

SOMALI DEMOCRATIC REPUBLIC

Law 7 Of 9 January 1984 Approving
And Containing The Mining Code

XEER L. _____ TIX

UJEEDDO: Law n° 7, of 9 Jan. 1984...
The Mining Code.



JAMHUURIYADDA DIMUQRAADIGA SOOMAALIYA

MADAXTOOYADA

MADAXWEYNAHA

THE PRESIDENT
OF THE SOMALI DEMOCRATIC REPUBLIC

CONSIDERING the approval of the Standing Committee of
the People's Assembly;

HEREBY PROMULGATES

the following Law:

Article 1

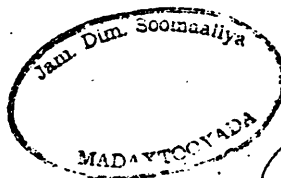
The Mining Code which is annex A to this Law, is hereby approved and shall form an integral part hereof.

Article 2

1. This Law shall be included in the Official Compilation of Laws of the Somali Democratic Republic and shall be published in the Official Bulletin.
2. It shall come into force upon signature by the President of the Somali Democratic Republic.
3. All persons shall be obliged to observe it as a Law of the Republic.

Mogadishu,

THE PRESIDENT OF S.D.R.
(Mohamed Siad Barre)



ANNEX A

MINING CODE
OF THE
SOMALI DEMOCRATIC REPUBLIC

(Law No. 7 of 9 January 1984)

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ANNEX A - MINING CODE

Part I - GENERAL PROVISIONS

Article 1

Definitions

In this Code unless the context otherwise requires:

"Adit" means a tunnel of inclination of less than fifteen (15) degrees in the horizontal which is or might be used for access, travelling, drainage or ventilation in connection with prospecting or mining operations;

"Agreement" means a contract between the Government and a person, relating to Hydrocarbon exploration and mining operations, establishing the terms and conditions, not inconsistent with the provisions of this Code or the Regulations, of any Oil Exploration Permit or Oil Mining Lease to which it relates;

"alluvial" includes all those mineral deposits which occur as detrital grains within unconsolidated near-surface materials;

"Commercial Discovery" means a discovery of Hydrocarbons which, in the judgment of the Government and a holder, can be produced commercially, based on a consideration of all pertinent operating and financial data, such as Hydrocarbon volumes, recoverable reserves, sustainable production levels and other relevant technical and economic factors, according to generally accepted practices in the international petroleum industry;

"Court" means a territorially competent Regional Court;

"Director" shall mean the Director-General of the Ministry of Mineral and Water Resources;

"to explore" means to carry out geological studies, geophysical studies, aerial mapping, investigations relating to subsurface geology, seismic surveys, structure test drilling, stratigraphic test drilling, the drilling of exploratory wells, appraisal drilling and related activities in connection with the exploration for Hydrocarbons under an Oil Exploration Permit granted pursuant to this Code;

"Government" means the Government of the Somali Democratic Republic;

"holder" means a person to whom a permit, license or lease has been granted pursuant to this Code, and includes his representatives, transferees or assignees;

"Hydrocarbons" means all natural organic substances composed of carbon and hydrogen called petroleum, including crude oil and natural gas, and all other mineral substances, products, by-products and derivatives that are found in conjunction with the same;

"lease area" means a portion of the geographic area of the Republic which is subject to a lease granted pursuant to this Code;

"license area" means a portion of the geographic area of the Republic which is subject to a license granted pursuant to this Code;

"lessee" means the holder of a lease issued under the provisions of this Code and includes all persons having a right or interest under such lease whether by transfer or otherwise;

"licensed mineral dealer" means a person to whom a mineral dealer's license is granted under the provisions of Article 78 of this Code;

"lode" includes all minerals occurring in solid form as vein, stockwork, replacement and stratiform deposits;

"mine" means any place, excavation or working where any operation in connection with mining is carried on;

"to mine" means intentionally to develop, extract, exploit or remove minerals including any operation necessary for the purpose and, in the case of Hydrocarbons, includes the storage, transportation, sale of other disposition thereof;

"minerals" means unless otherwise defined every naturally occurring mineral substance that can be mined including hydrocarbons, deposits of laterite origin, ores of precious, base and precious metals, alluvial deposits and minerals used for any industrial or agricultural process;

"mining rights" means the rights to mine as defined in this Code and the Regulations;

"Minister" means the Minister of Mineral and Water Resources;

"Ministry" means the Ministry of Mineral and Water Resources;

"passageway" means any highway, road, street, footpath, right of way, easement or installation of any railway, tramway, wireline, conveyor-belt, cableway, electricity or telephone line, chute, pipe, sewer, drain, tunnel, shaft, bridge, fluming or watercourse;

"person" includes a corporation, company, syndicate or other association or body of persons corporate or unincorporate;

"permit area" means a portion of the geographic area of the Republic which is subject to a permit granted pursuant to this Code;

"pit" has the same meaning as "shaft";

"police officer" means a police officer not below the rank of inspector or equivalent rank;

"to prospect" means to search for minerals, including such activities as are reasonably necessary to test the mineral bearing qualities of land and, in the case of Hydrocarbons, to explore therefor;

"prospecting rights" means rights to prospect as defined in this Code and the Regulations, and includes, in the case of Hydrocarbons, the right to explore;

"reef" has the same meaning as "lode";

"Regulations" means the Regulations made under this Code;

"rented surface area" means the area of land within a mining lease area which is occupied by mining works, installations, etc. for which a separate rent is prescribed in Article 47;

"Republic" means the Somali Democratic Republic;

"shaft" means any vertical or inclined tunnel or excavation other than an adit which is or might be used for access, travelling, drainage, or ventilation in connection with prospecting or mining operations;

"tailings" means all stones, gravel, sand, slime or other substance which is a residue of bonafide mining operations;

"watercourse" means any channel, whether natural or artificial, which confines, restricts, directs or controls the flow of water, whether continuously or periodically.

Article 2

Property in and control of minerals

1. The entire property in and control of all minerals:

(a) in any land territory of the Republic;

(b) under the territorial sea as determined by the relevant legislation in force from time to time; and

(c) on or under the seabed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the Republic's land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the low water mark, as recognized by the Republic, from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance, or to such distance as may be determined by agreement or otherwise between the Republic and other States;

is vested in the State.

2. Except in accordance with the terms and conditions of a permit, license or lease granted pursuant to this Code, no person may acquire any property in or control over any minerals located within the areas set forth in the preceding paragraph.

Article 3

Delegation of powers

1. The Minister may, by decree, delegate any of his powers conferred by this Code or Regulations except his powers to grant or revoke a permit, license or lease.

2. The Director may, with the written approval of the Minister, authorize in writing any public officer to carry out any of the powers and duties conferred or imposed upon the Director by this Code or the Regulations.

Article 4

Immunity from Suit

No legal proceedings whatsoever shall lie against the Director or any authorized officer on account of anything done in good faith in the execution of his duty under the provisions of this Code and the Regulations.

Article 5

Powers to close areas to prospecting or mining

1. The Minister may, with the approval of the Council of Ministers, by decree published in the Official Bulletin, declare any area to be closed to prospecting or mining:

(a) generally for all minerals or for specific minerals;

(b) for a specific period of time or until further notice;

(c) to all persons or to a particular class of persons;

Provided that such closure shall be without prejudice to existing prospecting or mining rights in such area.

Provided further that the Minister may permit prospecting or mining in such area under a special permit and subject to such conditions as he may think fit.

2. The Minister may, with like approval, reopen such area or any part thereof by further decree on such terms and conditions to prospecting or mining as he may think fit.

Article 6

Areas excluded from prospecting or mining

1. Except as otherwise provided by this Code, no permit, license or lease shall authorize any person to prospect or mine in:

(a) any burial ground or land in the vicinity or precincts of any mosque, church or other sacred buildings;

(b) any land required for a public purpose (other than mining) or within 100 yards of such land;

(c) any area situated within the boundaries of any city, town, village or populated locality;

(d) land reserved for the purpose of any railway, tramway, cableway, power or telephone line or cable, other than those constructed by a holder within a permit, license or lease area;

(e) any area which is the site of or is within 100 yards of any building, works, pipeline, flume, canal, dam or reservoir owned by the State, local administration or autonomous agency;

(f) any street, road or highway or land within 50 yards of the centre line of such street, road or highway (other than those constructed by a holder within a permit, license or lease area);

(g) any game reserve or forest reserve;

(h) land required by the Government for the extraction of minerals under the provisions of Article 8 hereof, a plan of which land shall have been supplied to the Director;

(i) land within 100 yards of any building except with the consent of the owner, and land under cultivation between the sowing and reaping of crops except with the consent of the owner;

Provided that, where such consent is unreasonably withheld, the Minister may authorize prospecting or mining to continue on such land and up to such limits and under such conditions as he may think fit;

(j) land within 100 yards of any well, cattle watering place or other source of water in use except with the consent of the owner of such source of water or local administration or autonomous agency having control of such source;

Provided that, where such consent is unreasonably withheld, the Minister may authorize prospecting or mining to continue on such land and up to such limits and under such conditions as he may think fit;

(k) land within 1000 yards of the boundaries of any aerodrome or landing ground (other than one constructed by a holder within a permit, license or lease area);

(l) land within 100 yards of any drilling site for water, minerals or prospecting operations except with the consent of the person undertaking such drilling operations;

(m) land in respect of which any permit, license or lease for minerals other than Hydrocarbons has been granted (other than by the holder) and land the subject of an application for any such permit, license or lease;

Provided that the Minister may authorize the applicant to begin prospecting or mining on such land pending the grant of the permit, license or lease under such conditions as he may think fit;

(n) land beacons by Government officials under the provisions of paragraph 2 of Article 94;

(o) land with deposits of tailings from mining operations which have terminated.

