], and the other is located outside [Country];

(b) transactions between a permanent establishment and its head office or other related branches, in which case the permanent establishment shall be treated as a distinct and separate enterprise from its head office and related branches.

Article [...] Transactions subject to Rules

The transactions subject to adjustment of prices under these Rules shall include—

(a) the sale or purchase of goods;

(b) the sale, purchase or lease of tangible assets;

(c) the transfer, purchase or use of intangible assets;

(d) the provision of services;

(e) the lending or borrowing of money; and

(f) any other transactions which may affect the profit or loss of the enterprise
(1) The methods referred to in rule 4 are the following—

(a) the comparable uncontrolled price (CUP) method, in which the transfer price in a controlled transaction is compared with the prices in an uncontrolled transaction and accurate adjustments made to eliminate material price differences;

(b) the resale price method, in which the transfer price of the produce is compared with the resale price at which the product is sold to an independent enterprise: Provided that in the application of this method the resale price shall be reduced by the resale price margin (the profit margin indicated by the reseller);

(c) the cost plus method, in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction, with a mark-up added to make an appropriate profit in light of the functions performed, and the assets used and risks assumed by the supplier;

(d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture;

(e) the transactional net margin method, in which the net profit margin attained by a multinational enterprise in a controlled transaction is compared to the net profit margin that would have been earned in comparable transactions by an independent enterprise; and

(f) such other method as may be prescribed by the [regulating entity] from time to time, where in his opinion and in view of the nature of the transactions, the arm’s length price cannot be determined using any of the methods contained in
these guidelines.

Article [...] Application of methods

(1) The methods set out in rule 7 shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of [relevant article] of the [Code][Act][Law].

(2) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.

(3) The [Regulating Authority] may issue guidelines specifying conditions and procedures to guide the application of the methods set out above.

Article [...] Power of [Regulating Authority] to request for information

(1) The [Regulating Authority] may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where the transfer pricing is applied.

(2) The documents referred to in paragraph (1) shall include documents relating to—

(a) the selection of the transfer pricing method and the reasons for the selection;

(b) the application of the method, including the calculations made and price adjustment factors considered;

(c) the global organization structure of the enterprise;

(d) the details of the transaction under consideration;

(e) the assumptions, strategies, and policies applied in selecting the method; and
(f) such other background information as may be necessary regarding the transaction.

(3) The books of accounts and other documents shall be prepared in, or be translated into, the English language, at the time the transfer price is arrived at.

Article [ ] Application of arm’s length pricing

(1) Where a person avers the application of arm’s length pricing, such person shall—

(a) develop an appropriate transfer pricing policy;

(b) determine the arm’s length price as prescribed under the guidelines provided under these Rules; and

(c) avail documentation to evidence their analysis upon request by the [Regulating Authority].

Article [ ] Certain provisions of the [Code][Act][Law] to apply

The provisions of the [Code][Act][Law] relating to fraud, failure to furnish returns and underpayment of tax shall apply with respect to transfer pricing.

Article [ ] Unpaid tax to be deemed additional tax

Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of [relevant sections] of the [Code][Act][Law].

37. Non-Fiscal Incentives

Non-fiscal incentives typically refer to provisions that use non-monetary and/or in-kind benefits to encourage investment in specific sectors of a country’s economy. These benefits may be issued at the national level as well as at the local level, such as by state, province or other regional...
entities. For the mining sector, these incentives may include, but are not limited to, the following:

- Administrative assistance such as “one stop shop” resources to support investors in the set up and running of businesses
- Simplified licensing procedures (e.g. ability to submit forms online; fast track approvals process)
- Technical assistance in the form of guidance on national regulatory frameworks
- Subsidized training programs that improve human capacity, particularly where there is a shortage of qualified employees

As with fiscal incentives, the use of non-fiscal incentives must carefully consider the opportunities, costs and challenges that arise from offering these types of incentives to investors. Up front financial investment may be lower where incentives are derived from pre-existing programs or structures, but alternate costs also exist, such as higher administrative costs where dedicated resources have to be assigned to meet investor needs. Particularly, it is essential that incentives do not provide such an advantage to global investors that it creates a significant disadvantage to local investors.

When non-fiscal incentives are offered, they should aim to be (1) affordable, not significantly undermining a government’s revenue via direct and/or indirect cost; (2) transparently presented to investors; (3) simple, making it easy on both the investor and the government to access and determine eligibility for the incentive and (4) non-discretionary, to ensure a consistent regime that limits the possibility of bribery and corruption that can become intertwined with discretionary measures. Incentives should also be consistent with international best practice and should not contradict any other incentives a country offers to investors.

Ultimately, many non-fiscal incentives provide services that, when functional, serve to strengthen the overall investment climate of a country. These incentives, therefore, can offer a critical starting point in linking investor needs with a country’s long term strategic goals to promote business, allowing for a positive impact that extends beyond the mining sector.

37. Example 1:

| Annotation |
| This suggested provision references the relevant investment legislation of a country that may already provide for general non-fiscal incentives that apply generally to investors and creates the framework for tailoring such incentives to the mining industry investors. Importantly, the provision restricts incentives to those that have been made available through the country’s legislative process, supporting a transparent and consistent regime around incentives. |

| Article [...] |
| (1) General non-fiscal incentives as provided for in [relevant investment legislation] shall apply to a mining right holder. The details of any such incentives if deemed applicable to the mining sector shall be addressed in the accompanying mining regulations. |

<p>| (2) Incentives shall not be granted to a mining right holder where they have |</p>
<table>
<thead>
<tr>
<th>37. Example 2:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td>Art. [_] Non- Fiscal incentives</td>
<td>Inspired by the Investment Incentives Code of the City of Naga, Philippines (1997), this example goes into more detail than the previous, outlining specific assistance and resources for license holders. This provision importantly gives room for additional incentives to be provided, but requires that these be subject to the approval of the country’s legislative body.</td>
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<td>A license holder shall be entitled to the following non-fiscal incentives:</td>
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<td>(a) Assistance in securing local permits and licenses;</td>
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<td>(b) Assistance in identifying office location and mining sites;</td>
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<td>(c) Joint ventures and downstream service provider match-making</td>
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<td>(d) Facilitated access to financial and technical assistance programs of the [Country];</td>
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<td>(e) Facilitated service connections with local utilities; or</td>
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<tr>
<td>(f) Any additional incentives made available must be published and approved by the [Legislative Body].</td>
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In the context of mineral extraction, environmental statutes and regulations address the impact of a mining operation on the environment and human health and safety. In general, environmental statutes and regulations should address potential pollution of the environment (including air, soil, surface water or groundwater or subsurface strata), protection of natural resources or endangered or threatened species, human health and safety, including occupational safety, the investigation and remediation of pollutants and hazardous materials, and the protection of cultural heritage. More specifically, environmental laws should address the following:

- Establishment of environmental management tools and standards such as pre-project environmental impact assessments and management plans to inform policy makers of the potential environmental impacts of the mining operation and establish a framework for managing those concerns during and after the project.
- Preservation of archaeological objects and cultural heritage.
- Identification, management and disposal of hazardous waste and materials extracted or produced by the mining operation.
- Conservation and protection of flora and fauna impacted by the mining operation, including habitats and ecosystems.
- Requirements and standards for mining operations to protect human health and safety.
- Provisions covering the investigation and remediation of pollutants discharged into air, soil and groundwater to expedite clean-up and minimize adverse impacts to the environment.
- Standards establishing reclamation obligations for land disturbed by mining operations.
- Mechanisms for the enforcement of, and addressing non-compliance with, environmental standards for mining operations.

The statutory language in this section should generally establish the applicability of the environmental requirements to all mining activities and operations in the country. The provisions should incorporate any distinct environmental law of the country or principles that should be set out in the mining law in the absence of or in addition to the environmental laws, as well as any relevant international and regional treaties and directives.

In addition, provisions should consider the applicability of the Equator Principles and other international environmental standards in the field. In addition,
### 38. Environment

#### 38.2 Impact Assessments and Management Plans

Environmental and Social Impact Assessments (ESIA) and environmental management plans (EMP) are tools widely used by numerous governments.
 when assessing the approval and implementation of mining proposals. These documents are also typically evaluated by lenders when making financing decisions. The government should consider that there are at least two approaches to the use of ESIA: first, as a step to obtain an environmental license prior to the mining activities; secondly, as part of the application process for the mining license. It is essential that mining and environmental laws, as well as related regulations and contracts, never create an expectation that the applicant has a right to have the ESIs approved or the environmental or mining license granted. It is therefore crucial that the ESIA be part of the permitting process and that the granting of the mining license be conditioned on the approval of the ESIA. Lack of clarity in the mining and environmental laws, regulations and contracts with respect to the role of the ESIA and on the need for it to be approved by the government increases the risk of conflicts and legal disputes. A country should consider completing a Strategic Environmental Assessment (SEA). One benefit for a government to conduct an SEA is to identify sensible zones where mining activities are not desirable and exploration licenses should therefore not be allowed. Conducting an SEA will thus reduce the risk for mining companies to invest on ESIs for projects with little chances of approval because of unacceptable environmental or social impacts.

Most countries require an ESIA to be prepared (either by the mining proponent or by the government) before issuing government approvals for any and all mining activities, including but not limited to reconnaissance, exploration and mining operation activities. However, if SEAs are the responsibility of the government, conducting an ESIA for a specific project should remain the responsibility of the mining proponent. In the latter case, the government’s role is to provide guidelines for the process, assess the quality of the ESIA report, and accept or reject the project based on ESIA findings. ESIs are of particular importance in resource rich countries that are environmentally fragile and at risk for social and environmental impacts once large-scale mining operations are underway. EIAs are typically associated with the exploration and feasibility stages of the mining project cycle.

In addition to requiring environmental impact analysis, most countries also require the development and submission of EMPs. Unlike EIAs, EMPs outline mining operations and provide a framework for identifying, managing and mitigating environmental impacts as they arise (both those identified in the EIA and those identified during the course of construction/operations). EMPs are essential for monitoring the obligations of mining companies by the government and should be part integral part of the ESIA process. A key factor for ensuring success in implementing EMPs is to require periodic implementation reports and periodic reviews to adjust to new circumstances during the life of the mine.

Finally, ESIs and EMPs are closely linked to mine closure and rehabilitation plan, and theses linkages should be properly reflected in mining laws and regulations, in terms of drafting process, approval and periodic reviews.

38.2. Example 1:

**Article [_]**

(1) Every holder of an exploration license or a mining/exploitation lease shall carry out an environmental impact assessment of his or her proposed operations in accordance with the provisions of [Related Legislation].

**Annotation**

Inspired by language from Uganda’s mining law (2003), this provision provides the general requirements for the submission to the government and its review of an EIA and an EMP.
The holder of a license referred to in subsection (1) of this section shall commence his or her operations under this Act only after securing a certificate of approval of his or her proposed operations and environmental impact assessment from the [the Environment Regulating Authority].

(3) The holder of an exploration license or a mining/exploitation lease shall submit to the [Environment Regulating Authority] an environmental management plan indicating the type and quality of wastes to be generated from any exploration or mining/exploitation operations under this Act and the method of its final disposal.

(4) The environmental management plan may be revised from time to time either by the holder of the exploration license or mining/exploitation lease, or if required by the [Environment Regulating Authority]. Any revised management plan must be approved by [Environment Regulating Authority] before it is implemented by the holder of the exploration license or mining/exploitation lease.

(5) Upon approval of a license and/or lease holder’s Environmental Impact Assessment and Environmental Management Plan, the license and/or lease holder shall carry out an annual environmental audit, and shall keep records describing how the operations conform to the approved Environmental Impact Assessment.

38.2. Example 2:

Article [\_]
No person may prospect for or remove, mine, conduct technical co-operation operations, conduct reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without an approved environmental impact assessment and environmental management plan.

(1) Any person who applies for a mineral right must submit an environmental impact assessment and environmental management plan as prescribed.

(2) An environmental impact assessment must consider, investigate, assess, and evaluate:

(a) The impact of a person’s proposed prospecting/reconnaissance, exploration or mining on the environment;

(b) Any adverse environmental effects which cannot be avoided should the proposal be

The language, as phrased, does not condition the issuance of an exploration license or a mining lease on the submission of an ESIA or an EMP. Instead, the holder of the license or mineral right is restricted from commencing operations until an ESIA and EMP has been prepared, reviewed and approved by the relevant authority. This may raise conflicts if, based on EDIA findings, the project is not approved.

This proposal, unlike Option 3 below, is general and does not detail the information that must be contained in the ESIAs or EMPs or provide a timeline for government review and approval.

Annotation

Inspired by South Africa’s mining law (2002), this provision also includes specific language regarding ESIA requirements as outlined in the United States National Environmental Protection Act, Section 102(2)(c).

This proposed legislative language outlines in more detail the content requirements for ESIA and EMP submissions, and it conditions the issuance of any permits or licenses or the commencement of any operations related to any mining activities on the submission and approval of both an ESIA and an EMP.

Option 2 offers a more comprehensive statute regarding ESIA/EMP requirements, the timeline for their review and approval by relevant government agencies. Governments may instead choose to implement such detailed requirements in regulations versus in the statutory text.
### AMLA GUIDING TEMPLATE

**PART D: Environment & Other Natural Resources**

<table>
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<tr>
<th>Implemented;</th>
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<tbody>
<tr>
<td>(c) Alternatives to the proposed action;</td>
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<tr>
<td>(d) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;</td>
</tr>
<tr>
<td>(e) Any irreversible and irreplaceable commitments of resources which would be involved in the proposed action should it be implemented; and</td>
</tr>
<tr>
<td>(f) The socio-economic conditions of any person who might be directly affected by a prospecting or mining operation.</td>
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</table>

(3) An environmental management plan must:

| (a) Establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives; |
| (b) Develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and |
| (c) Describe the manner in which the applicant intends to: |
| (i) Modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation; |
| (ii) Contain or remedy the cause of pollution or degradation and migration of pollutants; |
| (iii) Comply with any prescribed waste standard or management standards or practices; and |
| (iv) Rehabilitate the environment affected by the prospecting/reconnaissance, exploration or mining operations to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development. |

(4) Subject to paragraphs (3-4), the [Regulating Authority] must, within 120 days from the submission of the environmental impact assessment and environmental
management plan, approve the same, if:

(a) It complies with the requirements of subsection (3) and (4); and

(b) The applicant has the capacity, or has provided for the capacity, to rehabilitate and manage the negative impacts on the environment.

(1) The [Regulating Authority] may not approve the environmental management plan unless he or she has considered:

(a) Any recommendation by the [Relevant Mining Development and Environmental Committee]; and

(b) The comments of any [Admin Reviewer] charged with the administration of any law which relates to matters affecting the environment.

(5) The [Regulating Authority] may call for additional information from the person contemplated in subsection (1) or (2) and may direct that the environmental impact assessment and/or environmental management plan in question be amended and/or adjusted in such a way as the [Regulating Authority] may require.

(6) The [Regulating Authority] may at any time after he or she has approved an environmental impact assessment and environmental management plan, and after consultation with the holder of the reconnaissance permission, prospecting right, mining right or mining permit concerned, approve an amended environmental impact assessment and/or environmental management plan.

### 38. Environment

#### 38.3 Discovery of Archaeological Objects

This language is often used to ensure that any archaeological objects that are discovered during the course of mining activities are reported, catalogued, and protected and preserved.