2. Notwithstanding the provisions of the preceding paragraph, the Minister may, except in the case of item (a) above, and subject to the consent of the competent Minister of State, grant a special permit to prospect or mine in the above areas, subject to such terms and conditions as seem appropriate.

Article 7

Land required for a public purpose

1. Whenever any land, being the whole or part of the surface of any permit, license or lease area, is required for any public purpose, the Minister shall, with the approval of the Council of Ministers, give notice thereof to the holder of the prospecting or mining rights.

2. As from the date specified in such notice, all prospecting and mining rights in respect of the surface area of the land required shall be deemed terminated, and the holder shall remove from such land before the date specified in the notice any works, building, plant or other property.

3. Where the holder of prospecting or mining rights has received notice under this Article, he shall not be required to make good the surface of the land, and shall be entitled to compensation for any disturbance to passage-ways, works, buildings, plant or other property; but not for the disturbance of his prospecting or mining rights;

Provided that compensation shall not be payable for the removal of any camps or other structures erected temporarily in connection with prospecting or exploration operations.

4. Compensation payable under this Article shall, if not agreed between the parties, be determined by a Court.

Article 8

Government rights to take minerals for public purpose

Nothing in this Code or the Regulations shall restrict the right of the Government to take minerals required for any public purpose from any land;

Provided that when such minerals are taken from land, which is the subject of any permit, license or lease, in such a manner as to interfere with any prospecting or mining rights, the Government shall pay reasonable compensation to the holder for disturbance or damage caused, as may be agreed or determined in accordance with the provisions of paragraphs 3 and 4 of Article 7.

Article 9

Revocation of permits, licenses or leases in cases of fraud, etc.

1. Where any permit, license or lease has been granted in pursuance of the provisions of this Code and the Regulations and subsequently it is found that such grant has been obtained as a result of any false or fraudulent representation or in consequence of any incorrect information, the Minister may give notice to the holder in the prescribed manner to show cause within a specified time why such permit, license or lease should not be revoked.

2. If the holder fails to comply with such notice within the time specified or if the cause shown be deemed inadequate, such permit, license or lease may thereupon be revoked by the Minister with the approval of the Council of Ministers.

3. Notice of such revocation shall be published in the Official Bulletin and a copy of such notice shall be sent to the holder at his last known address.

Article 10

Revocation of permits, licenses or leases for breaches of this Code and the Regulations, etc.

1. In the case of a breach of the provisions of this Code or the Regulations or of any terms and conditions of any permit, license or lease by the holder thereof, the Minister may give the holder notice in the prescribed manner to show cause within a specified time why this permit, license or lease should not be revoked.

2. Such notice shall be sent to the last known address of the holder. If the holder fails to comply with such notice within the time specified or should the cause shown be deemed inadequate, the Minister may, with the approval of the Council of Ministers, by decree published in the Official Bulletin, a copy of which shall be sent to the last known address of the holder, summarily revoke such permit, license or lease.

3. Upon such revocation all privileges and rights conferred under such permit, license or lease shall cease as from the date specified in such decree.

4. Revocation under this Article and under Article 9 shall not in any way affect the liability of any person concerned arising out of such breach before such revocation and shall not be a bar to any legal proceedings relating thereto.

Article 11

Certain persons prohibited from acquiring rights

1. No member of the Government or Civil Service, nor any other person associated with the administration of this Code or the Regulations shall directly or indirectly, by himself or by any other person, acquire or hold any right or interest under any prospecting or mining right. Any permit, license, lease, document, or other transaction purporting to confer such right or interest on any such person shall be null and void.

2. No person shall acquire by transfer or through an agent any prospecting or mining right which he is otherwise barred from obtaining in his own behalf under the provisions of this Code or the Regulations.

Part II - RIGHTS AND OBLIGATIONS OF HOLDERS
OF PROSPECTING AND MINING RIGHTS

Section 1 - General rights

Article 12

Rights of entry, access, etc.

Subject to the provisions of this Code and the Regulations and except as may otherwise be expressly provided in the terms and conditions of any permit, license or lease, and subject also to any other law which may prohibit, regulate or restrict the entry into any areas of the Republic, the holder of prospecting or mining rights within the permit, license or lease area may:

(a) enter upon and prospect in any land or under any water (not excluded from prospecting or mining under Article 6) for such minerals as may be authorized in his permit, license or lease;

(b) whilst engaged in bona fide prospecting or mining operations within such area:

(i) erect on unoccupied land a temporary camp and such temporary structures and works as may be necessary for his operations, and enter into temporary occupation thereof;

(ii) take firewood, other than standing timber, for his domestic use and for his employees, agents or servants;

(iii) graze such animals as may be necessary for the carrying out of his operations;

(c) dig pits and trenches and bore or drill holes:

Provided that he shall not divert any water from any river, stream or watercourse or abstract water from any lake, pool or other source of water without the written consent of the competent authority controlling, or the owner of, such water;

Provided further that the utilization of water and the construction of any new works relating to the collection, extraction or use of water shall be

subject to the provisions of any water legislation in force;

(d) employ for such operations any number of persons as he may require and such methods of transport as may be necessary.

Article 13

Amalgamation of permits, etc.

1. The holder of any permits, licenses or leases which are contiguous and form a single block may apply in the prescribed manner to the Director to have such permits, licenses or leases amalgamated;

Provided that amalgamation shall not extend to different classes of permits, licenses or leases, nor to different holders.

2. The total obligations imposed by this Code and the Regulations in respect of all the permits, licenses or leases thus amalgamated may then be performed in respect of any one or more of the permits, licenses or leases at the discretion of the holder.

3. Any prescribed returns, reports and plans may be submitted in respect of the amalgamated block.

Article 14

Holder may remove plant, etc. on termination of permit, license or lease

1. Except as may be expressly otherwise provided in the terms and conditions of any permit, license or lease, any plant, machinery, engines or tools on the area of a permit, license or lease which has terminated or which are on any passageways used in connection therewith may, within ninety (90) days from the date of such termination, or within such further time as the Minister may allow, be removed by the holder, but he shall not remove any timber from any mine, adit or shaft except as may be approved by the Director to comply with the provisions of item (b) of Article 23.

2. If such plant, machinery, engines or tools are not so removed, they may be sold by negotiation or auction, by order of the Minister, and the net proceeds of such sale, after deducting the costs thereof and any sum which the holder is required by law to pay to the State, shall be retained by the Minister, and held until applied for by the holder within a period of twelve (12) months, after which time any such sums shall be forfeited to the State:

Provided that where plant, machinery, engines or tools cannot be sold by negotiation or auction they shall become the property of the State, and may be dealt with in such manner as the Minister may direct.

Article 15

Right of passageway

1. If on any permit, license or lease area or on lands outside the boundaries thereof, the holder of the prospecting or mining rights is desirous of obtaining a right of passageway, he may apply to the Minister in the prescribed manner for a grant of such right of passageway.

2. If on any application made under the preceding paragraph, the Minister is satisfied:

(a) that it is necessary for the prospecting or mining operations or for the transportation, treatment, processing or storage of any minerals such that the applicant should have the passageway; and

(b) that it is reasonable for such right to be granted over the particular land which is the subject of the application, or as may be amended by the Minister with the agreement of the applicant.

he may make a grant of a right of passageway in the prescribed manner.

Article 16

Duration of right of passageway

Any right of passageway acquired under the preceding Article shall expire when the permit, license or lease which it serves is terminated, and thereupon the holder shall comply with the provisions of Articles 14 and 23.

Section 2 - General Obligations

Article 17

Survey

1. Before granting any permit, license or lease or any passageway, and subsequent to such grant should the necessity arise, the Minister may require the area of land to be included or occupied or the boundaries thereof to be surveyed by a surveyor approved by the Minister, the cost of such survey shall be borne by the applicant or holder, as the case may be.

2. The Minister may require the boundary of any permit, license or lease or any part thereof to be demarcated in a manner approved by him, including the clearing of any vegetation along such boundary so that it shall be clearly visible, and the holder shall keep such boundary or part thereof permanently demarcated in such manner.

Article 18

Holder to produce permit, license, etc.

The holder of any permit, license or lease shall produce his permit, license, or lease whenever demanded by any person having lawful interest in the land on which he is carrying out prospecting or mining operations, or when demanded by a police officer, District Commissioner, or the Director or any officer authorized by him.

Article 19

Notice and security for compensation

Any holder of prospecting or mining rights intending to prospect or mine on any land shall, whenever practicable, give notice to the person having lawful interest in such land before commencing operations thereon and shall, if so required by such person or the Minister, deposit with the Minister such sum, or give security therefor, as the Minister may direct, for the payment of compensation which may be payable under Article 20. Such sum or balance thereof (if any) may be refunded or released in accordance with the provisions of paragraph 5 of Article 21.

Article 20

Payment of compensation

1. The holder of prospecting or mining rights shall, on demand being made by any person having lawful interest in land where such prospecting or mining operations are carried on by him, pay such person fair and reasonable compensation for any disturbance of his surface rights, and for any damage done to the surface of the land, or to any livestock, crops, trees, buildings or works, as a result of such operations.

2. The amount of compensation payable under the preceding paragraph shall be determined by agreement between the parties or, if the parties are unable to reach agreement, or if the agreed compensation is not paid, the party having lawful interest in the land may take proceedings before a Court.

3. The sum awarded by such Court shall be paid by the holder to the person entitled thereto within fourteen (14) days of the date of communication of the decision.

4. If the sum awarded is not paid within the time specified in the preceding paragraph such sum may, where the party concerned has made a deposit under Article 21, on application to the Minister, be paid out of such deposit under the order of the Minister. Where no such deposit has been made, the award may be executed in accordance with the law.

5. The Minister may, by notice to the holder of prospecting or mining rights who has failed to pay the sum awarded, suspend his mining or prospecting rights, until the sum awarded has been paid, and until the holder has lodged with the Minister such further sum as he may demand as security for any future compensation payable.

6. If such payment or deposit is not made within such time as the Minister may consider reasonable he may revoke the prospecting or mining rights of the holder in default, without prejudice to any further legal proceedings which may be instituted by reason of such default.

Article 21

Deposits

1. As a guarantee for the due performance of the obligations imposed by this Code or the Regulations, any person who has applied for, or is holding prospecting or mining rights, may be required by the Minister to deposit, in addition to any sum lodged under Articles 19 and 20, such sum, or security for like amount in lieu thereof, as may be prescribed or otherwise as may be decided by the Minister.

2. If such person fails to make deposit within the time specified, the application may be refused by the Minister, or the prospecting or mining rights revoked.

3. The Minister may, in any case where the depositor has failed, after due notice, to meet any obligations imposed upon him by this Code or the Regulations, take such steps as he may consider necessary to fulfill the obligations, and may expend from any deposit such sum as he may consider reasonable to defray any expense incurred by him in so doing.

4. Where any deposit or portion thereof is so expended, the Minister may require the depositor to make good such deposit or portion. Failure to do so may render any prospecting or mining rights, in respect of which any deposit was made, liable to revocation by the Minister.

5. Where upon the termination of all interests in any prospecting or mining rights, in respect of which a

deposit has been made, the permit, license or lease is produced to the Minister and the termination of such interests is duly recorded, then the person by whom such deposit was made may make written application to the Minister for the refund or release of such deposit or balance thereof and, upon production of satisfactory evidence by the applicant, the Minister shall authorize such refund or release to be made;

Provided that such refund or release is made without prejudice to any claim or proceeding existing, or which may arise through the breach by the holder or his agents or servants of any of the provisions of this Code or Regulations, or existing or arising from any other cause.

6. Subject to the provisions of Article 29, where the interest of a depositor in any permit, license or lease is terminated by transfer, no refund or release shall be made until the transferee has made a like deposit of such sum as the Minister may demand.

Article 22

Records of prospecting and mining operations

1. The holder of prospecting or mining rights shall keep on the permit, license or lease area or such other place in the Republic as the Director may approve, full and accurate records, plans and maps of his prospecting and mining operations, and shall render to the Director such returns, reports and plans as may be prescribed or as may be required under the terms or conditions of his permit, license or lease.

2. Except as may be expressly otherwise provided in the terms and conditions of any permit, license or lease, one half of the cores of any drill-holes shall be preserved by the holder, together with proper geological logs and records thereof, during the currency of such permit, license or lease and on the termination thereof such core portions, logs and records shall be made available to the Director or to such other officer as he may direct.

3. If the holder fails to comply with the requirements of this Article, the Minister may, without prejudice to any other penalty for which the holder may be liable, refuse

to entertain any application by such holder for any permit, license or lease.

Article 23

Obligations on termination of a permit, license or lease

Every person who was the holder of a permit, license or lease which has terminated shall, not later than thirty days from the date of such termination:

(a) submit the permit, license or lease to the Minister for cancellation;

(b) fill in or otherwise secure to the satisfaction of the Director, all shafts, pits or other excavations in a permanent manner so as to prevent persons or livestock inadvertently entering therein;

(c) remove all beacons marking the boundaries of such permit, license or lease area;

(d) forward to the Director all plans both of surface and underground workings, topographical, geological or assay plans, borehole core logs, and other records of the area over which rights are terminated;

(e) furnish written confirmation to the Director that he has complied with the provisions of this Article as to the securing of excavations and removal of beacons.

Article 24

Liability incurred before termination of permits, etc.

Termination of any permit, license or lease for whatsoever reason, including transfer and surrender, shall not affect in any way any liability incurred by the holder before such termination takes effect.

Article 25

Appointment of agents

1. When the holder is not personally residing on or sufficiently near his permit, license or lease area so as to maintain continuous supervision of any prospecting or mining operations in progress, he shall appoint an agent who shall be approved by the Director as possessing suitable qualifications and experience to supervise continuously such operation. Such approval may be withdrawn by the Director at any time.

2. Any change in the appointment of an agent shall be notified to the Director forthwith.

3. Such appointment and approval shall in no way absolve the holder from any of his obligations and responsibilities under the provisions of this Code or the Regulations.

4. Every holder of an exclusive prospecting license, mining permit or mining lease, and every holder of an oil exploration permit or oil mining lease when not resident in the Republic, or when such holder is a syndicate or company with its head office elsewhere than in the Republic, shall appoint and at all times have resident in the Republic an agent with full powers to represent the holder in all matters relating to any prospecting and mining operations, including the obligations imposed by this Code and the Regulations and the terms and conditions of such permit, license or lease.

5. A copy of the power of attorney duly signed by the agent in acceptance of his appointment shall be sent immediately to the Minister for record, and any subsequent document by which such power of attorney is altered shall similarly be signed and submitted to the Minister.

Part III - PROSPECTING AND MINING FOR
MINERALS OTHER THAN HYDROCARBONS

Section 1 - PROSPECTING PERMIT

Article 26

No prospecting without permit

No person shall prospect for minerals other than Hydrocarbons without a prospecting permit issued under the provisions of this Part.

Article 27

Grant of prospecting permit

1. The Minister may, on application in the prescribed manner, grant a prospecting permit in the prescribed form to any individual who:

(a) has attained the age of 21 years;

(b) is able to prove to the satisfaction of the Minister, or other authorized officer, that he can understand the provisions of this Code and the Regulations to such an extent as to enable him to carry out the obligations imposed by them.

2. The Minister may issue a prospecting permit for all minerals, other than Hydrocarbons, which are open to prospecting, or for such minerals or class of minerals as he deems fit. He may restrict the rights under any prospecting permit by endorsement thereon, either in respect of certain minerals, or class oil minerals, or in respect of any specified area or areas in the Republic.

3. When prospecting is to be carried out by a corporation, company, syndicate, partnership, society or other body, such body shall employ an individual or individuals, as its prospecting agent. The prospecting permit shall be in the name of such individual as agent for such body.

4. When application is made for a prospecting permit to be issued to an individual to act as agent for another person:

(a) such person shall complete an undertaking in the prescribed form to be responsible for the acts and omissions of the individual, who shall also be responsible for his own acts and omissions;

(b) the individual shall surrender for cancellation any valid prospecting permit he may hold in his own behalf.

5. An agent's prospecting permit shall terminate when he leaves the services of the person for whom he is acting as agent.

6. The Minister may refuse to issue a prospecting permit to an individual who, or whose employer has previously:

(a) held any prospecting or mining rights which have been revoked;

(b) been convicted of an offense against this Code or the Regulations or of an offense against the laws relating to the employment of labour.

Article 28

Duration and renewal

A prospecting permit shall remain in force for one year from the date of issue, and may be renewed on application in the prescribed manner for further periods of one year each.

Article 29

Prospecting permit not transferable

A prospecting permit shall not be transferable.