Some nations have separate laws protecting cultural, historic, and/or archaeological objects. For these countries, a provision referencing the appropriate law or code and confirming its applicability to mining activities may be appropriate. If no such law exists, a more robust provision should be included in the Mining Code to define what constitutes an archaeological object and the steps that must be taken by the operator if such an object is discovered during
### AMLA GUIDING TEMPLATE

#### PART D: Environment & Other Natural Resources

<table>
<thead>
<tr>
<th>38.3. Example 1:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td><strong>Article [ ]</strong></td>
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<tr>
<td>(1) Declaration of Archaeological Indications: The holder of a mineral right must inform the local administrative authority and the [Regulating Authority in charge of Culture, Arts and Museums], of the discovery of archaeological indications if the exploration or mining/exploitation works reveal the existence thereof.</td>
<td>Drawn from DRC’s mining law (2002), this provision requires notification of the appropriate local agency regarding the discovery of cultural resources, and requires that the objects be kept safe for preservation. This obligation should apply to all types of licenses.</td>
</tr>
<tr>
<td>(2) Discovery of Elements of the National Cultural Heritage: The holder is prohibited from moving the objects which are contained in the national cultural heritage list, be they movables or other items. In this case, the license holder must inform the local administrative authority and [Regulating Authority in charge of Culture, Arts and Museums] of this fact in writing, and without delay. The holder must remove, secure and keep these elements of [national cultural heritage] safe, as applicable, at the cost and on behalf of [Country] if the local administrative authority and [Regulating Authority in charge of Culture, Arts and Museums] concerned do not remove them within a period of sixty days following notification of the discovery.</td>
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<tr>
<th>38.3. Example 2:</th>
<th>Annotation</th>
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<tbody>
<tr>
<td><strong>Article [ ]</strong></td>
<td></td>
</tr>
<tr>
<td>(1) The holder of mineral rights should, if it is the case, adopt the necessary measures in order to preserve geosites, geologic heritage and archaeological finds.</td>
<td>Drawn from Mozambique’s mining law (2014), this provision requires authorization to remove any objects discovered during the course of mining activities. This language could be strengthened and clarified to state the processes and measures that should be adopted to preserve archaeological finds; for example, maintaining a certain distance between mining activities and archaeological or historic objects. This language could also be linked to any other applicable cultural heritage laws to assist in determining whether a found object is in fact an archaeological find, and to clarify who makes that determination. This obligation should apply to all types of licenses.</td>
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<tr>
<td>(2) The mineral rights holder must request an authorization from the competent [Regulating Authority] for the removal of geosites, geologic heritage and archaeological finds.</td>
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### 38. Environment

#### 38.4 Management of Waste/Hazardous Materials
This language should make provision to: (a) ensure operators have procedures in place to identify and account for waste/hazardous material, and (b) rectify any problems associated with waste management. Legislation should make reference to the type of license that the specific obligations are attached to and consider legacy issues or the potential environmental consequences after the company ceases operations.

Legislation should also outline the information that must be provided on this issue in an application to receive a mining license (for an example, see Example 1 from Zambia).

A number of countries impose an overriding duty in relation to waste, including requiring a “chain of custody” to follow from the generation of waste to its ultimate disposal. For example, the US under its Resource Conservation and Recovery Act (RCRA) provides a number of detailed “cradle to grave” requirements for the disposal of solid and hazardous waste, primarily through its waste management regulations codified in Title 40 of the Code of Federal Regulations.

38.4. Example 1:

Article [...] (1) The mineral rights holder shall take preventive, corrective and/or restorative measures to ensure that all streams and water bodies, all dry land surfaces, and the atmosphere be protected from pollution, contamination or damage resulting from operations hereunder [...]; and that any existing pollution, contamination and damage of or to such water bodies, land surfaces, and atmosphere resulting from operations hereunder be rectified; and that the terrain, in general, be restored to and left in a usable state for purposes which are economically or socially desirable.

(2) Every application for a mineral right shall include or be accompanied by:

(a) The applicant’s environmental plan, including his proposals for the prevention of pollution, the treatment of wastes, the protection and reclamation of land and water resources, and for eliminating or minimizing the adverse effects on the environment of mining operations.

(b) In the case of large scale mining licenses, the developer shall attach to the environmental impact statement a map showing the location of the tailings, waste and overburden dumps.

38.4. Example 2:

Annotation

Adapted from an exploration agreement with a private company from Liberia, these provisions are designed to address the various means by which hazardous/waste material can impact the environment.

Other provisions offered here are also inspired by Zambia’s mining legislation, providing detail concerning the information regarding the treatment of waste/hazardous materials that must accompany any license application.
Article [__] Hazardous/waste material and the land owner.
No holder of a mineral right shall create unprotected pits, hazardous waste dumps or other hazards such as to be likely to endanger the stock, crops or any lawful activity of the owner or lawful occupier of the land covered by such mineral right.

Article [__] Hazardous/waste material and mineral rights
Permission is granted only to stack or dump any mineral or waste product in a manner approved by the [Regulating Authority] in consultation with the health and environmental authorities.

Article [__] The Mining Development and Remediation Plan
The holder of mineral rights shall not commence mining activity prior to approval of a Mining Development and Remediation Plan by the [Regulating Authority]. The Mining Development and Remediation Plan must identify (a) the lands and minerals impacted by the mining operation, (b) any waters, flora or fauna, habitats, communities or other natural resource impacted by the proposed mining operation, (c) describe the practices, including system design and construction plans, and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse environmental or human impacts, (d) a remediation plan that includes a budget and funding for implementation, and (e) any other requirement as specified by the [Regulating Authority].

Article [__] Community development agreement
(1) The holder of a mineral right is required to have and implement a community development agreement with the primary host community if its approved mining operation will or does exceed any of the following limits:
(a) In the case of underground mining operations, where annual combined run-of-mine ore and waste production is more than one hundred thousand tons per year (waste material not exiting mine mouth to be excluded);
(b) In the case of open-cast mining operations extracting minerals from primarily non-alluvial deposits, where annual combined run-of-mine ore, rock, waste and overburden production is more than two hundred and fifty thousand tons per year. (2) Any approvals in this context shall be given by the [Regulating Authority] who will be responsible for the implementation of this [Act][Code][Law] and shall be appointed by the [Administrative Reviewer] responsible for natural resources. The [Administrative Reviewer] is the

Adapted from Sierra Leone’s mining law (2009), this provision are designed to address the various means by which hazardous/waste material can impact the environment.

These provisions acknowledge the importance of protecting the land owners’ rights and the communities most likely to be affected by any operations.

They also acknowledge the importance of having an evaluator of the mining activities and prior approval of a remediation and implementation plan to ensure that the operator will employ best management practices and comply with applicable environmental standards. As in the U.S., the regulator would then be afforded the right to review and approve of the plan to confirm that the operator is following the applicable environmental standards.

Consideration could be given to providing more guidance as to what constitutes “waste product” for example, in implementing regulations.

(Note: this language is used in a number of the region’s countries’ legislation, including Uganda and Botswana).
38. Environment

38.5 Conservation

This topic typically addresses general provisions regarding the protection of biodiversity, including animals, plants, and their habitat(s), through general prohibitions and/or regulation and permitting of any action that affects biodiversity. These provisions are particularly important when the activity at issue – like mining – has the potential to directly and indirectly make significant short- and long-term changes to the physical environment.

The government should consider specific national laws, as well as obligations under international and regional legal instruments, with respect to this topic.

38.5. Example 1:

Article [...]

(1) Despite other legislation, no person may conduct commercial prospecting/reconnaissance, exploration or mining activities:

(a) In a special nature reserve or nature reserve;

(b) In a protected environment without the written permission of the [Regulating Authority] and [the Cabinet member responsible for minerals and energy affairs]; or

(c) In a protected area referred to in [relevant section].

(2) The [Regulating Authority], after consultation with the [Cabinet member responsible for mineral and energy affairs], must review all mining activities which were lawfully conducted in areas indicated in subsection (1)(a), (b) and (c) immediately before this section took effect.

(3) The [Regulating Authority], after consultation with the [Cabinet member responsible for mineral and energy affairs], may, in relation to the activities contemplated in subsection (2), as well as in relation to mining activities conducted in areas contemplated in that subsection which were declared as such after the commencement of this section, prescribe conditions under which those activities may continue in order to reduce or eliminate the impact of those activities on the environment or for the environmental protection of the area concerned.

Annotation

Drawn from South Africa’s mining law (2002), this provision demonstrates a relatively straightforward way to draft a biodiversity conservation provision within a mining law. There are two general components: (1) a general prohibition of an activity within a specified area (designated as a nature reserve, for example); and (2) an exception from the prohibition provided that specific regulations, procedures, etc. are followed. The first component ensures that unregulated destruction or harm to biodiversity is generally illegal, thereby providing presumptive protection for the environment, and the second component allows for active government oversight over mining activities. This type of provision also requires the government to evaluate what areas require protection, to what degree, and what factors must be considered.

It is also important to specify and enforce penalties for violations of these provisions.
(4) When applying this section, the [Regulating Authority] must take into account the interests of local communities and the environmental principles.

38.5. Example 2:

Article [__]

(1) No person shall at any time hunt, capture or destroy any of the species legally protected by the government.

(2) No person shall at any time, hunt or destroy:
   (a) Young animals;
   (b) Animals accompanied by their young;
   (c) Any of the species protected by the government.

(3) Any person who contravenes any provision of the aforementioned regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding [amount] or to imprisonment not exceeding [time period] or both.

Annotation

Drawn from Ghana’s mining law (2006), this provision is another relatively straightforward way to protect biodiversity and wildlife, either within a mining law or as a separate law or regulation. This approach focuses on a blanket prohibition of specific species or specified subgroups within species, as opposed to specifying protection of all species within a geographical area. This approach can be used either in combination with or in lieu of Option 2 above.

Similarly, language providing for non-prohibited harm or destruction of specific wildlife in Option 2 above could be incorporated with this Option 3. For example, the regulating authority could provide for some level of non-prohibited harm or destruction of specific wildlife or habitat to occur provided that the mining proponent obtains a permit and provides compensatory mitigation after review of the activity’s potential impact on such wildlife.

38. Environment

38.6 Environmental Accidents

General operational safety requirements, training, labour standards, and geographic limits on where mining (and other industrial activities) may be conducted can be included in a mining code, or be addressed in separate laws or regulations and then referenced in the mining code as a source of additional requirements.

Further, measures can and should be developed that seek to address environmental accidents once they have occurred. This would include not only remediation activities (discussed further as part of Section 7 of this document), but also the conduct of root cause analyses to evaluate what went wrong so that steps can be taken to minimize the risk of a similar environmental accident happening again.

38.6. Example 1:

Article [__]

Annotation

Drawn from Nigeria’s mining law (2007), this provision imposes general
(1) The holder of a mining right shall:

(a) Conduct prospecting/reconnaissance, exploration, or mining/exploitation activities in a safe, skilful, efficient and workmanlike manner; and

(b) Conduct prospecting/reconnaissance, exploration, or mining/exploitation activities in an environmentally and socially responsible manner.

Article [__] Technical supervision of mining under a Mining Lease

(1) A mineral right shall not be granted by the [Regulating Authority] to any company unless the company has employed a person who possesses adequate professional qualification and experience in mining and the [Regulating Authority] is satisfied that the company shall, during the currency of the lease, have such qualified person in its employment.

(2) Where a mineral right has been granted, the lease shall remain in force during such time only as the lessee employs a person who possesses adequate mining experience and qualification in mining, to supervise personally the mining operations being undertaken by the company during the period of the lease.

(3) Where a person with adequate mining qualification and experience in mining is not available to supervise the mining operations being undertaken under a lease, the company shall cease operations until a suitably qualified person is available.

Article [__] Lands excluded from minerals exploration and exploitation

(1) No mining right granted under this [Act][Code][Law] shall authorize prospecting/reconnaissance, exploration or mining/exploitation of mineral resources on, or in, or the erection of beacons on or the occupation of any land:

(a) Within [X] meters of an oil pipeline license area; and

(b) Occupied by any town, village, market, burial ground or cemetery, ancestral, sacred or archaeological site, appropriated for a railway or situated within fifty meters of a railway, or which is the site of, or within fifty meters of, any Government or public building, reservoir, dam or connection with the mining operations conducted under its lease, temporary title or license granted under this [Act][Code][Law] involving loss of life or serious injury to a person or significant impacts to the public road.

(2) No reconnaissance/prospecting activity shall be carried out and no mining right shall

safety requirements upon mine operations, which, as discussed above, help to reduce the risk of environmental accidents. These types of requirements can be imposed on different types of mineral rights holders.

Provisions like those in paragraph (2) impose obligations on license holders to ensure that qualified persons are overseeing mine operations.

Because environmental accidents are unfortunately inevitable given the nature of the operations and human error, it is important to consider and evaluate the amount of risk assumed by governments and the communities in close proximity to the operations. The risk of harm to the environment and human health are reduced when operations are located away from sensitive locations (e.g. lands of cultural significance, population centres, and environmentally-sensitive areas). Therefore, provisions that explicitly exclude mining operations from certain “closed” areas that, if involved in an accident, would experience significant impacts (i.e., oil pipelines, public buildings, reservoirs, etc.) may be warranted.

The remaining provisions pertain to what happens once an environmental accident occurs. As a general matter, accidents should first be reported to the relevant officials and then investigated. The nature of the accident, based on the potential environmental impact, generally dictates what type of reporting and investigations are conducted. The larger the accident, the more significant a role the government should play. For smaller accidents, the responsibility for investigating the root cause of an accident could rest with the mineral right holder as maintaining a large governmental role in investigating the cause of all accidents could be an administrative burden. Note, however, that small accidents, if not addressed, could lead to larger accidents in the future. Therefore, in cases where smaller accidents are investigated by the mineral right holder, the reports should still be filed with the regulating entity. It is important that these matters are also addressed, even if in a manner different than larger environmental accidents.

To the extent that the government is involved in investigating an accident, it is not necessary for that investigative body to have powers similar to that of judges. However, the investigative body should (1) be neutral and independent, and (2) have the authority to make recommendations either to the government or to the mineral right holder directly. These provisions
### Article [_] Report of accident

1. The mining right holder shall, if an accident occurs in any mine or in environment, report the accident immediately, with full particulars of the accident;
   
   a. To the nearest police station; or
   
   b. To the office of the [State Regulating Authority] in which the accident occurred.

2. The place where the accident occurred shall be left undisturbed, and no person shall interfere with the surface working or any part in which or on which the accident has occurred until the place or anything at the place, has been visited or examined by an [Inspector or quarry officer].

### Article [_] Panel of inquiry

1. If an accident occurs in a mine, the [Regulating Authority] shall set up an independent panel consisting of not less than [X] members to inquire into the cause of the accident.

2. The panel of inquiry shall determine the cause of the accident including:
   
   a. Whether the holder or its agent is guilty of negligence or took all reasonable and proper precautions to prevent the accident;
   
   b. Whether any person was killed or injured as a result of the accident or whether any significant environmental impacts were caused by the accident; and
   
   c. How future accidents might be prevented.

3. For the purposes of an inquiry under the provisions of this [Act][Code][Law], the panel appointed by the [Regulating Authority] to conduct the inquiry shall have the power to:
   
   a. Authorize any person, where necessary, to have access to the mining operation or any surface area and remove anything from the place where the accident occurred and take such other measures as may be necessary for the conduct of the inquiry;
NOTE: This Document is part of a multi-part document, Parts A - E
plan; and
(b) Take all reasonable measures on or under the surface to mine the mineral to which the license relates.

(3) Application for a mineral right shall include:
(a) In respect of radioactive minerals, the application shall contain the following additional information:
   (i) A program to educate persons living in the vicinity of the mine or processing facilities of the general nature and characteristics of anticipated effects on the environment, health and safety of persons;
   (ii) Programs to assist authorities outside the mining area in planning and preparing to limit the adverse effects of an accidental release of radioactive substances; and
   (iii) In relation to security, the proposed measures during storage and transportation of any radioactive mineral products and measures to alert the holder to acts of sabotage at the mine or processing facility.

(3) Subject to the other provisions of this section, a mineral right holder may suspend or curtail production for any of the following reasons:
(a) An unsafe working environment;
(b) Uncontrolled pollution of the area resulting from the mining operations.

(4) The [Regulating Authority] shall, where the [Minster] receives notice under subsection (3) or becomes aware of any suspension or curtailment of production, cause the matter to be investigated.

<table>
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<th>38. Environment</th>
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<td>38.7 Remediation of Environmental Damage</td>
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</table>

These types of provisions seek to address the clean-up of pollutants discharged into various media (notably, groundwater and soil) to prevent or otherwise minimize adverse impacts to the environment. Similar to reclamation provisions (provided below), remediation provisions often set up liability regimes, establish clean-up standards, and impose financial assurance obligations on the mining/exploitation license holder.
The details of such a framework do not have to be contained within a mining code, but such a framework should be established.

### 38.7. Example 1:

**Article [ ]**

1. The mining/exploitation right holder is responsible for any environmental damage, pollution or ecological degradation as a result of his or her reconnaissance/prospecting, exploration or mining operations and which may occur inside and outside the boundaries of the area to which such right, permit or permission relates.

2. An applicant who prepares an environmental management program or an environmental management plan must describe the manner in which he or she intends to:
   - Modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation; and
   - Contain or remedy the cause of pollution or degradation and migration of pollutants.