Article 30

Rights and obligations under a prospecting permit

1. Subject to the provisions of this Code and the Regulations, and to any conditions endorsed on his prospecting permit, the holder of a prospecting permit may prospect on any land, not otherwise closed to prospecting, for such minerals as are endorsed on his permit.

2. The holder shall be present at the site of any prospecting or other operations being carried out under the authority of his prospecting permit, but may employ at such site such persons working under his direct supervision as may be necessary for such operations. Such persons shall not require prospecting permits.

3. The holder may, in the prescribed manner demarcate and apply for an exclusive prospecting license, mining permit or mining lease.

Section 2 - Exclusive Prospecting License

Article 31

Grant of an exclusive prospecting license

1. The Minister may, on application in the prescribed manner by the holder of a prospecting permit and on being satisfied that the applicant has sufficient capital to ensure proper prospecting of the area applied for, grant an exclusive prospecting license in the prescribed form.

2. The Minister may, after approving the grant of the license, authorize work to begin on the license area, pending the issue of the license.

Article 32

License area

The area of an exclusive prospecting license shall not exceed eight (8) square miles;

Provided that the Minister may, with the approval of the Council of Ministers, grant an exclusive prospecting license for an area greater than eight (8) square miles upon such terms and conditions as he may think fit.

Article 33

Duration and renewal

An exclusive prospecting license shall be valid for one (1) year, and may, on application in the prescribed manner be renewed by the Minister, at his discretion, by endorsement thereon, for further terms of one (1) year each up to a maximum of a five (5) year duration;

Provided that in the case of a license whose area exceeds eight (8) square miles the Minister may, with the approval of the Council of Ministers, grant further renewals after the fifth year on such terms and conditions and in respect of such area or areas as he may think fit.

Article 34

Rights and obligations under an exclusive prospecting license

1. Subject to the provisions of this Code and the Regulations and to the terms and conditions contained in the exclusive prospecting license, the holder shall have the sole right of prospecting within the license area for such minerals as may be authorized in the license;

Provided that such right shall not extend to the area of any other license, permit or lease lying within the boundaries of the license during the currency of such other license, permit or lease.

2. The holder may apply in the prescribed manner for the grant of a mining permit or mining lease within the license area.

3. Throughout the currency of the license, the holder shall continuously carry out prospecting operations

within the license area to the satisfaction of the Director, unless suspension of such operations has been authorized by the Minister in the prescribed manner.

Article 35

Transfer of license

The holder of an exclusive prospecting license or any interest therein shall not transfer his license or any such interest without the prior written approval of the Minister.

Article 36

Surrender of license

An exclusive prospecting license may be surrendered in the prescribed manner at any time on giving thirty (30) days notice to the Minister;

Provided that where the holder desires to surrender a part of the license area he shall apply in the prescribed manner for the approval of the Minister.

Section 3 - Mining Permit

Article 37

No mining without mining permit or lease

Save as provided by Article 8, no person shall mine minerals other than Hydrocarbons without a mining permit or mining lease issued under the provisions of this Part.

Article 38

Grant of mining permit

1. The holder of a valid prospecting permit or exclusive prospecting license may apply to the Minister in the prescribed manner for the grant of a mining permit.

2. If the Minister is satisfied that the application is prima facie in order, and that the mineral applied for exists within the area demarcated, he shall grant the mining permit in the prescribed form to the applicant for such mineral or class of minerals as may be authorized in the prospecting permit or exclusive prospecting license.

Article 39

Duration and renewal

A mining permit shall be valid for one (1) year from the date of demarcation, and may be renewed in the prescribed manner for further periods of one (1) year, subject to the Minister being satisfied that the requirements of this Code and Regulations have been met and that mining operations are being carried out in a safe and satisfactory manner.

Article 40

Conversion to lease

Where, in the opinion of the Minister, the scale of operations on a mining permit or permits is of such a scale as to warrant the grant of a mining lease, he may require the holder to apply for a lease, and such lease shall be granted, but subject to such terms and conditions as the Minister may think fit.

Article 41

Rights and obligations of the holder of a mining permit

1. Subject to the provisions of Articles 19 and 20, the holder of a mining permit shall, within the permit area, have the right:

(a) to prospect for and to mine such minerals as may be specified in the permit;

(b) subject to the provisions of Part V, to dispose of such minerals;

(c) to make all necessary excavations;

(d) to stack and, subject to the provisions of Article 96, to dump any of the products of mining;

(e) to erect permanent houses, buildings, engines, machinery and other works, and to obtain such passageways as may be necessary for the mining operations.

2. The holder shall throughout the currency of the permit carry on mining operations continuously within the permit area to the satisfaction of the Minister;

Provided that the Minister may, on application in the prescribed manner, authorize the holder to suspend work within the permit area for periods not exceeding ninety (90) days where he is satisfied that circumstances make it desirable to do so.

Article 42

Transfer of permit or shares

1. Subject to the approval of the Minister, which shall not be unreasonably withheld and to the provisions of Article 11, the holder may transfer his mining permit or permits in the prescribed manner.

2. Subject to the approval of the Minister, which shall not be unreasonably withheld, the holder may

by instrument in writing divide his interest in any mining permit into such shares as he shall think proper, but not exceeding twelve (12) in number, and may transfer such shares, and the rights and interests in the permit in the prescribed manner.

3. When the transfer of shares in a permit is effected, all or any of the share holders may be held responsible for the obligations imposed by this Code or Regulations, unless otherwise provided in the instrument creating the shares.

Article 43

Surrender of permit

A mining permit may be surrendered at any time by notice to the Minister and submission of the permit for cancellation, together with the confirmation required by Article 23.

Article 44

Revocation of permit

Without prejudice to the generality of Articles 9 and 10, a mining permit shall be liable to revocation:

(a) if subsequent to its grant it is found that the area was not properly demarcated prior to the application;

(b) if the holder ceases work for a period exceeding fourteen (14) days in any month without the authority of the Minister;

(c) if the holder fails to submit any prescribed return or report;

(d) if after due warning in writing the holder fails to maintain in good order the beacons demarcating the area; and

(e) if the holder fails to keep proper records and accounts of his operations as required by Articles 22 and 74.

Section 4 - Mining Lease

Article 45

Grant of mining lease

1. Where the holder of a prospecting permit, exclusive prospecting license or mining permit in the course of his operations discovers deposits of minerals of sufficient size and has carried out development work or preparations for mining, or such other prospecting work as in his opinion indicates a reasonable probability of steady and continuous production for a period of at least five (5) years, such holder may, in the prescribed manner, apply for the grant of a mining lease.

2. If the Minister is satisfied with the evidence submitted and is further satisfied:

(a) that the applicant has or can command sufficient capital for the proper development of a mine; and

(b) that a market exists or can be found for the products, the Minister may, with the approval of the Council of Ministers, grant a mining lease in the prescribed manner, subject to such conditions as he may think fit.

Article 46

Duration and renewal

1. The initial term for a mining lease shall not be less than five (5) years and not more than twenty-one (21).

2. Not less than six (6) months before the end of the term granted the lessee may apply in the prescribed manner for renewal of the lease for further terms, and if the Minister is satisfied that the lessee is carrying out work in a normal and businesslike manner, and that the lease is not otherwise liable to revocation under the provisions of this Code or Regulations, the Minister shall renew the lease by endorsement thereon for a further term, not exceeding twenty-one (21) years, as may seem to him reasonable, in view of the probable life of the operation.

3. Each such renewal shall be subject to such conditions as may apply to the grant of new leases.

Article 47

Rented surface area

The lessee shall define within the lease area the rented surface area or areas which he requires to occupy with surface installations, dumps, excavations, etc, but not passageways, and shall pay a special rent, hereinafter called "the surface rent", in respect of such rented surface area at the prescribed rate. Such surface rent may be revised at intervals of seven (7) years and the rented surface area occupied may be varied by the lessee, upon giving notice in the prescribed manner, as required by the progress of his mining operations.

Article 48

Rights of lessee

1. Subject to the provisions of Articles 19 and 20 the lessee shall, within the lease area, have the right:

(a) to prospect and mine for such minerals as may be specified in the lease;

(b) subject to the provisions of Part V, to process for sale, transport, and dispose of such minerals or mineral products;

(c) to stack and, subject to the provisions of Article 96, to dump any of the products of mining;

(d) to make all necessary excavations;

(e) to erect permanent houses, buildings, engines, machinery, plant and other works, and to make such passageways as may be necessary for the mining operations.

2. Pending the issue of a mining lease the grant of which has been approved, the applicant may apply to the Minister for permission to begin mining within the lease area or parts thereof. The Minister may grant permission subject to such conditions or restrictions as he may think fit. Such permission may be withdrawn at any time by the Minister.

Article 49

Working obligations on a lease

The lessee shall throughout the currency of the lease carry out continuously bonafide mining operations within the lease area to the satisfaction of the Minister;

Provided that the Minister may on application in the prescribed manner authorize the lessee to suspend work within the lease area for such period, not exceeding six (6) months, as he may think fit.

Article 50

Transfer of a lease or interest therein

The lessee shall not transfer his lease or create or transfer any right or interest therein, except as may be specifically authorized in the terms and conditions of the lease, until such transfer or interest has been approved in the prescribed manner by the Minister.

Article 51

Surrender of lease

A mining lease may be surrendered either in whole or in part in the prescribed manner, after giving six (6) months notice to the Minister.

Part IV - HYDROCARBONS

Section 1 - General Provisions

Article 52

Scope of this part.

The provisions of this Part relating to exploration and mining apply solely to Hydrocarbons.

Article 53

Grant of permits etc.

1. No person, other than the Government, may explore or mine for Hydrocarbons except in accordance with this Code, the Regulations and the terms and conditions of a permit or lease granted under the provisions of this Part.

2. Subject to the provisions of this Code and the Regulations, the Minister may, with the approval of the Council of Ministers, in the prescribed manner, grant:

(a) an Oil Exploration Permit to explore for, drill for, extract and remove, for the purpose of testing and analysis, Hydrocarbons in and from such lands and under such waters, referred to in Article 2 of this Code, as may be specified in the permit;

(b) an Oil Mining Lease to explore for, drill for, develop, extract, produce, transport, store,

process for sale or dispose of Hydrocarbons from any lands and waters, referred to in Article 2 of this Code, as may be specified in the lease;

Provided that any permit or lease granted pursuant to this Part shall be accompanied by, and its validity shall be conditioned upon the existence of, an Agreement between the Government and a holder relating to the conduct of Hydrocarbon exploration or mining operations within a particular permit or lease area, and provided, further, that the termination of any such Agreement shall result automatically in the revocation of any such permit or lease to which such Agreement relates.

3. Before entering into any Agreement, the Minister may require the individual signing such Agreement on behalf of any corporation, company, syndicate or other association or body of persons corporate or unincorporate, to lodge a power of attorney in such form as the Minister may approve evidencing such individual's authority to sign on its behalf.

4. The grant of an Oil Exploration Permit or Oil Mining Lease may be subject to such terms and conditions as the Minister may, with the approval of the Council of Ministers, determine, provided that such terms and conditions shall not be contrary to, or inconsistent with, the provisions of this Code or the Regulations.

5. The terms and conditions of any permit or lease granted pursuant to this Part shall be deemed to include those contained in any Agreement relating to such permit or lease area.

6. A permit or lease granted pursuant to this Part shall confer upon the holder, for the duration of its validity, the exclusive right to conduct the operations authorized therein within the area covered by such permit or lease.

7. Without prejudice to the provisions of the preceding paragraph, the Government shall have the right to grant to persons, other than the holder of an Oil Exploration Permit or Oil Mining Lease, permits, licenses or leases for the prospecting and mining of minerals other than Hydrocarbons within the permit or lease area or passageway. Provided that the grant of prospecting or mining rights for minerals other than Hydrocarbons shall not materially interfere with the rights of such holder to explore or mine for Hydrocarbons.

Article 54

Risk nature of operations

Except as may be otherwise provided in an Agreement, the holder shall take upon himself all the risks inherent in Hydrocarbon exploration and mining operations and shall commit himself to supply exclusively for his account the technology, capital, equipment, machinery and all other investments required for such operations in the permit or lease area, and the Government shall not be obligated to make any reimbursement to the holder with respect to the investments made. In the fulfillment of this obligation the holder may not have recourse to bank credit in the Republic from institutions, companies or enterprises operating therein.

Article 55

Participation

The terms and conditions of any Agreement may, in the discretion of the Minister, provide for the Government's participation in some or all stages of the Hydrocarbon exploration or mining operations contemplated. Such participation may include the right to participate in the rights and obligations under this Code, the Regulations or any permit or lease. The Minister may issue Regulations governing the terms and conditions upon which the Government will participate in such operations.

Article 56

General terms and conditions of an agreement

In addition to the requirements of, and consistent with, this Code and the Regulations, the terms and conditions of every Agreement shall require a holder to undertake the following obligations:

- (a) Perform certain minimum work and incur certain minimum expenditures during the course of Hydrocarbon exploration operations conducted pursuant to an Oil Exploration Permit;

(b) Provide a letter of guaranty to secure the fulfillment of the minimum expenditure obligations undertaken pursuant to a. above;

(c) Employ and train Somali nationals to the fullest extent possible with a view to the replacement of foreign personnel as soon as may be practicable. Such training and employment shall be carried out in accordance with a program approved by the Minister;

(d) Keep current financial and cost accounting records of Hydrocarbon exploration and mining operations, with pertinent records and vouchers, during the term of a permit or lease, in accordance with normal accounting practices in the international petroleum industry, the Regulations and the accounting requirements of the Ministry;

(e) Purchase Somali goods and services, provided such goods and services are reasonably priced and are competitive in terms of quality and availability with imported goods and services;

(f) Present annually to the Minister, for approval, complete work programs and budgets for the Hydrocarbon exploration or mining operations to be conducted in the ensuing year;

(g) Supply to the Government out of any Hydrocarbons to which he is entitled thereunder such quantity of Hydrocarbons as may be required to meet the requirements of the Republic for internal consumption of Hydrocarbons, provided that the quantity of Hydrocarbons to be so supplied shall be determined on a basis that does not discriminate against any individual holder and that the price therefor shall be fair and reasonable;

(h) Relinquish part or parts of a permit area at such time or times as shall be prescribed therein. The obligation to relinquish part or parts of a permit area shall not apply to any part of such area encompassing the area of a Commercial Discovery of Hydrocarbons for which an Oil Mining Lease is sought;

(i) Indemnify at all times the Government and its representatives and agents against all and any claims made by third parties in respect of any injury, damage or loss caused by an act or omission of the holder, his contractors, subcontractors, agents, employees or

representatives in the course of Hydrocarbon exploration or mining operations;

(j) Comply with and be governed exclusively by the laws of the Republic, provided that the terms and conditions may provide for arbitration of disputes arising thereunder between the holder and the Government in accordance with the rules issued by recognized international bodies which are acceptable to the Minister.

Article 57

Conservation and work practices

In the conduct of Hydrocarbon exploration or mining operations each holder, in accordance with generally accepted practices in the international petroleum industry, shall:

(a) Carry out such operations using the most reliable, modern and efficient techniques;

(b) Take steps to achieve the maximum efficient rate of production, compatible with the particular characteristics of the Hydrocarbon reservoirs discovered;

(c) Control the flow and prevent the waste or escape of Hydrocarbons, water, drilling fluids, or any mixture thereof;

(d) Generally adopt the necessary measures for the protection of flora, fauna and other natural resources;

(e) Avoid the pollution or contamination of water, atmosphere and land;

(f) Maintain in good condition and repair all structures, equipment and other property used in such operations;

(g) Carry out such operations in a proper, safe and workmanlike manner;

(h) Take all steps necessary to secure the safety, health and welfare of persons engaged in such operations.

The procedures for the application and enforcement of such conservation and work practices shall be prescribed

in the Regulations and may be developed in the terms and conditions of any Agreement.

Article 58

Blocks and awards of areas

For the purpose of awarding areas pursuant to this Part, the areas of the Republic referred to in Article 2 hereof shall be divided into blocks, according to a grid system, determined in accordance with rules to be prescribed by the Minister. Blocks must be of a rectangular shape with two of their sides oriented in the north-south direction, except where the borders of the Republic, other natural boundaries or the boundaries of other areas which are currently subject to a permit or lease, prevent it.

Section 2 - Oil Exploration Permit

Article 59

Duration and renewal

1. The initial term for an Oil Exploration Permit shall not exceed three (3) years.

2. Not later than ninety (90) days before the expiry of the term the holder may apply in the prescribed manner to the Minister for a renewal of the permit.

3. The Minister may renew the permit for not more than three (3) further terms of one (1) year each, provided that the holder has complied with the provisions of this Code, the Regulations and the terms and conditions, including drilling commitments, of his Oil Exploration Permit.

Article 60

Renewal for completion of works

If at the expiration of the initial term of an Oil Exploration Permit, or if such permit has been renewed, at

the end of any renewal period, any well is actually being drilled, tested, appraised or plugged the Minister shall, in accordance with the terms and conditions of such Oil Exploration Permit, renew such permit with respect to the area relating to the well being drilled, tested, appraised or plugged for such period as may be necessary to complete the drilling, testing, appraisal or plugging of such well.