3. **Power to recover costs in event of urgent remedial measures.**
   - If any prospecting, reconnaissance, exploration or production operations cause or result in ecological degradation, pollution or environmental damage which may be harmful to the health or well-being of anyone and requires urgent remedial measures, the [Regulating Authority] may direct the holder of the relevant right, permit or permission to:
     - Investigate, evaluate, assess and report on the impact of any pollution or ecological degradation;
     - Take such measures as may be specified in such directive; and
     - Complete such measures before a date specified in the directive.

4. If the holder fails to comply with the directive, the [Regulating Authority] may take such measures as may be necessary to protect the health and well-being of any affected person or to remedy ecological degradation and to stop pollution of the environment.

5. Before the [Regulating Authority] implements any measure, he or she must afford the

### Annotation

Drawn from South Africa’s mining law (2002), this provision, similar to what has been done, for example, in the U.S., sets up a mechanism for the government to conduct the remediation activities and then recover its costs related to such activities. In conjunction with this, some countries have also established a clean-up fund, whereby license holders contribute some amount each year to a fund that can then be used to clean-up e.g. abandoned sites or sites contaminated by a license holder who is unable to pay for the clean-up. This allows governments to address contamination right away, rather than wait for a legal process to conclude.
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| holder an opportunity to undertake such measures itself.  
(6) In order to implement the measures contemplated in paragraph (3)(a), the [Regulating Authority] may by way of an ex parte application apply to a [Judicial Reviewer] for an order to seize and sell such property of the holder as may be necessary to cover the expenses of implementing such measures.  
(7) In addition to the application in terms of paragraph (6), the [Regulating Authority] may use funds appropriated for that purpose by [Parliament] to fully implement such measures.  
(8) The [Regulating Authority] may recover an amount equal to the funds necessary to fully implement the measures from the holder concerned.  

### Example 2:

**Article [_]**

(1) An application for a mining activity license made under [relevant section] shall include an environmental management plan including the applicant’s proposals for eliminating or minimizing the adverse effects on the environment of prospecting, reconnaissance, exploration or production activities.

(2) A mineral rights holder shall be strictly liable for any harm or damage caused by prospecting, reconnaissance, exploration, production activities or mineral processing operations and shall compensate any person to whom the harm or damage is caused.  
(3) Liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage.  
(4) Where there is more than one person responsible for the harm or damage, the liability shall be joint and several.  
(5) Where any harm or damage is caused to the environment or biological diversity, compensation shall include the cost of reinstatement, rehabilitation or clean-up measures which are incurred and where applicable, the costs of preventative measures.  
(6) Liability shall also extend to:  

### Annotation

Drawn from Zambia’s mining law (2008), this provision lays out a common liability scheme for addressing contamination, liability that is also joint and several. In other words, if multiple parties hold a license (or otherwise own and/or operate a site), all parties, regardless of relative responsibility for the contamination, are liable for the entire clean-up cost vis-a-vis the government and third-parties. This helps to ensure that those responsible for the contamination bear the financial burden of the harm caused.

The extent of the liability (see paragraph (6) can be tailored to accommodate each country’s unique circumstances.
### 38. Environment

#### 38.8 Reclamation

As a principle, mine closure and rehabilitation are the responsibility of the mining company, in accordance with the polluter pays principle. These provisions relate to the reclamation obligations of the mineral rights holder to restore land disturbed by mining operations upon closure or cessation of mining operations. Generally, the purpose of reclamation is to improve the post-closure site to a certain designated standard in order to prevent or repair environmental damage at the end of a mine’s life.

A key element of this topic is the planning for closure. A closure plan, with sufficient details, should be part of the permitting process, as with ESIAIs. Indeed, it is much better to plan for closure from the outset. If the closure plan is hastily developed in the last years of a mine’s life, the chances for success are dramatically reduced. It is also important to ensure progressive rehabilitation during the life of the mine. Mining laws and regulations should therefore clarify the timing, approval process, and periodic review of closure plans; adapt closure obligations to capacities and of different segments of mining industry (large scale, small scale, artisanal); establish monitoring, reporting and enforcement mechanisms; and require financial guarantees.

Mining laws may refer to internationally accepted guidelines and principles, such as the International Financial Corporation (IFC) standards. As the closure of a mine may have huge economic and social impact, closure plans are not only about environment clean-up and rehabilitation. Specifically, on economic and social impacts, mining laws, together with specifics closure plans, should therefore clearly assign responsibilities to mining companies and

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| (a) Any harm or damage caused directly or indirectly by the prospecting, reconnaissance, exploration, production activities or mineral processing operations to the economy or social cultural conditions; |
| (b) Any negative impact on the livelihood or indigenous knowledge systems or technologies of any community; |
| (c) Any disruption or damage to any production or agricultural system; |
| (d) Any reduction in yields of the local community; |
| (e) Any air, water or soil contamination or damage to biological diversity; |
| (f) Any damage to the economy of an area or community; or |
| (g) Any other consequential disorder. |
to the government. Ensuring coherence between closure plans and national or local development plans is one factor for success.

To ensure that costs associated with future reclamation will be guaranteed in the event the mining company is unable to implement the requirements, government agencies generally require mineral rights holders to provide sufficient financial assurance at the beginning of the mining operation. The need for financial guarantees for mine closure and rehabilitation is not questionable today. Such assurance is typically evaluated on an annual basis to confirm the financial adequacy of the instrument compared to the mine plan. It is important to both governments and mining companies that these financial assurance amounts are realistic and appropriate, with a clear understanding of the process of future adjustment of assurance amounts. The challenge is to design the best form of guarantee that is efficient from both the government’s and the companies’ perspective, while ensuring the implementation of the closure plan. In this regard, the form of the guarantee, its management and the condition of access to funds are as important as the amount of the guarantee. This topic should be addressed to facilitate the potential future re-use of mined lands and to provide governments and communities with certainty that funds will be available for closure and reclamation in the event the mining operator is unable to perform its reclamation requirements.

### 38.8. Example 1:

<table>
<thead>
<tr>
<th>Article [] Issuing of a Closure Certificate</th>
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<tbody>
<tr>
<td>(1) The mineral right holder remains responsible for any environmental liability, pollution or ecological degradation, and the management thereof, until the relevant government agency has issued a closure certificate to the holder.</td>
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<tr>
<td>(2) Within [180 days] of ceasing the mining operations (including lapsing, abandonment, cancellation, relinquishment of any portion of the licensed land or completion of a prescribed closing plan), the mineral right holder must apply for a closure certificate and file a closure plan for governmental approval. The mineral right holder must comply with all aspects of environmental authorization issued in relation to closure.</td>
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<th>Article [] Reclamation and Restoration</th>
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<td>Pursuant to the license issued with respect to the mineral right, the mineral right holder shall as far as reasonably practicable reclaim and restore, where applicable, the land disturbed, excavated, explore, mine or covered with tailings arising from its mining operations to its natural state or in accordance with best practices.</td>
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<th>Article [] Financial Provision for Reclamation and Remediation of Environmental Damage</th>
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<tr>
<td>(1) The mineral right holder must furnish during all stages of the project sufficient financial assurances for reclamation which will be reassessed by [Regulating Authorities] on an annual basis. The financial provision may be made by bank guarantee, letter of credit or a trust deed.</td>
</tr>
</tbody>
</table>

**Annotation**

Drawn from South Africa’s mining law (2002), this provision highlights that closure standards should be practical for assessing the adequacy of reclamation efforts. It is often unrealistic or undesirable to return the land to its pre-disturbance condition (i.e., backfilling an open mine pit).
(2) Once required reclamation and remediation of environmental damage is completed in accordance with the closure plan and related environmental authorizations, the mineral right holder’s financial assurance obligations shall be considered terminated.

(3) If, at the time of the cessation of mining operations, the [Regulating Authorities] is not satisfied with the financial assurance provided by the mineral right holder or the reclamation work performed in connection with environmental impacts assessed at the time of closure, it may appoint an independent third party to rehabilitate the closed mining or prospecting operation to address any latent or residual environmental impacts.

### 38.8. Example 2:

Article [__]

1. The holder of a mining/exploitation right shall carry out rehabilitation and reclamation of mined out areas to the satisfaction of the [Regulating Authority].

2. There shall be included in an exploration license or a mining lease granted under this Act, a condition that the holder shall submit an environmental restoration plan of the exploration or mining area that may be damaged or adversely affected by his or her exploration or mining operations.

3. The environmental restoration plan shall include the following:

   a. An identification of the exploration or mining area concerned, its current uses and productivity prior to exploration or mining operations.

   b. A detailed time table of the accomplishment of each major step to be carried out under the restoration plan which may include:

      i. The reinstatement, levelling, re-vegetation, reforesting and contouring of the affected land;

      ii. The filling in, sealing, or fencing off of excavations, shafts and tunnels, or

      iii. Any other method that may be prescribed.

   c. The use to which the land is proposed to be put following restoration, including a statement of the utility and capacity of the restored land to support a variety of alternative uses.

### Annotation

Inspired by Uganda’s mining law (2003), this provision offers a more detailed description of the requirements of the environmental restoration plan as provided in the Act (as drafted here based on Uganda’s Mining Code) or any implementing regulations in order to provide certainty to operators on the accepted standards of reclamation and the amount of financial assurance before commitment to a major mining project.

Financial assurance requirements can vary depending on the specific country’s preferences and can be adjusted later as circumstances require. Performance bonds are one common type of financial assurance, as provided here. Other types could include self-insurance, letters of credit, a cash trust fund, insurance or a trust set up on behalf of the government to which mining/exploitation holders must contribute on an annual basis (as adopted by Nigeria in its 2007 Minerals and Mining Act).
uses.

(4) In making a decision whether to accept the environmental restoration plan, the [Regulating Authority] shall take into account:

(a) The steps taken by the mining/exploitation holder to comply with applicable environmental protection standards, existing land use policies and plans and any applicable health and safety standards; and

(b) The consideration that has been given in developing the environmental restoration plan in a manner consistent with local physical, environmental and climatological conditions and best practices.

Article […] Environmental performance bond

(a) The [Regulating Authority] may require the mineral right holder to execute an environmental performance bond to ensure the fulfilment of all the environmental requirements under this [Act][Code][Law].

(b) The amount of such bond shall depend on the environmental restoration plan and shall reflect the probable difficulty of restoration, taking into consideration such factors as topography, geology of the site, hydrology and re-vegetation potential.

(c) Liability under the bond shall be for the duration of the mining and restoration operations.

### 38. Environment

#### 38.9 Enforcement and Non Compliance

In addition to setting out the environmental obligations of mineral rights holders, a mining law should provide for a specific mechanism by which the government may oversee mining operations and compel mineral rights holders to follow through on those obligations and correct environmental problems through enforcement actions.

Many countries provide the government with a general authority to enforce the violation of any requirement, which may include environmental protection requirements. The effect of noncompliance can range from loss of the mineral right to civil liability to imprisonment of the mineral rights holder.
The penalties should be commensurate with the damage caused by taking into account the various types of applicable sanctions (administrative, criminal, civil), as well as affirmative environmental obligations. They should also be significantly dissuasive enough to avoid paying penalties being less costly than remediation of damage.

Companies should be encouraged to establish internal or community-level grievance mechanisms to facilitate the compliance with environmental regulations.

Existing procedural rules should be applied for discovery of non-compliance or where rules do not exist, government should create general rules for such cases.

### 38.9. Example 1:

**Article [x]**

(1) The [Regulating Authority] may cancel or suspend any reconnaissance/prospecting right, exploration right, mining right or retention permit if the holder thereof:

(a) Is conducting any reconnaissance/prospecting, exploration, or mining operation in contravention of this [Act][Code][Law];

(b) Breaches any material term or condition of such right, permit or permission;

(c) Is contravening the approved environmental management program; or

(d) Has submitted inaccurate, incorrect or misleading information in connection with any matter required to be submitted under this [Act][Code][Law].

(2) Before acting under subsection (1), the [Regulating Authority] must:

(a) Give written notice to the holder indicating the intention to suspend or cancel the right;

(b) Set out the reasons why he or she is considering suspending or cancelling the right;

(c) Afford the holder a reasonable opportunity to show why the right, permit or permission should not be suspended or cancelled; and

(d) Notify the mortgagor, if any, of the reconnaissance/prospecting right, exploration right or mining right concerned of his or her intention to suspend or cancel the right.

**Annotation**

Drawn from South Africa’s mining law (2002), this provision empowers the regulating authority to terminate or suspend the mineral right in the event that the rights holder fails to comply with any requirement under the mining law, including environmental obligations. The rights holder may be directed to take certain corrective actions to remedy the environmental issues. The rights holder is also afforded the opportunity to present its case to the regulator as to why the right should not be ended.

This language is oriented toward motivating the rights holder to perform the work itself, rather than having the government assume the responsibility. The threat of rescinding the right is used to encourage the rights holder to comply with the government’s directions.
(3) The [Regulating Authority] must direct the holder to take specified measures to remedy any contravention, breach or failure.

(4) If the holder does not comply with the direction given under subsection (3), the [Regulating Authority] may act under subsection (5) against the holder after having:

(a) Given the holder a reasonable opportunity to make representations; and

(b) Considered any such representations.

(5) The [Regulating Authority] may by written notice to the holder lift a suspension if the holder:

(a) Complies with a directive contemplated in subsection (3); or

(b) Furnishes compelling reasons for the lifting of the suspension.

38.9. Example 2:

Article [...]  
(1) The [Regulating Authority] may, with due regard to good reconnaissance/prospecting practices, good exploration practices or good mining practices by notice in writing addressed and delivered to the holder of a mineral license, give directions to such holder in relation to -

(a) The carrying on of reconnaissance/prospecting operations, exploration operations and mining operations, including the erection or construction of any accessory works;

(b) The protection of the environment;

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

(d) The construction, erection, maintenance, operation or use of accessory works;

(e) The removal of accessory works or other goods erected, constructed or brought on land in connection with the prospecting for, the exploration for, or mining or conveyance of, any mineral or group of minerals which is not used or intended to be used in connection with such prospecting, mining or conveyance;

Annotation

Drawn from Namibia’s mining law (1992), this provision, like South Africa’s in Example 1 above, permits the government to issue directions to rights holders for environmental protection purposes. The government has expansive powers to order corrective action and, if the rights holder fails to comply, recover the costs associated with the government performing the corrective work itself. Noncompliance is subject to civil and criminal penalties.

Whereas the primary threat to the rights holder in Example 1 is the loss of the mineral right, Example 2 directly raises the prospect of criminal penalties, including jail time, and the monetary costs of clean-up.
A rights holder may choose to employ methods for extracting minerals that could be considered wasteful. For example, certain mining practices involve the use of enormous amounts of water for excavation, yet yield a relatively small amount of extracted minerals and no reuse of the water.

To protect against these practices, most countries include a general prohibition against wasteful mining or treatment. The regulating authority is permitted to direct rights holders to refrain from wasteful practices and terminate the mining license for noncompliance. The key distinction among different countries’ laws tends to be the level of discretion accorded to the government.

**38.10 Example 1:**

Article [...]  
(1) Where the [Regulating Authority] considers that a holder of a mineral right is using wasteful mining practices, the [Admin Reviewer] shall:

**Annotation**

Inspired by Zambia’s mining law (2008), this provision provides the government with broad discretion to determine what mining practices are precluded due to wastefulness. The regulator must provide the specific reasons why the practice is wasteful, but ultimately has a great deal of power.
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| (a) Give notice to the holder specifying the particulars of the wasteful mining practices; | in setting boundaries for wasteful and useful practices. |
| (b) Request the holder to cease the wasteful mining practices and remedy any damage caused by the practices; and | Because of the expansive powers provided to the regulator, as well as jeopardy of the entire license if the rights holder fails to comply, this language may discourage investment in mining projects as too risky. In many instances, it may not be possible for the rights holder to remedy all damage that may have been caused by a practice later deemed wasteful. |
| (c) Require the holder to reply in writing showing cause, within a time specified by the notice, why the holder's license should not be revoked. | |

(2) The [Regulating Authority] shall, where a holder fails, within the time specified in the notice, to cease using the wasteful mining practices or to remedy any damage caused by the wasteful mining practice, cancel the license.

### 38.10. Example 2:

Article [ ]

(1) Subject to [relevant section], the [Regulating Authority] may direct the holder of a mineral right to take corrective measures if it establishes that the minerals are not being mined optimally in accordance with the mining work program or that a continuation of such practice will detrimentally affect the promotion of employment and social and economic welfare of all [Country] citizens.