Article 61

Working obligations in permit area

1. Subject to the terms and conditions of the Oil Exploration Permit, the holder shall with all reasonable despatch, and in any case not later than ninety (90) days from the grant of the permit, commence by geological and/or geophysical methods, a program of exploration in the permit area which may include, but is not limited to, investigations relating to the subsurface geology, aerial mapping, seismic surveying, structure test drilling, the drilling of exploratory wells, stratigraphic test drilling and related activities, and shall, during the currency of the permit, continue with due diligence to carry out such other work as may be necessary to determine whether a deposit of Hydrocarbons exists within the Permit Area.

2. In the event that a formation is identified and is shown to be potentially productive of Hydrocarbons, the holder shall carry out an adequate program of appraisal drilling and such other activities that may be necessary to determine whether the deposit of Hydrocarbons so identified is a Commercial Discovery.

Article 62

Work programs

The exact nature and extent of the operations to be carried out pursuant to an Oil Exploration Permit shall be set forth in an exploration work program and work program budget which shall be submitted to and approved by the Minister. Except as may be otherwise provided in the terms and conditions of any Oil Exploration Permit, the scheme of exploration operations shall be conducted in accordance with such approved work program and work program budget.

Section 3 - Oil Mining Lease

Article 63

Grant of lease

1. An Oil Mining Lease shall only be granted to:
 - (a) the holder of an Oil Exploration Permit with respect to an area within his permit area; or
 - (b) the holder of an Oil Mining Lease with respect to an area adjacent to his lease area, provided that such area is not currently subject to a valid Oil Exploration Permit or Oil Mining Lease.
2. An Oil Mining Lease shall only be granted with respect to the area, as designated by agreement between the Government and the holder of the permit or lease, where a Commercial Discovery of Hydrocarbons has been declared. The area to which such Commercial Discovery relates shall include the area which, in the judgment of the Government and the holder of the Permit or Lease, is capable of, and necessary for, the development and production of Hydrocarbons from the formation or formations identified during the course of exploration operations.

Article 64

Comprehensive oil mining lease

The Minister may, with the approval of the Council of Ministers, grant a comprehensive Oil Mining Lease covering two or more lease areas provided that such lease areas are on the same geological formation or cover a group of similar or related formations.

Article 65

Duration and renewal

1. The initial term of an Oil Mining Lease shall not exceed twenty-five (25) years, but renewal may, at the

discretion of the Minister, be granted, with the approval of the Council of Ministers, at the end of such term for a further period not exceeding five (5) years.

2. Every renewal of an Oil Mining Lease shall be subject to a review of the terms and conditions of such lease in the light of prevailing conditions at the time of such renewal.

Article 66

Rights and obligations of holder

1. Subject to the provisions of this Code and the Regulations and to the terms and conditions of the Oil Mining Lease, the holder of such lease shall have the right:

(a) to explore for, drill for, develop, extract and produce Hydrocarbons located within areas subject to the lease;

(b) subject to the provisions of Part V, to transport, store, process for sale or dispose of all Hydrocarbons produced from a lease area, and, subject to the provisions of Article 96, to dispose of any waste products resulting from such mining operations;

Provided, however, that the operations conducted pursuant to the Oil Mining Lease shall not include transportation beyond the FOB point of export or agreed delivery point in the Republic, nor any process of refining, nor any handling of Hydrocarbons which have been treated in a refinery, liquefaction or processing plant.

2. Subject to the provisions of this Code and the Regulations and to the terms and conditions of the lease, the holder shall at all times develop and exploit every Commercial Discovery of Hydrocarbons in accordance with generally accepted practices in the international petroleum industry.

Section 4 - Transportation of Hydrocarbons

Article 67

Authorization and operation of pipelines

The construction, reconstruction and alteration of pipelines, pumping stations and other necessary facilities incidental thereto, and the operation thereof, within the areas set forth in Article 2 hereof, shall be subject to the prior authorization of the Minister. Authorization may be granted subject to such conditions as the Minister deems appropriate. Procedures for obtaining such authorization and conditions applicable thereto may be prescribed in the Regulations.

Section 5 - Miscellaneous Provisions

Article 68

Transfer of permit or lease

1. The holder of an Oil Exploration Permit or Oil Mining Lease shall not assign, encumber or transfer such permit or lease, or any right, interest or obligation arising therefrom, except with the prior written approval of the Minister.

2. Such approval may be granted subject to such conditions as the Minister may deem appropriate. Any transfer, assignment or encumbrance in contravention of this Article shall be null and void.

Article 69

Surrender of permit or lease

Except as may be expressly otherwise provided in the terms and conditions applicable thereto, an Oil Exploration Permit or Oil Mining Lease may be surrendered either

wholly or in part after giving not less than ninety (90) days notice to the Minister. In the case of partial surrender, the area so surrendered shall thereupon cease to form part of such permit or lease area.

Article 70

Rights of entry into excluded areas

Notwithstanding the provisions of Article 6, the holder of a permit or lease issued under the provisions of this Part may, upon giving notice of a least two (2) weeks to the Minister, and subject to the terms and conditions of his permit or lease, enter such areas as are described in item (c), (d), (e), (l), (g), (h), (i), (j), (k), (l), (m) and (n) of Article 6 for the purpose of conducting Hydrocarbon exploration operations thereon, provided that he shall:

- (a) not excavate or otherwise disturb the surface of such areas;
- (b) not engage in any form of drilling activity;
- (c) so conduct his operations as to cause as little damage in such areas as possible; and
- (d) on completion of such examination, forthwith make good any damage caused in such areas.

Part V - ROYALTY ON, EXPORT AND LOCAL SALE OF MINERALS

Article 71

Liability to royalty

1. All minerals obtained in the course of prospecting or mining operations and any substance or matter extracted therefrom, after deducting the amount of any minerals used or consumed in the conduct of such operations, shall be liable to such royalty as may be provided in the

Regulations or in the terms and conditions of any permit, license or lease.

2. Notwithstanding any other provisions of this Code or the Regulations, liability for the payment of royalty shall be deemed to have arisen immediately the minerals have been extracted or produced and shall be payable in the manner prescribed, provided that where it is not possible to calculate the exact amount of royalty payable before the sale or other disposition of the mineral, provisional royalty shall be payable to the Minister in such sum as he may reasonably assess. Thereafter, a final assessment shall be made after receipt of account sales, assays, valuations or other documents as may be necessary to establish the proper amount of royalty due.

3. The Minister may exempt from the payment of royalty such quantities of minerals as he may deem to be necessary for the purposes of testing and analysis, experiment or assay or for commercial or scientific specimens.

Article 72

Minerals obtained in prospecting

1. Save as may be provided in the terms of any permit or license to prospect, minerals obtained in the course of prospecting shall be the property of the State, and shall not be removed from the permit or license area or disposed of by the holder or by any other person except with the prior written approval of the Minister who may authorize their removal for safe custody, or for any other reason which he may deem fit and subject to such conditions as he may impose.

2. If the Minister is satisfied that the applicant has been conducting only such work as is reasonably necessary to enable him to test the mineral bearing quality of the permit or license area, he may authorize the applicant to retain or dispose of the minerals on payment of the prescribed royalty.

Article 73

Export and local sale of minerals

1. No person shall export any mineral or any product or substance refined or derived from any mineral unless he is in possession of a permit to export issued under the provisions of this Code or the Regulations, which shall contain a certificate to the effect that royalty has been paid or secured to the satisfaction of the Minister.

2. The Director or any authorized officer may inspect any consignment of minerals before export and may take free of cost samples therefrom for the purpose of ascertaining the mineral content and its worth;

Provided that any sample materials remaining after examination shall be returned to the exporter if requested at the time of sampling.

3. When minerals or mineral products or substances are sold to persons within the Republic for any purpose whatsoever, the holder of the prospecting or mining rights shall be liable to pay such royalty as may be prescribed for such minerals or mineral products within one (1) month of such sale, unless such royalty is otherwise secured to the satisfaction of the Minister.

Article 74

Records of buying and selling

The holder of a mining permit, mining lease, or oil mining lease and any other person buying or selling minerals or mineral products, shall keep adequate records to the satisfaction of the Minister to show the quantity of minerals or mineral products produced, bought or sold, and accounts of such purchases, sales or exports. Such records may be inspected by the Director or other authorized officer at any reasonable time.

Article 75

Permit for small quantity of minerals

The Minister may grant to any person a permit to possess or buy small quantities of minerals subject to such conditions as may be specified in the permit.

Part VI - RESTRICTED MINERALS

Article 76

Possession of restricted minerals

1. Under the provisions of this Part, the Minister may, with the approval of the Council of Ministers, by decree published in the Official Bulletin, restrict the possession of and dealing in any minerals. Such decree may specify the state of processing at which such restrictions shall apply or cease to apply.

2. No person shall possess any such restricted minerals unless:

(a) he is a mineral dealer licensed under the provisions of this Part;

(b) he is the holder of prospecting or mining rights which specifically authorize the prospecting or mining of such minerals;

(c) he is a person to whom a permit to possess small quantities of such minerals has been granted by the Minister under Article 75, and such possession is in accordance with the conditions of the permit; or

(d) he is the duly authorized employee of any person specified in sub-paragraphs (a) to (c) of this paragraph and his official employment necessitates possession of such minerals.