(2) Before making the recommendation, the [Regulating Authority] must consider whether the technical and financial resources of the holder of the mineral right in question and the prevailing market conditions justify such recommendation.

(a) If the [Regulating Authority] agrees with the recommendation, he or she must, within [30 days] from date of receipt of the recommendation of the [Regulating Authority], in writing notify the holder that he or she must take such corrective measures as may be set out in the notice and must remedy the position within the period mentioned in the notice.

(b) The [Regulating Authority] must afford the holder the opportunity to make representations in relation to the [Regulating Authority]'s findings within [60 days] from the date of the notice and must point out that non-compliance with the notice might result in suspension or cancellation of the mineral right.

(3) The [Regulating Authority] may, on recommendation, suspend or cancel a mineral right if:

#### Annotation

Drawn from South Africa’s mining law (2002), this provision, compared to Example 1 above, places greater restraint on the regulator’s ability to unilaterally determine that a practice is wasteful and must be corrected. This is because the regulating authority must consider the rights holder’s financial conditions and the state of the market, and seek the concurrence of the regulating authority (or equivalent high-level official).

Rights holders are therefore more insulated from capricious decisions and accordingly have a greater incentive to commit more resources to the mining operation.
### 39. Other Natural Resources

Mining activities typically impact other natural resources both within and around the areas surrounding mining sites. In addition to general environmental concerns, a mining law may also address resources including (but not limited to): land, water, forestry and timber. These provisions typically will govern the interaction between mining title holders and land owners (individual and/or communal); when and to what extent both land owners, community members and mining title holders may use these resources (such as drawing from underground water reserves or logging); and whether the mining title holder needs additional licensing or approval from the regulating authority or other relevant government bodies in order to use any of these resources that exist within the boundaries of the license.

#### 39.1 Land

“Land” in the mining law context typically refers to the surface of the land and includes the seabed beneath territorial waters, where applicable. While land is often addressed in a separate act, it is important for a mining law both to reference the relevant legislation and to reiterate relevant rights, procedures and protections that impact land in and around mining sites. Some considerations that should inform this section are:

- How land rights or ownership are organized within the country whether land is privately held, communally owned, publicly owned and managed at the central government or subnational government level
- How land is acquired for the project whether pursuant to free prior informed consent, consultation with communities or expropriation
- Compensation of landowners or users for loss of land or disturbance of use of land
- Relocation and resettlement issues and the human rights issues that can be triggered
- Coexistence and/or overlapping rights between mining projects and other types of users or uses

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(a) The holder of that mineral right fails to comply with a notice contemplated in subsection (1); or

(b) Having regard to any representations by the holder, the [Regulating Authority] is convinced that any act or omission by the holder justifies the suspension or cancellation of the right.

(4) The [Regulating Authority] may, on recommendation, lift the suspension of a mineral right if the holder in question:

(a) Complies with the notice contemplated in subsection (1); or

(b) Furnishes compelling reasons for the lifting of the suspension.
AMLAD GUIDING TEMPLATE
PART D: Environment & Other Natural Resources

- Resolution of disputes regarding these issues above.
- The distinction between surface (land) and subsurface (minerals) rights;
- The relationship between the landowner (or lawful occupier) and the mineral right holder (including compensation)
- Procedures for acquisition of land subject to mining
- Relocation and resettlement issues

39.1. Example 1:

| Article [...] Restrictions of rights of entry by holder of license or permit |
| (1) No person shall exercise any right conferred by a mineral license or permit upon any privately owned land - |
| (a) unless the person has given at least __ days’ notice of the intention to do so to the owner or lawful occupier thereof giving in such notice details of the area in which the right is to be exercised and the date of expiry of the permit or license. |
| (b) until such time as the person has: |
| (i) entered into a written agreement with the owner or lawful occupier of such land containing terms and conditions relating to the payment of compensation contemplated in section 4), or |
| (ii) the owner or lawful occupier of such land has in writing waved any right to such compensation; and |
| (iii) has submitted a copy of such agreement or waiver to the [Regulating Authority]. |

| Article [...] Rights under license or permit to be exercised reasonably |
| (1) Subject to the terms of any agreement with the owner or lawful occupier of the land, the rights conferred by a mineral license or permit shall be exercised reasonably and, except to the minimum extent necessary for the reasonable and proper conduct of the operations, shall not be exercised so as to prejudice the interest of any owner or occupier of the land over which those rights extend. |
| (2) No holder of a mineral license or permit shall create unprotected pits, hazardous waste dumps or other hazards likely to endanger the stock, crops or other lawful activity of the owner or lawful occupier of the land over which those rights extend. |

**Annotation**

Inspired by Botswana’s mining law (1999), these provisions give preference to the interests of the owner of the land, while still providing some protection to mineral license holders. The mineral license holder does not acquire ownership of the land. He/she has to negotiate entry to the land and agree with the landowner on compensation to be paid for disturbing the landowner’s rights.
A holder of a prospecting license shall, unless the [Regulating Authority] otherwise stipulates, within sixty days of the expiry or termination of the mineral license or permit, remove any camp, temporary buildings or machinery erected or installed and repair or otherwise make good any damage to the surface of the ground occasioned by the removal, in the manner specified by the [Regulating Authority].

Article [_] Right of owner or lawful occupier to use and access land
(1) The owner or lawful occupier of any land within the area of a mineral license or permit shall retain the right to graze stock upon or to cultivate the surface of such land insofar as such grazing or cultivation does not interfere with the proper use of such area for reconnaissance/prospecting, exploration, retention or mining purposes.

(2) In the case of a mining area or a retention area, the owner or lawful occupier of any land within such area shall not erect any building or structure thereon without the consent of the holder of the mining license or retention license, as the case may be, which consent shall not be unreasonably withheld; provided that where such consent is unreasonably withheld, the [Regulating Authority] may grant it.

Article [_] Compensation for disturbance of rights, etc.
(1) A holder of a mineral license or permit shall, on demand being made by the owner or lawful occupier of any land subject to the mineral right, promptly pay the owner, or occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier and for any damage done to the surface of the land by the operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of the operations, pay compensation for the damage.

(2) In assessing the compensation payable under subsection (a), account shall be taken of any improvement effected by the holder of the mineral right or by the holder's predecessor in title, the benefit of which has or will endure to the owner or lawful occupier thereof.

(3) The compensation payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals.
(4) No demand made in terms of this section shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under the mineral right pending the determination of compensation to be paid.

(5) Where a holder of a mineral right fails to pay compensation when demanded under the provisions of this section, or where the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(6) A claim for compensation under the provisions of subsection (a) shall be made within a period of [ ] years from the date when such claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.

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<th>39.1. Example 2:</th>
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<tr>
<td>Article [ ] A holder of a prospecting license shall, unless the [Regulating Authority] otherwise stipulates, remove, within sixty days of the expiry or termination of the exploration license, any camp, temporary buildings or machinery erected or installed and repair or otherwise make good any damage to the surface of the ground occasioned by the removal, in the manner specified by the [Regulating Authority];</td>
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| Article [ ] A small scale mining license confers on the holder exclusive rights to carry on mining operations in the mining area for minerals other than gemstones, and to do all such other acts and things as are necessary for or reasonably incidental to the carrying on of those operations. |

| Article [ ] (1) Without limiting the generality of subsection (1), a holder of a small-scale mining license may— |
| (a) enter into or upon the mining area and take all reasonable measures on or under the surface for the purpose of the mining operations; |

| (b) erect the necessary equipment, plant and buildings for the purposes of mining. |

| Annotation |
| Inspired by Zambia’s mining law (2008), these provisions give preference to the interests of mineral right holders, while still providing protection to landowners. |
transporting, dressing or treating the mineral recovered in the course of the mining operations; and

(c) conduct exploration within the mining area for any mineral.

Article [__]

(1) A holder of a license or permit shall not exercise any right under this Act or the license or permit without the written consent of the owner or legal occupier thereof or the duly authorized agent—

(a) upon any land which is the site of or which is within one hundred and eighty meters of any inhabited, occupied or temporarily uninhabited house or building;

(b) within forty-five meters of any land which has been cleared or ploughed or otherwise prepared in good faith for growing of farm crops or upon which farm crops are growing;

(c) upon any land which is the site of or is within ninety meters of any cattle dip, tank, dam or any private water as defined in the Relevant Water Legislation; or

(d) upon any land forming part of an aerodrome, other than an aerodrome referred to in sub paragraph (iv) of paragraph (a): Provided that where any consent required under this subsection is unreasonably withheld, the Regulating Authority may arrange for arbitration of the matter in accordance with section one hundred and thirty-one;

Article [__]

Subject to the terms of any access agreement, the rights conferred by a license or permit shall be exercised reasonably and, except to the minimum extent necessary for the reasonable and proper conduct of the operations, shall not be exercised so as to prejudice the interest of any owner or occupier of the land over which those rights extend.

Article [__]

Subject to the terms of any access agreement, the owner or occupier of any land within the area of a license or permit shall retain the right to use and access water and to graze stock upon or to cultivate the surface of the land in so far as such use, grazing or cultivation does not interfere with the proper working in the area for mining, prospecting.
or other operations to be carried on under the license or permit, but shall not erect any building or structure thereon without the consent of the holder of the license or permit. Provided that where such consent is unreasonably withheld, the [Regulating Authority] may grant it.

Article [ ]
(1) Subject to subsection (2), a holder of a license or permit who requires the exclusive or other use of the whole or any portion of the exploration or mining area for the purpose of the license or permit may, in accordance with the laws relating to such acquisition, acquire a lease thereof or other right to use the same upon such terms as may be agreed between such holder and the owner or occupier of the land.

(2) Except with the consents of the appropriate authorities, the holder of a license or permit shall not purchase or obtain a lease of or other rights over any land:

(a) dedicated as a place of burial;
(b) containing any ancient monument or national monument;
(c) which is the site of or is within ninety metres of any building or dam owned by the State; or forming part of a Government aerodrome;
(d) occupied as a village;
(e) reserved for the purposes of any railway track or within one hundred metres of any railway track;
(f) within the boundaries, or within sixty metres of the boundaries, of any city, municipality or township;
(g) used as a forest nursery or plantation or as a timber depot, sawmill or other installation for working a forest;
(h) declared to be a national forest or local forest;
(i) used as a street, road or highway;
(j) comprised in a National Park.

Article [ ]
(1) A holder of a mineral right shall, on demand being made by the owner or lawful occupier of any land subject to the mineral right, promptly pay the owner, or occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier and for any damage done to the surface of the land by the operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged
during the course of the operations, pay compensation for the damage.

(2) In assessing the compensation payable under subsection (1), account shall be taken of any improvement effected by the holder of the mineral right or by the holder's predecessor in title, the benefit of which has or will endure to the owner or lawful occupier thereof.

(3) The compensation payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals.

(4) No demand made in terms of this section shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under the mineral right pending the determination of compensation to be paid.

(5) Compensation shall not be payable under subsection (1) in respect of any indigenous wood or timber taken—

(a) upon land that has been declared a local forest or a national forest under the provisions of the [Relevant Forests Legislation]; or

(b) upon other land that has not been alienated by the [President] in accordance with the [Relevant Land Legislation].

(6) Where a holder of a mineral right fails to pay compensation when demanded under the provisions of this section, or where the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(7) A claim for compensation under the provisions of subsection (1) shall be made within a period of three years from the date when such claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.
In order to adequately address forestry protection and illegal logging, it is essential for mining codes both to make reference to relevant forestry legislation and address pertinent rights, protections, and licensing as it pertains to the mining sector. Where addressed in a mining code, the section may want to highlight different forest authorities (which may be separate from the environmental authority) and the need to specify the applicable agencies for coordination purposes. It should also ideally specify which timber rights exist as attached to the mining license and which may require further or separate authorization from the relevant authority. In addition, some key issues that may be addressed under forestry include:

- the necessary permits required (for clearing or use)
- timber rights that attach to the mining license
- use and sale of timber for other landowners/community around the mining site (this should be cross-referenced with the subtopic on land and coexistence between the mining project and third parties)

It is also worthwhile to consider, depending on country context, the need for a separate approval/licensing authority before activities related to logging or clearing to commence. This may encourage transparency and standardization of rights related to forest activities across all mining sites.

### 39.2. Example 1:

**Article [ ]**

(1) The holder of a mining right may, in order to construct buildings or perform any other operation required for mining activities, cut timber forming part of the domain of the [State] on the parcel of land that is subject to the right, in accordance with the rules set forth in the [Relevant Forestry Legislation] and the regulations. However, the rules referred to above do not apply to a person who effects line cutting not exceeding [x] metre in width.

(2) Similarly, except in the case of a strip of woodland established for the protection of lakes, watercourses, riparian areas and wetlands by government regulation under section [x] of the [Relevant Forestry Legislation], the rules apply neither to a person cutting trenches or performing other excavations nor to a person carrying out drilling work, provided the person has obtained prior authorization from the [Forest Regulating Authority] and complies with the following conditions:

(a) the total area of the trenches or other excavations, added, as the case may be, to the

### Annotation

Drawn from Quebec’s mining law (2015), this provision provides how and in what ways a mining license holder may use timber rights. The provision also explicitly lays out the types of cutting that are outside the scope of a mining license and require approval from the relevant authority managing forestry rights. Finally, notwithstanding general timber rights assumed by license holders, the provision makes an exception where any part of the mining site is deemed a protected ecosystem according to the relevant forestry legislation.
total area of excavations already carried out by another holder of a mining right, shall not exceed \([x\%]\) of the wooded area of the parcel of land in question;

(b) the area affected by the cutting of timber, which is required for drilling work, added, as the case may be, to the area affected by cutting already carried out by another holder of a mining right on the same conditions, shall not exceed \([x\%]\) of the wooded area of the parcel of land in question.

(3) The said [Regulating Authority] may give authorization subject to such other conditions and obligations as he may establish jointly with the [Other Relevant Authorities] responsible for the administration of this [Act][Code][Law].

(4) Moreover, the rules referred to in the first paragraph do not apply to a person who, in order to stake a parcel of land in accordance with section \([x]\), must cut timber forming part of the domain of the [State].

(5) Notwithstanding the foregoing, in any area classified as an exceptional forest ecosystem under the [Relevant Forest Legislation], the holder of the mining right must follow the rules set forth in the [Relevant Forestry Legislation].

### 39.2. Example 2

Article [__]

(1) Mining locations made under the [Country] mining law upon lands within an area of three thousand six hundred acres, more or less, shall confer on the locator the right to occupy and use so much of the surface of the land covered by the location as may be reasonably necessary to carry on exploration and mining, including the taking of mineral deposits and timber required by or in the mining operations, and no permit shall be required or charge made for such use or occupancy.

(2) Provided, however that the cutting and removal of timber, except where clearing is necessary in connection with mining operations or to provide space for buildings or structures used in connection with mining operations, shall be conducted in accordance with the rules for timber cutting on adjoining national-forest land, and no use of the surface of the claim or the resources therefrom not reasonably required for carrying on mining and exploration shall be allowed except under the national forest rules and regulations.

**Annotation**

Drawn from 16 U.S. Code § 482a - Mining rights in Prescott National Forest, this example lays out in a more detailed manner the different types of timber use that are allowed under a mining license. This use is restricted to what is necessary for mining. Distinct from example 1, this provision does not require a permit or other authorization in exercising the timber rights allowed under the mining license.

The provision specifies that any timber use beyond that allowed under a mining license will require a separate permit, and provides for the use of timber resources by other users to the extent that such use does not conflict with mineral development.

It should also be noted that this example also specifically addresses timber...
### 39. Other Natural Resources

#### 39.3 Water

Water is seldom defined in mining laws. From the context it can be deduced that water refers to any water body including rivers, streams, dams, underground reservoirs or watercourses, and the sea, where applicable. Water use for mining purposes is often dealt with in separate legislation and is not exclusively contained in mining codes. While addressing relevant rights, procedures and licensing (where applicable), the mining law should also reference the applicable related legislation. For this topic, it is advisable to balance the water needs of the surrounding community with the needs of the mining project in accordance and establish priority of use.

Some other key issues include:

- depletion and/or diversion of water sources (including periodic monitoring of water efficiency in mining operations and ecosystem management)
- periodic review of allocation of water during the life of the mining project
- monitoring of and liability for pollution of water sources (including regular testing of water quality)
- the necessary permits for required use
- water rights that attach to the mining license
- any additional permitting required as well as the identification of relevant authorities

#### 39.3. Example 1

**Article [ ] Rights in waters and wetlands**

Except as otherwise provided in this [Act]/[Code]/[Law], all rights in wetlands and in the waters of any spring, stream, river, watercourse, pond or lake on or under public land, are vested in the [Government]; and no such wetlands or water shall be obstructed, dammed, diverted, polluted or otherwise interfered with, directly or indirectly, except in accordance with the provisions of the [Relevant Water Act].

**Article [ ] Grant of water rights**

(1) Every application for a mineral right shall indicate whether the applicant intends-

#### Annotation

Inspired by Uganda’s mining law (2003) and Namibia’s mining law (1992), these provisions addresses the following water related issues in the context of mining:

- details of water sources to be used for mining purposes
- reference to separate water legislation dealing with water rights
- liability for water pollution
(a) To utilize for reconnaissance/prospecting, exploration and mining operations any water existing within the boundaries of his or her mineral rights;

(b) To utilize any natural source of water existing at the site to which mining products are conveyed for washing;

(c) To obtain and convey to the area of his or her mineral right from any natural water supply outside the boundaries of the mineral right, such specified volume of water as may be required for the relevant operations;

(d) To occupy any land that may be required for the construction of a dam, reservoir or pumping station and for the conveyance of such water to the area where the water is utilized, by means of pipes, duets, flumes, furrows or otherwise, and for such conveyance to have a right of passageway;

(e) To construct any works necessary for the collection, storage or conveyance of such water.

(2) The [Relevant Water Act] shall apply in relation to and for the purpose of acquiring the right to use water in any manner or for any purpose or object specified in subsection (1) of this section.

Article [...] Liability for pollution of water sources or other damages or losses caused

(1) When in the course of any reconnaissance/prospecting operations, exploration operations or mining operations, any mineral or group of minerals is spilled in the sea or in any water on or under the surface of any land or the sea or water is otherwise polluted or any plant or animal life, whether in the sea, other water in, on or under land, is endangered or destroyed or any damage or loss is caused to any person, including the State, by such spilling or pollution, the holder of such license or mining claim shall forthwith –

(a) Report such spilling, pollution, loss or damage to the [Regulating Authority];

(b) Take at his or her own costs all such steps as may be necessary in accordance with good reconnaissance practices, good exploration practices or good mining practices
<table>
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<th>or otherwise as may be necessary to remedy such spilling, pollution, loss or damage.</th>
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<tr>
<td>(2) If the holder of a license or mining claim referred to in subsection a fails to comply with the provisions of paragraph a, within such period as the [Regulating Authority] may deem in the circumstances to be reasonable, the [Regulating Authority] may direct by written notice addressed and delivered to such holder to take within such period as may be specified in such notice such steps as may be so specified in order to remedy the spilling, pollution or damage or loss; and the [Regulating Authority] may, if such holder fails to comply with such directions to the satisfaction of the [Regulating Authority] within the period specified in such notice or such further period as the [Regulating Authority] may on good cause shown allow in writing, cause such steps to be taken as may be necessary to remedy such spilling, pollution or damage or loss and recover in a competent court the costs incurred thereby from such holder.</td>
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### 39.3. Example 2

**Article [ ]**

(1) The Operating Permit for underground waters and geothermal deposits is granted by joint order of the [mining regulating entity] and the [hydraulics regulating entity] on the recommendation of the [mining regulating entity]. Operating Permits for geothermal deposits designate the volume which may be operated, by an area and two levels of depth. They may also limit the calorific content of what is extracted.

(2) Operating Permits for geothermal deposits may impose special conditions on the holder for extraction, use and reinserter of heat-conveying fluid and products contained therein so as to preserve the deposits as much as possible. Operating Permits for underground waters designate the area of operations. They establish the maximum output which the holder may extract. Unless the Title’s granting instrument specifies otherwise, no holder of an Operating Permit for underground waters may, in any event, extract a flow that could compromise the regeneration of these waters. Operating Permits for underground waters may also limit the volume which may be extracted by two levels of depth.

**Article [_]**
The development of underground water and geothermal deposits must be conducted so as to ensure the rational exploitation of these resources. To this end, the holders of

### Annotation

Drawn from Guinea’s mining law (2011), this provision addresses some key water rights issues in the context of mining:

- It ensures that any decisions relating to the allocation of water rights involve relevant regulating authority for water resources
- It requires a particular volume of water to be designated to a mine, so that it does not have access to unlimited amounts of water from all available sources
- The allocation of water is also limited by the physical availability of water – the amount of flow extracted cannot affect the ability of the underground water sources to regenerate.
- Operating techniques must be approved by the relevant authority to limit water pollution. Environmental standards set out in the country’s environmental and water law are also referenced.

It is also essential that pollution or water standards are referenced at multiple points throughout a mining law in the reference to the relevant related legislation and as a part of license holder obligations.
Exploration Permits and Operating Permits for underground waters and geothermal deposits must carry out the works using techniques approved by the hydraulic and energy industry in order to protect the waters from any pollution in accordance with the provisions of this [Act][Code][Law], the [Water Code] and the [Environmental Code].
## 40. Local Development

Local development, or local content (a term borrowed from the oil and gas sector) provisions address the combination of international best practice, national legislation and company policies that collectively support broad-based economic and social development of the country in which mining operations take place. These policies typically focus on the following areas:

- building the capacity and skills of local workers and service providers;
- facilitating the development and use of locally produced goods;
- transferring knowledge between mining companies and the local population;
- leveraging the construction and operation of mining-related transport, power, water and ICT infrastructure for broad-based development by implementing shared access models for non-mine users; and
- other projects that increase access to health, education and/or other necessities that support the communities around the mining sites.

Local development or local content policies are encouraged in the Africa Mining Vision. The latter is one of the critical factors to ensure that the mining sector contributes to sustainable development and poverty alleviation in developing countries. If well designed technically and legislatively and conscientiously implemented, local content policies tend to produce an employment multiplier effect, particularly because the most substantive expenditures of a mining company relate to purchase of goods and services, infrastructures, energy or employee’s salaries. Capturing a bigger part of these expenditures in developing countries while challenging can contribute to sustainable development.

Maximising the sustainable development impacts from mining requires the preparation of an overall sustainable development plan by the government that identifies areas where local capacity can be developed and the kinds of goods and services to be targeted for increasing local content. Governments can maximize benefits by identifying skills, goods and services for increasing local capacity that have the ability to be applicable to other sectors of the economy. Consultation with industry is encouraged in developing these requirements to ensure they are realistic.

When developing local development or local content provisions, governments need to ensure that such provisions are consistent with their international treaty obligations, notably with respect to: (a) the Schedule of Commitments undertaken as World Trade Organisation (WTO) members under the GATS and TRIMs Agreements. Some countries such as Botswana, China, DRC, Guinea, India, Peru and Tanzania exclude the entirety of the mining sector from Schedule of Commitments while countries such as Australia, Canada, Cote D’Ivoire, South Africa, United
States and Zambia include services incidental to mining; (b) negotiated bilateral investment treaties (BITs), which are agreements between two countries that establish the terms and conditions of foreign investment within a country and provide rights directly to the investors of each country which is a party to the treaty. Some BITs expressly prohibit countries from imposing certain types of local content requirements on companies and can be directly enforced by mining companies if they are incorporated in the same country as has entered into a BIT with the host country.

As part of the sustainable development plan or policy, governments are also encouraged to develop curricula in high schools, universities and technical training colleges, at the national or at regional level with others countries, to create or increase local capacity in targeted specialized skills. This could be a complementary policy to enhance the effectiveness of local skills training requirements put on the mining industry.

Finally, it is essential that any policies addressing local development/content clearly define what the term “local” means according to each individual country context and in a way that is consistent with the national vision for maximizing the benefits of the extractive sector. It is important for a government, when doing so, to take into account existing free movement of persons and good regulations or policy at regional integration organizations where it may be a member state. The following are some examples of how “local” can be progressively defined (a) for the purposes of workers and service providers: nationals, geographic long-term residents of the country, regional citizens and/or long-term residents, continental citizens and/or long term residents and (b) for the purposes of goods: nationally, regionally, continentally produced. It is critical to take a look at the potential for a progressive definition of “local” building from a “national” to a regional and ultimately continental category.

40. Local Development

40.1 Local Employment and Training

Local employment and training requirements refer to provisions that encourage or require mining license holders to prioritize the hiring, professional development and skills training of local individuals. Designed to maximize direct job creation from mining, these provisions may also address the need for transfer of skills and technology, recognizing the limited technical expertise present in some countries and ensuring that knowledge transfer takes place during the life of mining projects. A progressive increase in management and technical skills transfers can be evidenced by the progressive change in the composition of technical and management employees from largely expatriate to local over the life cycle of the mine.

To fulfil this aim, governments are encouraged to require companies to do some if not all of the following: use local workers for unskilled work;
hiring local individuals for skilled positions and managerial positions at increasing levels over time; and train local individuals, including through internship programs, scholarship programs etc. “Local” as noted above, can be progressively defined as impacted communities, sub-regional, national, regional continental workers.

While the requirement for mining licence holders to employ locally and implement/ fund training and skills-building programs should be clearly stated in law, the details concerning specific targets, percentages, and schedules should rather be set out in regulations and individual mining contracts so that they can be tailored to existing or planned capacity and can be changed over time. Laws can also require mining license holders to submit local content plans where mining license holders commit to certain targets and percentages, which are updated periodically to account for the progressive availability of local skills. Note that monitoring compliance with targets and percentages, as well as local content plans requires a good degree of government capacity. Obligations should be clear, reportable and adjustable and the specific targets, percentages and schedule for implementation should be public. Governments with little capacity can require the mining license holders to publish annual progress reports so to allow for public participation in monitoring implementation. Such an approach should perhaps also be supplemented with processes that encourage interaction between the community and company and local government to enhance the capacities needed to achieve, or even exceed, the objectives. Finally ensure consistency with relevant national laws (e.g. labour, education) as well as any regional or international laws.

40.1 Example 1:

Article [\_]

(1) Citizens of [Country] possessing the necessary qualifications and experience shall be given preference for employment in all phases of operations under a mining right, and in accordance with the national labour laws. Such priority shall progressively apply to citizens of member states of [Sub regional Community] and citizens of member states of the Africa Union in accordance with national and regional labour laws as applicable. The burden of proof shall be on the employer.

(2) A holder of a mining right shall not import unskilled labour for the carrying out of any of its operations undertaken under the mineral right.

(3) A holder of a small-scale mining licence or large-scale mining licence shall carry out a scheme of training and employment of local employees in each phase and level of operations taking into account the

Annotation

Drawn from Sierra Leone’s mining law (2009), this provision is noteworthy because it stipulates the best practice that all unskilled labour positions must be given to nationals (i.e. such positions cannot be filled by expatriates). There are also reporting requirements to monitor compliance with these requirements and heavy penalties in case of non-performance of obligations. It is also noteworthy that the provision refers to the application of national labour laws, which underlines the obligation of foreign investors to respect national law. It should be verified that a stability clause, which are sometimes incorporated in mining agreements/contracts to protect investments from an unpredictable regulatory environment, does not apply to reasonable changes in labour laws of general application so as to ensure the application of best practices in labour laws to the mining operation.

However, it would be useful to clarify the criteria of a non-compliance to reach to a “material breach” (level, frequency, etc.) and escalated specific penalties for different level of non-compliance (from suspension to cancellation).
requirements of safety and the need to maintain acceptable standards of efficiency in the conduct of the operations.

(4) The training programme shall provide appropriate instruction and training to ensure the advancement of employees of [Country citizenship] in the skilled technical, supervisory, administrative and managerial categories.

(5) A holder of a small-scale mining licence or large-scale mining licence shall submit an annual written report to the [Regulating Authority] describing the number of personnel employed, their nationality, their positions and the status of training programmes for citizens of [Country].

(6) Failure by a holder of a mining right to comply with the provisions of subsection (3), (4) or (5) shall be regarded as a material breach and if such person is the holder of a small-scale mining licence or large-scale mining licence, the licence may be suspended or cancelled.

34.1 Example 2:

Article [...] Holders of mining titles or permits are to abide by all local labour laws. Said holders and their suppliers and sub-contractors are to give priority, where there are equal qualifications and without any distinction as to sex, to managerial staff [who are Citizens of the Country] who have the required skills to effectively manage mining operations.

(2) Businesses shall submit a plan for training local managerial staff, so as to gradually replace expatriate staff, to [regulatory authority].

(3) Businesses shall be obliged to comply with increasing quotas for local employment according to various levels of responsibility. A decree by [the regulatory authority] shall establish the classifications for positions and the required quotas for local employment, according to the life cycle of the mine.

Annotation

Drawn from Burkina Faso mining law (2015), this provision is noteworthy for several reasons: First, the local employment requirement applies not only to the mining company but also to its sub-contractors. Second, the provision refers to the obligation of foreign investors to respect labour law and to gender issues. Third, it requires the submission by the mineral right holder of local employee training plans, and refers to a decree that will provide details on positions and progressive quotas for each life cycle of the mine which can allow for the achievement of an appropriate mix of developed skills.

The mineral right holder is also required to submit an annual report on the implementation of the local employment and training plan while the regulatory authority is required to publish the submitted report together with the local employment and training plan in a national journal.

It may be useful to require the mineral right holder to publish the report and plan ion...
(4) [The regulatory authority] is to receive an annual report from businesses on the status of the implementation of the requirements relating to the training, employment and promotion of local staff, and the annual report shall be published in national newspapers, together with the training plan referred to above, in paragraph (2).

(5) Employment contracts for foreign workers in the mining sector are to be approved by [the regulatory authority], under the conditions specified in a joint order from [regulatory authorities].

40. Local Development

40.2 Local Goods and Services

Local goods and services provisions generally encourage or require mining license holders to locally procure goods and services needed for business that are produced in-country and/or provided by locally-owned businesses. While these provisions may not necessarily bar mining license holders from importing goods or contracting foreign firms for certain services, some mining laws will, in some cases, require license holders to demonstrate absence of the applicable goods or services locally in order to be exempted from local procurement requirements, or offer specific tax incentives to encourage mining license holders to engage the local market. Local goods and services provisions can only be implementable when the government coordinates with the private sector to facilitate the creation and operation of local businesses with the capacity to service the mining sector.

The purpose of such provisions is to stimulate the local economy and promote local employment, not only directly at the mine site, but also indirectly. Local goods and services should be defined carefully so as to reduce the risk of intermediary or trading companies which are not local in nature. A local company should be defined to maximize the country's goals, and could include a locally registered company, a company with majority national ownership, or a company with both majority national ownership and majority national employees, particularly at the managerial level. The level of detail in the definition of a “local company” will depend on a country’s current capacity and overall goals which should be first set forth and developed in a local content policy. The risk of transfer pricing (see Section C) when such local companies are subsidiaries or affiliates of the mining company should also be carefully assessed and addressed. Furthermore, from a regional perspective, it may be important to
nuance the definition of “local” to allow for a prioritization of national followed by regional goods and services.

Additionally, it is essential to develop lists of target goods and services for increasing local capacity which can have spill over effects or be applicable to other parts of the economy, not only applicable to mining for best results. As with the definition of a local company, these lists should be in line with an overall national development plan. Ultimately, the goal is to encourage the creation of local added value rather than mere importers of foreign goods. In the same line, a coherent approach on tax incentives is crucial, especially regarding incentives on imports duties for targeted goods in the list. Targets for local goods and services should be in line with local capacity and reviewed regularly. It is always important to also review bilateral trade and investment treaties as well as WTO rules to ensure consistency with the specific obligations in the proposed mining law.

It is important also that any policy on local good and services policy address the issue of quality and quantity provided in the country. Several legislations in Africa subject the local good and services requirement to “comparable quality, quantity, delivery schedule and price” condition. In that regard, government may encourage and facilitate the creation of mining local goods and services associations in order to help them enhance their capacity to fulfil mining industry requirements.

Finally, as with local employment and training, the local good and services requirement should be clearly stated in law as obligation, while details concerning specific targets, percentages, and schedules can and should be spelled out in more details in regulations and contracts to allow for flexibility in adjusting requirements as local capacity develops. “Local” can also be progressively defined as impacted communities, sub-regional, national regional and continental.

40.2 Example 1:

**Article []**

(1) The holder of a mining right shall in the conduct of mineral operations, and in the purchase, construction and installation of facilities, give preference to

(a) local materials and products; and

(b) locally owned or resident service agencies.