Article 77

Sale and purchase of restricted minerals

1. No person shall sell restricted minerals to or buy restricted minerals from any person in the Republic, other than a licensed mineral dealer, or a person to whom a permit has been granted under the provisions of Article 75.

2. In this Article "buy" and "sell" includes barter, exchange, give or receive as a gift or pledge, and all other forms of acquisition or disposal.

Article 78

Mineral dealer's license

The Minister may grant a mineral dealer's license in the prescribed manner subject to such conditions as he may think fit. This license shall be in addition to any other authorization prescribed by any other law.

Article 79

Obligations of a licensed mineral dealer

1. Every licensed mineral dealer shall pay to the State royalties due on any restricted minerals bought or received by him under the provisions of this Part and, if so required by the Minister, shall give security for such payments.

2. Every licensed mineral dealer shall:

(a) keep a register showing:

(i) all purchases and sales of minerals made by him;

(ii) the nature and weight of such minerals;

(iii) the date of each transaction;

(iv) the name and address of the vendor and his title to such minerals;

(v) the name and address of the purchaser or consignee to whom such minerals are sold or consigned;

(b) cause every transaction to be entered in such register within twenty four (24) hours of being made;

(c) produce such register to the Minister, to any officer authorized in writing by him or to any police officer whenever so required; and

(d) render to the Director such returns as he may require.

Part VII - SAFETY, INSPECTION AND ACCIDENTS

Article 80

General safety

1. The holder of any permit, license or lease shall take all due and proper precautions for the safety of all persons employed by him in any prospecting or mining operations to the satisfaction of the Director.

2. The holder shall, during the currency of any permit, license or lease keep all adits, shafts, pits and other excavations, whether made prior to the grant of such permit, license or lease or during its currency, secured to the satisfaction of the Director in such a manner as to prevent the inadvertant entry of persons or livestock.

3. The holder shall also take proper precautions to prevent any persons being injured by any blasting operations or the operations of any plant, machinery, conveyors, moving belts, cableway, tramway, electricity supply or other works or apparatus, and shall provide suitable fencing, guards and warning notices where such danger exists or is likely to arise.

4. In any quarry, gravel or sand pit, or other opencast working or open excavation the holder shall ensure

that the working faces of such excavation are stepped or sloped, and restricted in height so as to avoid collapse, and shall take proper precautions when men are working near faces to prevent injury due to falling materials.

Article 81

General inspection

1. The Director, a medical officer nominated by the Minister of State for Health, hereinafter called "the medical officer", or any other person authorized in writing by the Minister, at any time by day or night, but so as not unreasonably to impede or obstruct the work in progress, may:

(a) enter, inspect and examine any area in which prospecting or mining operations are being conducted or which is the subject of any prospecting or mining rights or right of passageway;

(b) examine and make inquiry into the condition and ventilation of any mine and any building connected with prospecting or mining operations or passageway, and all matters relating to the safety, welfare and health of the persons employed therein;

(c) inspect and examine the condition of the external parts of machinery used on any mine or for the purposes of any passageway, and the condition of all plant and works;

(d) inspect the storage of explosives upon any mine and direct in what manner they shall be stored.

2. The Minister, or a person authorized by him in writing, may call for, examine and take extracts from all books, accounts, vouchers and documents relating to prospecting or mining operations.

3. The Director, or a person authorized by him in writing, shall have the right to examine all plans and documents relating to prospecting or mining operations, to inspect all mine workings and take samples therefrom at any reasonable time.

Article 82

Power to remedy dangerous practice, etc.

1. If the Director or the medical officer finds anything connected with prospecting or mining operations or any passageway to be dangerous or defective so as to be detrimental to the welfare or health of any person, or livestock, he shall give notice in writing thereof to the holder of the prospecting or mining right or right of passageway, or his agents in charge of the operations or mine.

2. Such notice shall contain such particulars of the matter considered to be dangerous or defective, which shall be remedied, either forthwith or within such time as may be specified.

3. The Director or the medical officer may order work to be suspended until the danger is removed to his satisfaction.

4. On receipt of such notice the holder of the prospecting or mining right or right of passageway, or his agent, shall comply therewith, or, if he objects thereto, he shall immediately state his objection in writing to the Minister who shall make a decision on the objection.

5. Where the holder of the prospecting or mining right or right of passageway, or his agent states his objections to the Minister under the preceding paragraph he shall cease to use the mine, or part thereof, machine, plant, matter or practice as to which such notice has been given, and shall withdraw all men from the danger indicated by such officer until such time as the matter is decided by the Minister;

Provided that, if in the opinion of the officer giving such notice, there is no immediate danger, such officer may allow work to proceed during the time the matter is being determined, under such restriction and upon such conditions to ensure safety as he may consider necessary and may specify in writing.

Article 83

Proceedings in case of accident

1. Whenever an accident occurs in connection with prospecting 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 of the matter, so far as they are known to him, to the Director 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.

3. The Director shall, for the purpose of an inquiry under this Article have the powers of a Court to summon witnesses, to call for the production of books and documents and to examine witnesses and parties concerned on oath.

4. Any witness required to attend by the Director for an inquiry may be paid reasonable expenses as are applicable to Court witnesses.

5. The word "Director" in this Article includes an officer appointed by him for the purpose of this Article.

Part VIII - REGISTRATION

Article 84

Prospecting or mining rights shall be registered

All permits, licenses or leases and rights of passageway shall be registered in the office of the Director in the prescribed manner.

Article 85

Transfers of interest to be registered

1. When any permit, license, lease or right of passageway is transferred to, vests in or devolves upon any person, such person shall within thirty (30) days thereafter, or of the date of approval where approval is required, apply in the prescribed manner to the Director to register such transfer, vesting or devolution.

2. Where any interest in any permit, license, lease or right of passageway has been created, renewed or terminated, the person concerned shall apply in the prescribed manner to the Director to register the instrument creating, renewing or terminating such interest within thirty (30) days of the date of the execution thereof;

Provided that the Director may, for good cause shown, extend the period for the making of such application.

3. The Director's office shall cause to be kept in such Register, maintained pursuant to this Part, such details as are prescribed or as the Minister may direct, including but not limited to:

(a) the office address in the Republic of any holder of any permit, license, lease or right of passageway and the name of his resident agent, along with the power of attorney establishing such agent's authority to act on his behalf;

(b) maps of the Republic illustrating those areas currently subject to a permit, license or lease and those which remain available for award in accordance with this Code.

Article 86

Registration not to cure defect

Registration shall not cure any defect in any document registered, or confer upon it any effect or validity which it would not otherwise have had.

Article 87

Inspection of register

The Director shall on application, and on payment of the prescribed fee:

(a) allow inspection of the register at all reasonable times; and

(b) give copies of or extracts from any entry in the register.

Article 88

Copies of prospecting or mining rights, etc. to District Commissioner

The Director shall forward a copy of every permit, license or lease (other than a prospecting permit issued under Part III) and every right of passageway, and of any instrument transferring, renewing, creating or terminating any of these or any interest therein, which is registered in his office to the District Commissioner of the District or Districts in which the area in question is situated.

Part IX - DISPUTES

Article 89

Application to investigate dispute

Where any matter respecting the provisions of this Code or the Regulations, or the terms or conditions of any permit, license or lease, or arising out of any prospecting or mining operations, is in dispute between two or more holders of prospecting or mining rights, the parties may jointly apply to the Director to investigate such dispute.

Article 90

Memoranda, statements, etc.

1. The parties to the dispute shall submit to the Director written memoranda covering the matter in dispute.

2. The Director, or other officer duly authorized by him, may investigate such dispute, and for such purpose shall have the same powers of inspection and inquiry as are provided in Article 83 of this Code.

Article 91

Adjustment of disputed boundaries

1. Where such dispute is in respect of any area, boundary or beacon, the Director or other authorized officer shall make a survey of the disputed area, boundary or beacon, and shall have power to amend such area, boundary or beacon in whatever manner seems to him best in the circumstances.

2. Such amendments shall be binding upon all the parties to the dispute.

Article 92

Director to submit report

At the conclusion of every investigation, the Director or other authorized officer shall make a report to the Minister, together with his recommendations, and a plan showing any amendments made under the provisions of the preceding Article.

Article 93

Discretion of Director to refuse to investigate

Notwithstanding anything in this Part, the Director may refuse to investigate any dispute, and may thereupon, or at any time during any investigation refer the disputants to a Court.

Part X - MISCELLANEOUS, PENAL AND FINAL PROVISIONS

Section 1 - Miscellaneous

Article 94

Discovery of minerals

1. When the holder of prospecting or mining rights discovers minerals which he believes may be of economic value or capable of development, and which have not been reported in the locality previously, he shall notify the Minister, giving details of such discovery, and shall supply a sample of the minerals.