(2) Without limitations on the preceding sections of this Article [], a holder of a mineral right shall procure goods and services with [local] content to the maximum extent possible and consistent with safety.

**Annotation**

Inspired by language from Ghana’s mining law (2006) and regulations (2012), this provision supplements the general language from the law with more specific provisions from the accompanying regulations. The regulations are particularly noteworthy for their planning, review and reporting requirements, allowing for the parties to develop a detailed procurement plan that is realistic and can be adjusted if necessary.

Although some sections in this provision are taken from the implementing regulations, the example reflects best practices in dealing with the procurement of local goods and services in the context of a mining law.
efficiency and economy.

(3) A holder of a mineral right shall submit to the [Regulating Authority] for approval, a procurement plan in accordance with sub regulation (1)

(4) The procurement plan shall be submitted within one year of the commencement the holder’s operations.

(5) The procurement shall be for an initial period of five years, and subsequently for a further five-year period.

(6) The procurement plan shall include:

(a) targets for local procurement;

(b) prospects for local procurement; and

(c) specific support to providers or suppliers as well as measures to develop the supply of local goods and services including broadening access to opportunities and technical and financial assistance”

(7) A person who fails to comply with Sections (1) and (2) above is liable to pay the [Regulating Authority] a penalty of [ten thousand United States dollars] for each month of the first six months of defaults and subsequently ten thousand US dollars for each day that the default continues

(8) The procurement plan shall be revised annually to take account of the requirements of the local procurement list.

(9) The holder of a mineral right shall submit semi-annually, reports on the implementation of the procurement plan.

(10) The [Regulating Authority] shall have a local procurement list and specify in the list the goods and services with [National] content which shall be procured in [country] by the holder of a mineral right.
(11) A holder of mineral right, who fails to comply with Section (10) is liable to pay the [Regulating Authority] the full import duty in respect of the goods imported and a penalty as provided in the local procurement list.

(12) The [Regulating Authority] shall review the local procurement list annually.

(13) In assessing tenders for goods and services on the local procurement list, where bids are within [two] percent of each other by price, the bid containing the highest level of [Country National] participation in terms of ownership and management by [Country Nationals] and employment of [Country Nationals] shall be selected.

(14) A person whose local procurement programme has been approved by the [Regulating Authority] under this [Code][Act][Law] shall submit an annual report to the [Regulating Authority] on or before the third first day of January each year, showing the level of compliance with the approved programme.

(15) “local” for the purposes of this Article [__], shall mean on a priority basis (i) citizens or companies or partnerships owned or controlled by citizens of [Country], and in the absence of citizens of [Country]; and progressively citizens or companies or partnerships owned or controlled by citizens of member states of [Sub regional Community] and citizens of member states of the Africa Union.

40.2 Example 2:

Article [__]

(1) The minimum [local] content in any project to be executed in the [Country] mining industry shall be consistent with the level set in the relevant Regulations issued pursuant to this [Act][Code][Law].

(2) Where a project description is not specified in the Regulation, the...

Annotation

Drawn from Nigeria’s Oil and Gas Industry Content Development Act (2010), this provision requires companies to comply with certain local procurement requirements as set out in the relevant regulations passed pursuant to the Act. Companies must also provide a detailed local content plan that set out, among other things, how companies will give priority to locally manufactured goods and services, and must consider local content when evaluating bids for goods and services. To help ensure
### AMLA GUIDING TEMPLATE

#### PART E: Local Development, Labour & Health

<table>
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<tr>
<th>Regulating Authority</th>
<th>shall set the minimum content level for that project or project item pending the issuance of a Regulation.</th>
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<tr>
<td>(3) All [company] and contractors shall comply with the minimum [local] content for particular project items, services or products specification set out in the relevant Regulations.</td>
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<tr>
<td>(4) Notwithstanding the provisions of subsection (1) of this section, where there is inadequate capacity to any of the targets in the relevant Regulations, the [Regulating Authority] may authorize the continued importation of the relevant items and such approval by the [Regulating Authority] shall not exceed 3 years from the date of the approval.</td>
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<td>(5) The [local] content plan submitted to the [Regulating Authority] by an operator shall contain a detailed plan, satisfactory to the [Regulating Authority], setting out how the [company] and its contractors shall give first consideration to [local] goods and services, including specific examples showing how first consideration is considered and assessed by the [company] in its evaluation of bids for goods and services required by the project.</td>
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<td>(6) The [local] content plan submitted to the [Regulating Authority] by any [company] shall contain detailed plan on how the [company] intends to ensure the use of locally manufactured goods where such goods meet the specifications of the industry.</td>
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<td>(7) All companies shall consider [local] content when evaluating any bid where the bids are within 1 % of each other at commercial stage and the bid containing the highest level of [local] content shall be selected provided the [local] content in the selected bid is at least 5% higher than its closest competitor.</td>
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<td>(8) All [companies] shall maintain a bidding process for acquiring goods and services which shall give full and fair opportunity to [local] contractors and companies.</td>
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</table>

that locally manufactured goods and services meet industry standards, mining companies are also required to invest in or help establish facilities to facilitate local manufacturing or service-provision of the goods in return for certain fiscal incentives.
(9) The award of contract shall not be solely based on the principle of the lowest bidder where a [local] company has capacity to execute such job and the company shall not be disqualified exclusively on the basis that it is not the lowest financial bidder, provided the value does not exceed the lowest bid price by 10 percent.

(10) The [Regulating Authority] shall make regulations which shall require any [company] to invest in or set up a facility, factory, production units or other operations within [Country] for the purposes of carrying out any production, manufacturing or for providing a service otherwise imported into [Country].

(11) The [relevant Regulating Authority charged with fiscal matters] shall, in consultation with the [Minister] make regulations providing an appropriate fiscal framework and tax incentives for foreign and local [companies] which establish facilities, factories, production units or other operations in [Country] for the purposes of carrying out production, manufacturing or for providing services and goods otherwise imported into [Country].

(12) “local” for the purposes of this Article [...], shall mean on a priority basis (i) citizens or companies or partnerships owned or controlled by citizens of [Country], and in the absence of citizens of [Country]; and progressively citizens or companies or partnerships owned or controlled by citizens of member states of [Sub regional Community] and citizens of member states of the Africa Union.

40. Local Development

40.3 Infrastructure (Construction, Ownership, Control, Use)

Infrastructure provisions address whether and how a mining license holder may construct installations (such as transport, power, water and ICT...
infrastructure) needed to operate a mine, import inputs, beneficiate and/or export the ore/mineral; who owns the infrastructure under the mining license; and how a mining license holder may use public infrastructure (such as waterways and roads) and what investment, access and maintenance obligations it has in this regard. These provisions may also address in particular what happens to such physical infrastructure after the mineral right has terminated, detailing whether former license holders may remove certain improvements on the land and assignments and the related costs. Such infrastructure may be provided by the state, may be constructed by companies, or be constructed by both in a public/private partnership. Outside of the primary mining law these provisions are sometimes addressed in the mining licence or mine development agreement. The right of way of all longitudinal infrastructure (such as railways and power lines) should always be retained by the government so that it can subsequently leverage economies of scope by allowing other types of infrastructure (ICT lines and water lines) to be laid alongside such infrastructure.

Infrastructure provisions in a mining law should broadly ensure that the country and surrounding community benefits from the infrastructure investments made by the mining company to the greatest extent possible. Where such social benefits are evident, In some cases, they can sometimes be achieved by requiring the infrastructure to be built and owned, or built, operated and subsequently transferred to the government or a regulated third party to ensure some access to other users. In other cases, it may be appropriate for a government to offer financial incentives to license holders who build infrastructure that can be used by the broader community and/or by third-parties (to the extent that this use does not interfere with the mining activities and that the requisite fees, if applicable, are paid to the license holder). The goal is clearly to move away from “enclave infrastructure” to infrastructure that promotes development. This may be an area where the ideal solutions have not yet emerged but it certainly requires joint planning between the government and mining companies. As such, an infrastructure master plan is required to assess to what extent infrastructure that a mine requires could also benefit non-mine users before open or shared access is required. This is because requiring in the context of a negotiated mining agreement/contract, such access may result in reduced royalties or other tax incentives that may be given away by the government in return. So if a cost-benefit analysis shows that access would not ultimately be feasible or beneficial, a government may be better off negotiating for something else.

Further issues to be considered may include:

- Environmental management, safety and security (including waste, disturbance, soil erosion, traffic management etc. For further details, see sections on environmental management in the Environment section)
- Appropriate negotiation between the Government and the investor to share in an adequate proportion the burden of constructing and maintaining facilities that would be used both by the company and the population.
- To the extent of third party use, whether users will be assessed a user fee and how the amount is determined.
- Determine who will have the burden of maintenance of the new infrastructure.
Provisions under this topic should also reference applicable related legislation, if any, that details further rules and regulations.

### 40.3 Example 1:

**Article [___]**

(1) Building the infrastructure required for mining activities shall be done by the State or as part of a Public-Private Partnership (PPP). In any event, the State shall either act directly or through an intermediary, in any entity which it owns or controls. Infrastructure projects are to be subject to competitive international invitations to tender and shall in all cases be consistent with the development plan for transport infrastructure which guarantees that third parties have access to the infrastructure.

(2) Regardless of how it is financed, transport infrastructure (railways, roads, bridges), ports, airports, developments and their annexes, water pipes and power lines, as well as any other permanent fixed assets, with the exception of production tools, developed for the use of a mining title must be transferred to the State free of charge once fully depreciated and within a maximum period of twenty (20) years.

**Annotation**

Drawn from Guinea’s mining law (2011), this provision requires that essential mining-related infrastructure is either provided by the state, or is designed, built, and operated in the framework of a public-private partnership (PPP), thereby separating the ownership of the infrastructure from the ownership/ rights of the mining project. In addition, all infrastructure projects must be awarded by international tender and all transport infrastructure must guarantee access to third parties. Finally, the provision requires that all infrastructure (transport, water and power transmission lines, etc.) must be transferred to the government free of charge after a period of time (limited to 20 years) that is necessary for a return on the infrastructure investment to be made.

### 40.3 Example 2:

**Article [___] Use of Infrastructure**

(1) Communication lines and other infrastructure installed or developed by the license holder within the area subject of the mining rights may be used by Government or third parties provided however, that fair compensation shall be paid and that such use does not unreasonably interfere with or obstruct the licence holder’s operations.

(2) All fixed assets installed by licence holder shall become the property of Government, upon termination of the mining rights, however, the

**Annotation**

Drawn in part from Liberia’s mining law (2000), the sections provide that all fixtures installed by the company in the mining area belong to the government, whereas all moveables belong to the company. In addition, the Government retains the right-of-way along which all longitudinal infrastructure is built and may lay other types of infrastructure alongside the company’s infrastructure. Finally, the company is required to allow access to some of the infrastructure it installs in the mining area.
movable assets shall remain the property of the mining rights holders.

(3) The Government shall have the option to acquire all or part of the moveable assets on terms to be set forth in the Mineral Development Agreement, and shall acquire title to all non-moveable fixed assets.”

(4) Fibre optic cable and other infrastructure installed or developed by the [licence holder] within the area subject of the mining rights may be used by Government or third parties provided however, that fair compensation shall be paid and that such use does not interfere with or hinder the licence holder’s operations.

(5) The Government shall retain the right-of-way along which any longitudinal infrastructure including, but not limited to, power lines, fibre optic cables, roads, and railways lines, constructed and or operated by the licence holder and may, in consultation with the licence holder lay down or permit third parties to lay down other infrastructure along those right-of-ways.

40. Local Development

40.4 Community Engagement (including Community Development Agreements)

Community development or engagement provisions in a mining law typically address how individuals or communities who stand to be affected by the project should be consulted prior to the development of a project and throughout the mining cycle, as well as how benefits of a mining project should be shared with them. Often in the form of agreements, these provisions are becoming more common under the context of free, prior and informed consent (FPIC) best practices, particularly with note to vulnerable populations (ethnic and religious minorities, women, etc.)

In a mining law, community development provisions may be covered in general provisions requiring license holders to take into account the impact of mining on surrounding communities through environmental, social and human rights impact assessments and mitigate such impacts in the form of financial and/or in-kind compensation of equal or better value. Elsewhere, the law may specifically require license holders to draw up and sign a community development (or benefits sharing) agreement with the community, spelling out the programs, approaches, and financing that
will be needed to facilitate efficient and transparent engagement between the license holder and the community. It should be noted that community engagement includes the building of infrastructure as part of a development agreement, and that any construction occurring in this context must be held to the same standards of construction that apply to infrastructure that is built specific to the mining operation. Some laws provide that companies must provide some portion of revenue directly to the affected community. Elsewhere a certain portion of tax revenue collected is required to be redirected to the affected community via regional and/or local authorities. Others jurisdictions have put into place specifics funds with contribution of government and mining companies to be used for local development investments and projects. Each of these approach has its own advantages and challenges and should be carefully designed.

One key factor in promoting community development is to ensure company corporate social responsibility activities are aligned with local development goals. The mining law and its regulation should provide clear guidance for negotiation and development of CDAs. Community Development Agreements (CDAs) should therefore require, rather than encourage, consultation with local communities for setting priorities for community development projects. Further, the agreement should state that the government will require such plans to be aligned with the relevant local government development plan. Agreements should also provide that the Government will ensure formal mechanisms for community and local government involvement in the implementation and monitoring of community development agreements, for example, through a committee with representatives from the mining company, local community and local government. It is also important that the CDAs provide annual report on implementation requirements, as well as annual meetings.

40.4 Example 1:

Article [...]  

(1) The holder of a small-scale or large-scale mining licence shall assist in the development of mining communities affected by its operations to promote sustainable development, enhance the general welfare and the quality of life of the inhabitants, and shall recognize and respect the rights, customs, traditions and religion of local communities.

(2) The holder of a small-scale or large-scale mining licence is required to have and implement a community development agreement with the primary host community if its approved mining operation will or does exceed any of the following limits –

(a) in the case of extraction of minerals from primarily alluvial deposits, where annual throughput is more than one million cubic metres per

**Annotation**

Drawn from Sierra Leone’s mining law (2009), this provision requires mining companies to contribute to the development of the community and protect its rights. In addition, it requires the signing of a CDA and it articulates clear guidelines for what should be included in it, including:

- how to define the community;
- how to ensure the full participation of the community in the decision making and monitoring processes;
- the preparations for mine closure; and
- the approval process of the CDA by the regulating entity.
year;

(b) in the case of underground mining operations, where annual combined run-of mine ore and waste production is more than one hundred thousand tonnes per year (waste material not exiting mine mouth to be excluded);

(c) in the case of open-cast mining operations extracting minerals from primarily non-alluvial deposits, where annual combined run-of mine ore, rock, waste and overburden production is more than two hundred and fifty thousand tonnes per year; or

(d) where the licence holder employs or contracts more than one hundred employees or workers at the mine site on a typical working day (including all shifts).

(3) The primary host community is the single community of persons mutually agreed by the holder of the small-scale or large-scale mining licence and the local council, but if there is no community of persons residing within thirty kilometres of any boundary defining the large-scale mining licence area, the primary host community shall be the local council.

(4) If the holder of the small-scale or large-scale mining licence and local council cannot agree on which community is the primary host community, the licence-holder may notify the [Regulating Authority] requesting clarification, and the [Regulating Authority] shall notify the licence holder and local council within sixty calendar days from the date of such notice, specifying which community is the primary host community.

(5) The holder of a small-scale or large-scale mining licence who is required to have a community development agreement shall negotiate with the primary host community the terms of the agreement, and such agreement shall include
the following:

(a) the person, persons or entity who represent the primary host community for the purposes of the community development agreement;

(b) the objectives of the community development agreement;

(c) the obligations of the licence-holder with regard to the primary host community including but not necessarily limited to-

   (i) undertakings with respect to the social and economic contributions that the project will make to the sustainability of the community;

   (ii) assistance in creating self-sustaining, income-generating activities, such as but not limited to, production of goods and services needed by the mine and the community;

   (iii) consultation with the community in the development of mine closure measures that seek to prepare the community for the eventual closure of the mining operations;

(d) the obligations of the primary host community with regard to the licence-holder;

(e) the means by which the community development agreement shall be reviewed by the licence-holder and primary host community every five calendar years, and the commitment to be bound by the current agreement in the event that any modifications to the agreement sought by one party cannot be mutually agreed with the other party;

(f) the consultative and monitoring frameworks between the licence-holder and the primary host community, and the means by which the community may participate in the planning, implementation, management and monitoring of activities carried out under the agreement; and

(g) a statement to the effect that both the licence-holder and primary
host community agree that any dispute regarding the agreement shall in the first instance be resolved by consultation between the licence-holder and the primary host community representative(s), and if this fails to resolve the dispute, either party may submit the matter for the [Regulating Authority], in consultation with the local council, to decide, and the decision of the [Regulating Authority] shall be final and binding on the licence-holder and the primary host community.

(6) A community development agreement shall take into account the unique circumstances of the licence holder and primary host community, and the issues to be addressed in the agreement may include the following issues:

(a) educational scholarship, apprenticeship, technical training and employment opportunities for the people of the community;

(b) financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power;

(c) assistance with the creation, development and support to small-scale and micro enterprises;

(d) agricultural product marketing;

(e) methods and procedures of environment and socio-economic management and local governance enhancement; and

(f) other matters as may be agreed.

(7) A community development agreement may not address any of the following matters:

(a) the imposition of any additional rent, fee, or tax for the benefit of the primary host community;

(b) the provision of any passenger car, truck, or four-by-four vehicle to
any individual of the host community or to the host community, other
than a specialized purpose vehicle such as an ambulance, fire engine, or
bus; and

(c) the provision of any monetary amount, service, good, or facility for
the sole benefit of an individual or single family unit.

(8) A community development agreement agreed and signed by the
authorized representatives of a small-scale or large-scale mining licence
and its primary host community shall be submitted for approval to the
[Regulating Authority] who shall, if the agreement meets the
requirements set out in this Part, approve such agreement within forty-
five calendar days of it being submitted.

(9) If the community development agreement is not
approved, the [Regulating Authority] shall notify the holder of the small-scale or large-
scale mining licence and the primary host community representative and
such notice shall contain the specific reasons for denial and the means
or directions by which such reasons may be corrected.

(10) The holder of the small-scale or large-scale mining licence and host
community representatives may submit any number of revised
agreements.

(11) If the holder of the small-scale or large-scale mining licence and its
primary host community fail after reasonable attempts to conclude a
community development agreement by the time the licence-holder is
ready to commence development work on the mining licence area, the
licence-holder or the primary host community may refer the matter,
jointly or individually, by notification to the [Regulating Authority] for
resolution, and the decision of the [Regulating Authority], in
consultation with the local council, thereon shall be final.

(12) A notification under subsection (4) from either or both parties shall
include the draft community development agreement proposed by the
party, description of the efforts to negotiate an agreement, issues that have been agreed, issues which have not been agreed, and proposals to resolve issues, and the [Regulating Authority] shall determine the matter within sixty calendar days of such notification.

(13) The holder of the small-scale or large-scale mining licence shall provide a copy of the community development agreement approved by the [Regulating Authority] to the Director within thirty calendar days of the date on which such agreement was approved, and the agreement shall be considered non-confidential and available to the public at the Mining Cadastre Office.”

40.4 Example 2

Article [...] (1) From a Mining Fund for Local Development, financing shall be allocated to regional development plans and community development plans.

(2) Money shall be paid into the Fund through contributions, on the one hand, from the State, of up to 20% of the proportional fees collected, which relate to the value of the products extracted and/or sold, and on the other hand, through contributions from mining title holders and recipients of industrial operating permits relating to quarry materials, of up to 1% of their monthly turnover excluding tax, or the value of the products extracted during the month.

(3) All holders of valid mining titles and recipients of valid industrial operating permits relating to quarry materials when the present [Code][Act][Law] comes into operation shall be under an obligation to contribute to the Mining Fund for Local Development.

(4) The Ministries in charge of Mining and Finance shall produce a comprehensive and exhaustive joint annual report on the status of

Annotation

Drawn from Burkina Faso’s mining law (2015), this provision takes an approach based on special funds to finance local projects rather than CDAs. It concerns community engagement, as the use of the funds should be based on projects as provided in community development plans and regional development plans. And priority is given to social development projects in those plans.

Noteworthy, the provision requires the contribution of State and mining companies. There are also annual publications obligations on amount available in the funds and use of the money to ensure transparency. Finally, details concerning the funds will be spelled out in more details in regulations.
contributions to the Mining Fund for Local Development. This report shall be published in the Faso Official Gazette and it shall be widely circulated in the press at the end of the second quarter of the year in progress, for the status for the previous financial year.

(5) Resources allocated to territorial communities from the Mining Fund for Local Development shall be included in the recipients' community investments programmes. They shall be allocated primarily to social sectors.

(6) Annual reports on the use of such resources are to be submitted to regional and municipal councils for adoption, and to the relevant organisations duly appointed by the State, for review. Annual reports on the use of resources from the Fund shall be widely published.

41. Labour

Labour as it pertains to the mining sector generally covers the legal and human rights that govern the labour relations between workers and employees. These rights, detailed in international as well as national labour and/or employment laws, usually address issues such as the negotiation of workers’ pay, benefits, safe working conditions, and rules regarding the organizing of labour unions. Labour can be a sensitive issue in the mining industry, as the perceived or actual failure to uphold relevant rights can strain not only worker and company interactions, but also those with local communities around the mining site (such as in the case of community exposure to toxic pollution). In addition to basic rights and duties, effective management of labour concerns also includes creating and maintaining an environment that prevents forced labour and child labour.

From the government perspective, in order to minimize or eliminate harm to citizens as well as business disruptions, a strong legal framework of labour and employment laws is crucial. In addition to labour issues addressed in the primary mining law, this framework must also include specific regulations that are tailored to the context of work in the mining sector, such as those addressing health and safety precautions in detail. Companies also play a role in strengthening the labour environment critical to site operations by establishing clear company-wide policies that reflect international and national best practice, spelling out the rights and obligations of all stakeholders at a mining site and ensuring that all staff,
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<th>41.1 Example 1:</th>
<th>Annotation</th>
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<tr>
<td>Article [...]</td>
<td>Drawn from Rwanda’s mining law (2014), this provision is a general reference to the labour laws and regulations. The text works if the country has a strong and independent labour law. The article is placed at the beginning of the mining law under the title general principles. In addition, it is advisable to place such reference at the beginning of the sector concerning labour law. If there are multiple applicable law sources it is advisable to name the specific laws (e.g. labour law, social security provisions, etc.).</td>
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<th>41.1 Example 2:</th>
<th>Annotation</th>
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<td>Article [...]</td>
<td>Inspired by language from Sierra Leone’s mining law (2009), Congo’s mining law (2002) and Cameroon’s mining law (2010), this provision highlights the prevalence rule as applicable to the Mining Code, ensuring that the labour rights of the workers are implemented, even if the general law is less strong on these standards. It would be advisable to set principles and rules at least for the following subjects in</td>
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Labour and Employment Law

41. Labour

41.2 Specific Prohibitions

In addition to the general labour rights and obligations outlined in this section, international law and best practice place a focus on the prohibition of particular types of labour, including but not limited to: child labour, forced labour and the use of indentured, migrant and/or prison labourers. The main drivers for use of these prohibited forms of labour are poverty, as well as the treatment of these groups as being cheap or free sources of labour. The presence of mining sites can exacerbate the exploitation of these vulnerable communities if appropriate labour policies are not instituted, followed and enforced carefully.

Mining laws can help to mitigate some of these risks by clearly stating the prohibitions within the law, for example by using the definition of a child consistent with the Convention on the Rights of the Child as a basis for determining when a child is underage for labour purposes. The law must also include adequate enforcement mechanisms, such as assessing the types of labourers working on site during official inspections, and including appropriate sanctions where a site is found to be engaging in prohibited forms of labour. Lastly, as with all areas of the mining law, prohibition of gender discrimination in labour practices should be clearly spelled out, and should include specific gender targets in the hiring, training, and knowledge transfer provisions in the mining law, labour and employment law, as well as relevant local content policies.

41.2 Example 1:

Article [__]

(1) Mining activities shall not employ as their workers:

Annotation

Usually, mining laws have specific prohibition of hiring children as workers. Accepting that children are special subjects of protection of law (as will be reflected in the next example), the law should also include protection for other human groups,
a) Any human being, no matter his or her condition, minor of 18 years since his date of birth. If the date of birth cannot be officially determined, the [Regulating Authority] will determine the age of the worker to the effect of the application of this prohibition;  

b) Indentured workers;  

c) Prisoners, except under regulated work, duly coordinated with the [Regulating Authority]  
d) Undocumented migrant workers, or any other foreign person without an appropriate work permit.  

41.2 Example 2:  

Article [__]  
(1) A holder of a mining right shall not employ or in any way use the following prohibited forms of labour for any mining activity, underground and over-ground:  

(a) A child under eighteen years of age shall not be employed in a mine, or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the [Regulating Authority] and/or that place at risk the child’s well-being, education, physical or mental health, or spiritual, moral or social development.  

b) Indentured workers or other forms of forced labour, including unregulated use of prison labour;  

c) Undocumented workers, migrant workers, or any other person without an appropriate work permit.  

Article [__]  
(1) It is an offense under this law to procure or employ prohibited labour  

That due their usually weak standing in the relationship with the mining projects, thus being forced to work under unfair and dangerous conditions.  

Annotation  
Inspired by Sierra Leone’s mining law (2009), and Tanzania’s labour law (2004), this provision includes specific details that allow both government officers and users to understand the reasons and circumstances why children should not work in mining and the consequences of it.  

We suggest a clear and detailed language, because parties in the relationship can clearly foresee the consequences of them omitting the application of the law.  

Even if this provision is included in the general Labour Code, we advise to include it again in the mining law. Examples 1 and 2 do not exclude each other.
in contravention of this section.

(2) In any proceedings under this section, if the age of the child is in issue, the burden of proofing that it was reasonable to believe, after investigation, that the child was not underage for the purposes of this section shall lie on the person employing or procuring the child for employment.

(3) The [Regulating Authority] will determine appropriate sanctions or other punitive measures in related regulations.

41. Labour

41.3 Mine Workers Rights & Duties

Mine workers’ rights and duties provisions typically address the protections and obligations of mine workers within the context of their employment at a mining site. Some issues addressed may include the right of a worker to leave a mine to protect his/her personal health or safety and broad protection in the form of non-discrimination against any person in their capacity as a mine employee.

It is also important to include reference to mine working conditions as miners work in a specifically risky environment where rights and duties go further than in most labour relationships. It should get regulated carefully and in detail, to minimize risks especially concerning health and security of the workers.

41.3 Example 1:

Article [\_] (1) The rights of a worker include the right to:
(a) work under satisfactory, safe and healthy conditions;
(b) receive equal pay for equal work without distinction of any kind;
(c) have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays;

Annotation

Drawn from Ghana’s labour law (2003), this provision contains a full list of rights and duties of mine workers. To avoid longer lists, the mining law can use a reference to others laws that specifically regulate the topics. However, at least a list including the principal rights and duties is advisable in the mining law.

Usually, duties are rights inversely read. This means that most of them are obligations that are designed to protect the worker (e.g. applying health and safety codes).
### AMLA GUIDING TEMPLATE

**PART E: Local Development, Labour & Health**

| (d) form or join a trade union; | **Annotation**
| (e) be trained and retrained for the development of his or her skills; and | Drawn from a manual prepared by the Ministry of Labour of Perú. ([http://www.mintra.gob.pe/mostrarTemaSNIL.php?codTema=89&tipo=20](http://www.mintra.gob.pe/mostrarTemaSNIL.php?codTema=89&tipo=20)), this regulation details the rights and duties of the workers mainly in occupational health and safety matters. It is not a general list of rights and duties. |
| (f) receive information relevant to his or her work. | |
| (2) Without prejudice to the provisions of this [Act][Code][Law], the duties of a worker in any contract of employment or collective agreement, include the duty to: | |
| (a) work conscientiously in the lawfully chosen occupation; | |
| (b) report for work regularly and punctually; | |
| (c) enhance productivity; | |
| (d) exercise due care in the execution of assigned work; | |
| (e) obey lawful instructions regarding the organization and execution of his or her work; | |
| (f) take all reasonable care for the safety and health of fellow workers; | |
| (g) protect the interests of the employer; and | |
| (h) take proper care of the property of the employer entrusted to the worker or under the immediate control of the worker. | |

#### Example 2:

**Article [...]**

(1) **Rights**

(a) Request inspections and inquiries from the (Health Regulating Authority), when the safety conditions at work are precarious.

(b) Know the safety risks at work, that might affect his/her health and safety.
### AMLA GUIDING TEMPLATE

**PART E: Local Development, Labour & Health**

<table>
<thead>
<tr>
<th>(c)</th>
<th>Get information about security or health at work.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d)</td>
<td>Receive medical help.</td>
</tr>
<tr>
<td>(e)</td>
<td>Receive medical and surgical attention, general and specialized.</td>
</tr>
<tr>
<td>(f)</td>
<td>Receive hospital and pharmacy attention.</td>
</tr>
<tr>
<td>(g)</td>
<td>Receive rehabilitation and prosthetic pieces, its correction or replacement when needed by normal use.</td>
</tr>
<tr>
<td>(h)</td>
<td>Receive continuous education opportunities</td>
</tr>
<tr>
<td>(i)</td>
<td>Elect his/her collective workers’ representatives.</td>
</tr>
</tbody>
</table>

#### 2. Obligations/Duties

<table>
<thead>
<tr>
<th>(a)</th>
<th>Be responsible for his/her own safety and co-worker safety</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>Do not operate or manipulate machines, valves, pipes or electric conductors, if the worker is not trained for that.</td>
</tr>
<tr>
<td>(c)</td>
<td>Report, immediately, any safety work incident.</td>
</tr>
<tr>
<td>(d)</td>
<td>Comply, strictly, the safety directions and regulations.</td>
</tr>
<tr>
<td>(e)</td>
<td>Participate actively in all programmed trainings.</td>
</tr>
</tbody>
</table>

#### 42. Occupational Health and Safety

Mines are potentially hazardous and unhealthy places by reason of the risk of exposure to chemicals, the complex machinery used in some mines, poorly kept mine equipment and conditions, among others. Unsafe working conditions in mines may thus cause serious injury, death, the spread of disease and ultimately, heavy costs for the health system. Occupational health and safety provisions typically address the obligations of various stakeholders, from license holders to government agencies, to create a safe working environment for persons who work in and around mining sites. These provisions may be provided for in other pieces of specific legislation such as a mine health and safety laws which should then be referred to...
in the mining law. These provisions may also be addressed within the mining law in general obligation provisions for the type of license or as a distinct chapter, and can include (but are not limited to):

- The minimum age of mine employees (including child labour prohibition);
- General occupational health and safety measures to protect mine workers (including use of explosives and hazardous materials);
- Standards for adequate housing (where the license holder provides housing on or near the mine site).

### 42. Occupational Health and Safety

#### 42.1 Applicability of Health & Other Relevant Laws or Regulations

Health and safety is a subject matter that has increasingly become an integral part of the mining laws and regulations of most African countries, particularly over the last 20 years. However, as mentioned above, there may be other applicable laws that govern the mining sector specifically or labour generally. This topic addresses provisions that provide for the application of national laws with regard to health and safety standards and/or international principles.

#### 42.1 Example 1:

**Article [ ]**

All holders of mining rights, must comply with the relevant provisions of all laws affecting health and safety at a mine site and/or in mining operations.

**Annotation**

Drawn and adapted from South Africa’s mining law (2002), this provision avoids mentioning specific pieces of legislation by name and instead provide for the applicability of health and safety laws and regulations as currently in effect.

When the mining law mentions specifically an act by name (e.g. “the Health and Safety Act”), the mining law should include a clause that eliminates any confusion about the application of subsequent modifications to that law (e.g. “as amended from time to time”).

#### 42.1 Example 2:

**Article [ ]**

All holders of mining rights shall be obliged to observe the highest

**Annotation**

Drawn from Liberia’s mining law (2000), this provision identifies the relevant regulating entities tasked with drawing up health and occupational safety standards.
### AMLA GUIDING TEMPLATE
**PART E: Local Development, Labour & Health**

| Standards of hygiene and occupational safety as established by the [Regulating Authority] in collaboration with the [Health Regulating Authority], the [Labour Regulating Authority], the [Environmental Regulating Authority] and other relevant governmental agencies. In this regard, mine and quarry operations shall be further obliged to draw up and enforce workplace regulations in accordance with such standards to ensure the hygiene and safety of their workers, plants and inventories. | In cases where they may not exist other governing pieces of legislation, the law may require the establishment of clear standards through the collaboration of relevant government regulations. |

## 42. Occupational Health and Safety

### 42.2 General Health and Safety Provisions

When a mining law includes health and safety provisions, it is recommended that the provisions be consistent with any other relevant and current legislation, particularly those that deal with health and safety standards across all sectors in detail. In cases where there is no national legislation related to health and safety, the mining law may establish the health and safety standards applicable to the mining sector and give authority to the appropriate regulating entities to make rules concerning such matters. These provisions may also, where necessary, include the setup of funding instruments (wealth funds, bonds, etc. to address non-environmental accidents and injuries.

### 42.2 Example 1:

**Article [...]**

1. During exploration or mining operations, a mining rights holder, in accordance with the generally accepted practices in the international mining industry, shall take all steps necessary to secure the safety, health and welfare of all persons engaged in such operations.

2. The procedures for the application and enforcement of such standards and work practices shall be prescribed in regulations and may be developed, in addition to the regulations, in the terms and conditions of any applicable Agreement.

**Annotation**

Adapted from Somalia’s mining law (1984), this provision calls for the implementation of international best practice as well as appropriate work place policies and regulations in order to safeguard the safety and health of people engaged in mining operations.
### 42. Occupational Health and Safety

#### 42.3 Inspection of Mines

Inspection of mines are carried out to ensure that mining operations are conducted in compliance with the standards established by law. Most mining laws and regulations include sections on inspections. They may also be detailed in a health and safety law or other national law. The requirement for mine inspections can also be found in the ILO Safety and Health in Mines Convention, 1995 (No. 176). Consequently, countries who have ratified the convention may want to cascade down the requirements that flow from the Convention or reference the Convention or other applicable national law in the mining law. A law may mandate a minimum number of regular inspections (usually every six months or once a year) and one of such inspections should be required before the opening of a new mine. An investigative kind of inspection may also be conducted that focuses on specific issues such as high risk areas, equipment or practices. An investigative inspection of mines may be part of a regular mine risk assessment or based on a complaint. Consequently, it is important to provide for anonymous reporting of non-compliance which allows the public and mine workers to assist in monitoring mine safety. An effective inspection depends significantly on the expertise and professionalism of the inspectors. Making rules on the procedures for mine inspection allows for a transparent process for mining operators and provides clear guidelines for inspectors. A finding of non-compliance may, based on the level of risk, provide for a chance to cure and/or a penalty.

### 42.2 Example 2:

**Article []**

The [Regulating Authority] shall make regulations to provide for matters concerning environmental protection, health and safety, including ensuring the safety of the public and the safety and welfare of persons employed in mines and the carrying on of mineral operations in a safe, proper and effective manner.

**Annotation**

Drawn from Ghana’s mining law (2006), this provision provides for the making of regulations which will detail the requirements for health, safety and environmental protection.

### 42.3 Example 1:

**Article []**

(1) A [Regulating Authority] may, at a reasonable time in the day or in

**Annotation**

Drawn from Ghana’s mining health and safety law (2012), this provision outlines the powers of inspectors, including the times for inspections as well as the mode of inspection. It allows the inspector to take samples of minerals and other substances as well as photos and extracts from documents. The inspector may also direct that...
the night and on the production of the appropriate authorization

(a) enter, inspect and examine a mine in a manner that does not unnecessarily impede or obstruct the working of the mine;

(b) examine and inquire into

(i) the state and condition of a mine or part of the mine and of matters and things that pertain to the mine in so far as they relate to the safety or health of persons employed in the mine, and

(ii) matters relating to these regulations, to minimize any damage that may be caused to the environment by mining and mining related operations; and

(c) enforce compliance with these regulations.

(2) For the purpose of an examination, inspection, or enquiry, an inspector may invite the manager of a mine or an official of the mine not below the rank of a mine captain or its equivalent, together with any other official or employee that the inspector considers necessary to accompany the inspector and that manager, official or employee shall comply with the request.

(3) A [Regulating Authority] may:

(a) take samples of minerals and other substances from a mine

(i) for the purpose of analysis or testing; or

(ii) for use in evidence in connection with an offence against these regulations, and

(b) for the purposes of inspection,

(i) take extracts from or make copies of a document, or

remedial measures be taken to the interest of safety, health and the environment. Non-compliance with such directives attracts punitive measures.
(ii) take photos of a mine.

(4) A [Regulating Authority] shall give a receipt for any object or document removed or taken in the course of the performance of the Inspector’s functions.

(5) A [Regulating Authority] may, by written notice to a holder of a mining lease, or the manager of a mine, order

(a) the cessation of operations in, and the withdrawal of any or all persons from the mine or part of the mine where the inspector considers necessary in the interest of safety health or the environment; or

(b) the discontinuance of the use of a machinery that the Inspector considers unsafe, until the action necessary for safety as specified in the notice is taken and completed.

(6) Where the [Regulating Authority] is of the opinion that a circumstance, practice or omission in a mine or part of the mine is so defective or dangerous as to be likely to cause bodily injury or cause damage to any property and there is no provision in these regulations concerning that situation, the Inspector shall:

(a) make an order which directs the holder or the manager of the mine to remedy the situation immediately or within the time specified by the Inspector, and

(b) confirm the order by notice in writing, specifying the matters considered defective or dangerous and which the holder or manager is required to remedy immediately or within the time specified in the order.

(7) A holder or manager who does not comply with an order made under sub-regulation (5) commits an offence and is liable on summary conviction to a fine of not more than [fifteen thousand penalty units] or a term of imprisonment of not more than twenty-five years or to both.
(8) A holder or manager may appeal against an order made by an Inspector under this regulation.

(9) A copy of an order made under this regulation shall be kept as part of the record required to be maintained under the record keeping obligations under this [Law][Act][Code].

(10) A [Regulating Authority] may:

(a) obtain and record statements from witnesses, or conduct enquiries regarding mine accidents, dangerous occurrences and contraventions of these regulations

(b) appear at inquests and call and examine witnesses and cross-examine witnesses, and

(c) conduct a prosecution for an offence under these regulations.

(11) A [Regulating Authority] may:

(a) exercise any power that is necessary for giving effect to these regulations; and

(b) impose penalties specified or deemed appropriate for an offence under these Regulations.

(12) A [Regulating Authority], in exercising the powers specified under these Regulations, may be assisted by a person who the inspector believes has special or expert knowledge of the matter being inspected, tested or examined.

42.3 Example 2:

Article […]

(1) Any authorized Inspector of the [Regulating Authority] may enter, during office hours, any license area and may:

Annotation

Drawn from Ethiopia’s mining law (2010), this provision describes the powers and the scope of (inspection) activities of an authorized inspector of a mine. Unlike Example 1, this provision provides for the inspector, clear seizure powers of
a) inspect any activity or process carried out in or upon the area in question;

b) inspect any book, record, statement or other document and make copies or extracts thereof;

c) examine any material or appliance found in the area;

d) take samples of any material and test, examine, analyse and classify such samples;

e) seize any material, appliance, book, record, statement or other document which might be relevant to a legal proceeding involving the violation of this Law, Act, Code, regulations or directives and keep it in the custody of the Regulating Authority; and

f) require support necessary for the accomplishment of the inspection in accordance with this sub-article.

(2) Where any material, appliance, book, record, statement or other document is put under the custody of the Regulating Authority in accordance with sub-article (1)(e) of this Article:

a) the person from whose possession or control any document is taken shall be allowed, under the supervision of the Inspector, to make copies or extracts thereof;

b) if no legal proceedings are instituted in connection with any of the items seized, or if it appears that such item is not required at any trial for the purpose of evidence or upon an order of court, that item shall be returned immediately to the person from whom it was seized.

(3) The Inspector shall show his letter of authorization to the appropriate officer of the licensee for conducting inspection under sub-article (1) of this Article.
In addition to the overall requirement to comply with health and safety provisions in the mining code or other laws and regulations, license holders should be required, either by law or contract, to develop and enforce onsite health and safety regulations to govern company operations in conformity with national legislation and regulations on this matter. These provisions may also specify which government officials and regulatory bodies will ensure that license holders are in compliance, as well as a system of periodic review to ensure on-site regulations are up to date with current health and safety best practices.

**42.4 Example 1:**

Article [...] Obligation to Draw up Workplace Regulations. All holders of mining rights shall be obliged to observe the highest standards of hygiene and occupational safety as established by the [Regulating Authority], in collaboration with the [other relevant Regulating Authorities including health, labour and environment]. In this regard, mine and quarry operations shall be further obliged to draw up and enforce Regulations in accordance with such standards to ensure the hygiene and safety of their workers, plants and inventories.

Article [...] Approval of Regulations. The texts of any and all such hygiene and occupational safety regulations shall be submitted to the [Regulating Authority] for prior review and subsequent approval. Once approved, copies thereof shall be posted in the most visible locations for workers within plants, Operation and other work sites.

**Annotation**

Drawn from Liberia’s mining law (2000), this provision not only requires the right holder to draw up the workplace rules in accordance with standards issues by the relevant regulating entities but also obligates a prior review of such rules by the regulating entity for approval. Further, the rules must be made visible to the workers.
### 42.5 Accidents

Accident and injury provisions typically address the definition, reporting and investigation procedure for incidents that occur on the mining site. Mining is considered an inherently dangerous activity, thus, prevention, response to, and reporting of accidents should be an integral part of the country’s mining law and regulation. State procedure varies widely and may include some of the following examples:

- Requiring license holders to report death or serious injury directly to a designated government official or regulatory body;
- Managing the investigation process either through a designated regulatory body or through an independently created inquiry panel.

#### 42.5 Example 1:

**Article [...]**

(1) Whenever an accident occurs in connection with exploration or mining operations causing or resulting in loss of life or serious injury to any person, the person in charge of the operations shall, as soon as possible, report in writing the facts up the chain of the right holder’s Management, who shall in turn report in writing the fact to the [Regulating Authority] who shall hold an inquiry into the cause thereof and record a finding.

(2) A copy of the report and finding shall be submitted to the competent labour authority.

**Annotation**

Drawn from Somalia’s mining law (1984), this provision requires that accidents are reported to regulating authority who undertakes an investigation. The regulating authority is also obligated to share the findings of the investigation with the appropriate labour authority.

#### 42.5 Example 2:

**Article [...]**

(1) Accidents occurring in a mine, quarry or in connection with operations that cause serious injury or death must be reported by the operator as soon as possible to the [Regulating Authority], and to such other Persons as may be prescribed by the laws of [Country] within the...

**Annotation**

Drawn from Liberia’s mining law (2000), this provision goes further to regulate what is required in cases of danger and accidents. It covers aspects such as: reporting, preservation custody, preservation of evidence and the practical application of the regulation. The reporting requirement is not only to the Regulating Entity but other relevant entities, ensuring that all relevant authorities which may include security, labour and environment are timely informed. While it may seem to create an unclear
(2) When accidents occur in connection with operations, the condition of the premises where the accident occurred shall be preserved without alteration until inspectors and representatives of the [Regulating Authority] have completed their investigations, or authorization to alter the condition of the accident scene or objects therein as obtained from the [Regulating Authority]. However, the foregoing prohibition shall not apply to the extent necessary to permit operations for the preservation of human life and property.

(3) In cases of emergency, where the Mine or Quarry Operator has failed to take appropriate hygiene and safety measures, the [Regulating Authority] or its duly authorized agents shall, in collaboration with the appropriate agencies of Government take whatever relief or preventive measures are necessary to remove or mitigate the danger and when necessary shall make demands on local government authorities with the view to saving human life and property.

(4) When part of the work in a mine or quarry is awarded to any contractor or subcontractor, the employees of any such contractor or subcontractor shall in all respects be obliged to respect all regulations provided for in this chapter.

(5) Subsequent to a discovery by any official of the [Regulating Authority]’s inspectorate or a complaint that a holder of a mining right has failed to implement any of the hygiene and safety regulations in this chapter, the [Regulating Authority] may prescribe, in collaboration with the [Health Regulating Authority], and the [Labour Regulating Authority], after hearing representations and recommendations from appropriate parties/agencies, measures required to ensure the hygiene and safety of the workers, plant and inventories. In cases of emergencies or imminent peril, the appropriate department of the [Regulating Authority] may promptly employ or prescribe provisional measures.
### 42. Occupational Health and Safety

#### 42.6 Insurance Coverage

Given that mining activities are largely conducted in labour-intensive and high-risk environment, insurance coverage becomes fundamental to the management of risk on site. It is therefore important that mining laws require license holders to obtain adequate insurance to cover on-site personnel and property with respect to health and safety risks.

**42.6 Example 1:**

*Article [__]*

(1) Mining rights licence holders must show proof of insurance coverage prior to the start of operations. At minimum, insurance coverage should cover risks including:

- (a) damage to mining sites
- (b) third party liability
- (c) occupational accidents suffered by personnel on the mining site; and
- (c) health and life insurance for all employees

**Annotation**

Inspired by language from Angola’s mining law (2011) and Sierra Leone’s mining law (2009), this provision requires mining rights licence holders to have insurance against risks, in particular to cover occupational accidents suffered during the course of mining operations and coverage for health and life insurance of employees. Ideally, proof (or a plan to obtain) insurance coverage should be submitted to the regulating authority during the application process for the mining licence.

#### 42.7 Standards for Housing and Living Conditions
The law should include, at a minimum, general provisions or reference to provisions which could appear in other legislation or regulations that specify the minimum requirements and standards for housing and living conditions for mine workers. Possible issues to be covered can include size of the dwelling, number of people to be housed within the dwelling, sanitation and utilities, protection against extreme climate conditions, pest control and nutrition.

### 42.7 Example 1:

**Article […] Transformation of minerals industry**

The [Regulating Authority] must, within [x] years from the date on which this [Code][Act][Law] took effect, (a) and after consultation with the [Housing Regulating Authority], develop a housing and living conditions standard for the minerals industry, to be published in subsequent regulations.

**Annotation**

Adapted from South Africa’s mining law (2002), this provision provides for the regulating authorities for mining and housing to jointly develop minimum housing and living standards for the mining sector, to be published within a defined time period in accompanying regulations. This approach allows for some degree of flexibility, giving regulating authorities the time to collaborate and draw up an appropriately detailed standard for the sector.

### 42.7 Example 2:

**Article […]**

(1) The owner of a mine, manager of a mine or a holder of a small scale mining licence, shall ensure that changing rooms are provided

(a) near to man riding shafts on the surface of an underground mine,

(b) at locations near to a work area of a surface mine, with separate provisions for males and females, and

(c) are proportionate in size to the number of persons employed in the mine.

(2) A changing room shall have

(a) sufficient lockers, cupboards or other suitable accommodation capable of being locked to enable each employee store goods separately;

(b) adequate facilities for bathing

**Annotation**

Drawn from Ghana’s Mining law (2012) this provision goes into more detail, discussing various amenities to be provided by the owner or manager of a mine. These include changing rooms and lockers, bathing and toilet facilities, an adequate supply of potable water and facilities for storage and consumption of food.
(c) adequate facilities for drying clothes; and

(d) suitable toilet facilities.

(3) An adequate supply of potable water shall be provided at a convenient and safe position close to each working place.

(4) The manager of a mine or holder of a small scale mining licence shall provide at a convenient place on the surface of the mine facilities for the storage and consumption of food in the mine.

(5) The manager of a mine or the holder of a small scale licence shall ensure that the mine has sufficient and suitable toilets and urinals for the use of employees of the mine and that

(a) where the number of persons employed does not exceed one hundred, there is one toilet for at most every twenty-five persons;

(b) where the number of persons employed exceeds one hundred, there is one additional toilet for at most every forty persons beyond the first one hundred persons;

(c) each main working level underground has a well-lit, well ventilated and screen toilet, which is kept clean;

(d) each bucket used in an underground sanitary convenience has a close fitting lid which is fixed on the bucket while it is removed to the surface; and

(e) a toilet is accessible to each workman.

(6) A person shall not pollute the mine with faeces or misuse a sanitary facility

(7) The person in charge of a working place or a section in a mine shall
ensure

(a) that the working place or section is clean and safe; and

(b) in the particular case of an underground mine, each level, drive, cross-cut and station is clean and safe and free of any defects.

(c) the manager of a mine or a holder of a small scale mining licence shall ensure that

(i) each toilet together with its surroundings within a perimeter of ten meters is disinfected at least twice every week, and

(ii) the dates of the disinfection are logged and the records are open for inspection by the inspector