2. In the event of any Government officer discovering minerals which he believes may be of economic value or capable of development, he may demarcate an area not exceeding one (1) square mile, or several such areas, and shall report such demarcation with a plan thereof to the Minister, and shall supply a sample of the minerals. Demarcation shall be by the same method as prescribed for a mining permit. Such area shall be designated a "Government Mineral Area".

Article 95

Priority of applications

If applications for a permit, license or lease for minerals other than Hydrocarbons are received for the same

area or for overlapping areas from two or more persons, that application which is first received by the Minister shall have priority, provided that the application has been made in the prescribed manner, and that the area applied for shall have been properly demarcated, as may be required by this Code or the Regulations.

Article 96

Pollution of water

No person shall in the course of prospecting or mining operations permit any noxious or poisonous matter to pollute water in use by the public, nor shall he discharge sand, slime or other tailings in a manner as to interfere with any such use.

Article 97

Lateral limits

1. The lateral limits of any permit, license or lease shall be vertical planes passing through the sides by which such permit, license or lease area is bounded.

2. The lateral limits of the occupied or rented surface area required for prospecting or mining operations on the surface may be less than the permit, license or lease area, and may vary from time to time depending upon the requirements of the operations.

Article 98

Use of facilities

1. The construction of any roads, railway lines, airfields, ports, power generation facilities or communication systems, the reclamation of land and the creation of islands, on any permit, license or lease area, or on any passageway, by a holder shall require the prior written

approval of the Minister, which shall not be unreasonably withheld or delayed, and the Minister may require, as a condition of his approval, that such facilities be available for public use, provided that any person having a lawful interest in the land on which such facilities are constructed and any authorized public officer shall have access to and use of such facilities, and provided, further, that:

(a) where any such person or member of the public uses such facilities in a manner as, in the opinion of the holder and the Government, to do appreciable damage thereto, or to enhance substantially the cost of upkeep thereof, the holder shall be entitled to call upon such user to contribute to the cost of upkeep;

(b) where any such person or member of the public uses such facilities in a manner as to interfere materially with the free use and enjoyment of such facilities or the effective conduct of the operations authorized in the permit, license or lease by the holder thereof, the holder may give notice to the user to limit his use of the facilities so as to limit such interference.

2. Except as provided in the preceding paragraph, any such facilities constructed by the holder of any permit, license, lease or right of passageway shall be considered to be private facilities and members of the public may not use such facilities without the consent of the holder under such conditions as he may require.

3. Any airfield constructed by the holder of prospecting or mining rights shall be subject to the laws for the time being in force for the regulation of airfields and flying generally in the Republic.

Article 99

State of war

In the event of a state of war duly declared, the Minister shall have the right of pre-emption of all minerals mined under any permit, license or lease, and all products thereof, and shall have the right to take control of the mining operations from the holder for such time as the state of war exists.

Article 100

Interference with prospecting or mining rights, passageways, beacons, mine timbers, etc.

No person shall at any time:

- (a) interfere with or obstruct any prospecting or mining operations authorized under this Code or the Regulations;
- (b) interfere with any passageway;
- (c) interfere with any machinery, plant, works or property on any area the subject of any permit, license, lease or passageway;
- (d) without lawful authority wilfully break, deface or remove any boundary mark, beacon, pillar, post or notice erected for the purpose of this Code or the Regulations;
- (e) without lawful authority interfere with any timber, support, door or barrier in any mine, shaft or adit;
- (f) without the consent of the lawful owner remove or otherwise interfere with tailings;
- (g) obstruct any person in the exercise of his rights conferred by this Code or the Regulations.

Section 2 - Penalties

Article 101

Illegal prospecting or mining

Any person who prospected or mines on any area referred to in Article 2 otherwise than in accordance with the provisions of this Code and the Regulations shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding Sh. So. 100,000.-- or to imprisonment for a term not exceeding twelve (12) months, or to both such fine and imprisonment.

Article 102

Failure to comply with notice

1. If the holder of any prospecting or mining rights or right of passageway, or his agent, fails to comply with the requirements of any safety notice given under Article 82 or with any decision of the Minister when an objection has been determined, he shall be guilty of an offence and liable on conviction to a fine not exceeding Sh. So. 20,000.-- or to imprisonment for a term not exceeding twelve (12) months or to both such fine and imprisonment.

2. Any person failing to comply with the requirements of any other notice lawfully given under the provisions of this Code or the Regulations shall be guilty of an offence and liable on conviction to a fine not exceeding Sh. So. 5,000.-- or to imprisonment for a term not exceeding three (3) months, or to both such fine and imprisonment.

Article 103

Failure to attend inquiry, etc.

Any person summoned to attend or produce books or documents at any inquiry held under the provisions of Article 83 and refusing or neglecting to do so, or refusing to answer any question put to him by or with the concurrence of the Director, or other authorized officer holding such inquiry, shall be guilty of an offence and liable on conviction to a fine not exceeding Sh. So. 400.--.

Article 104

General penalty

Any person who violates any of the provisions of this Code or the Regulations for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding Sh. So. 10,000.-- or to a term of imprisonment not exceeding six (6) months, or to both such fine and imprisonment.

Article 105

Forfeiture of minerals, etc. by Court

1. In addition to any other penalty, the Court shall order the forfeiture of all minerals obtained in the course of illegal prospecting or mining, or obtained as the result of any violation of this Code or the Regulations, or in default of such minerals, such a sum as the Court may assess as the value of such minerals.

2. The Court may further order the forfeiture of any implements or machinery used for any illegal prospecting or mining.

Section 3 - Final Provisions

Article 106

Regulations

1. The President of the Republic may, on the proposal of the Minister, make Regulations for the implementation of this Code.

2. Without prejudice to the generality of the power conferred by the preceding paragraph, Regulations made hereunder may include, but are not limited to, particular provisions for, or with respect to, the following:

(a) prospecting and mining for minerals other than Hydrocarbons and the carrying on of prospecting and mining operations and the execution of works for that purpose;

(b) the exploration for and mining of Hydrocarbons and the carrying on of exploration and mining operations and the execution of works for that purpose;

(c) the manner of application for, and the form and conditions of, and the renewal, transfer, surrender, revocation or registration of rights under any permit, license or lease;

(d) the fees and rents to be paid, and deposits to be made in respect of any permit, license or lease, or any renewal, transfer, surrender or revocation thereof, or any creation of an interest therein;

(e) the size, shape, method of demarcation or survey of any permit, license or lease area and the removal of obsolete beacons;

(f) the construction and use of passageways;

(g) the cutting down and use of timber for the purposes of carrying on the operations authorized in a permit, license or lease;

(h) the safety, welfare, health and housing conditions of persons employed in exploration, prospecting or mining operations and the precautions necessary for the carrying on of such operations in a safe, sanitary and proper manner;

(i) the safe usage, storage, and proper handling of any explosives used in exploration, prospecting or mining operations;

(j) the restriction or prohibition of the employment of children, young persons and women in underground mining;

(k) the possession, safeguarding, disposal of and dealing in the minerals mined or produced;

(l) the construction and operation of storage facilities, pipelines, water lines, pumping stations, tank stations, valve stations or other storage or transportation installations for the carrying on of exploration, prospecting or mining operations;

(m) the registration of permits, licenses and leases, rights of passageway, and the registration of any other instruments under which any right or interest in any of them is transferred, surrendered, or otherwise dealt with, and the fees payable on such registration;

(n) the agents and representatives to be appointed, the returns, reports, and plans to be rendered, the nature of the records, accounts, books and plans to be kept by the holders of prospecting and

mining rights, the furnishing by such holders of any reports, returns and other information required by the authority concerned, and the method of Government inspection and control of exploration, prospecting or mining operations;

(o) the rates of royalty to be paid to the Government, the method of calculation of the amount of such royalty, and the manner and time of payment thereof;

(p) the control of the flow, the prevention of escape and the disposition of any poisonous or noxious substances, tailings or minerals resulting from exploration, prospecting or mining operations;

(q) conserving, and preventing the waste of minerals and other natural resources of the Republic;

(r) the construction, erection, maintenance, operation or use of installations or equipment;

(s) the removal of structures, equipment and other property brought into the Republic in connection with exploration, prospecting or mining operations that are not used or are no longer to be used in connection with such operations;

(t) the methods to be used for the measurement of minerals and other substances that may be mined, extracted or produced;

(u) taking, preserving and furnishing to the Ministry of cores, cuttings and samples of minerals and other substances;

(v) the obligations of a holder upon revocation or termination of a permit, license or lease with respect to clean up or make safe operations;

(w) conservation and other work practices to be followed during the course of exploration, prospecting or mining operations.

3. The power under this Article to promulgate Regulations may be exercised with respect to all exploration, prospecting and mining operations or only with respect to certain specified operations or only with respect to certain holders.

Article 107

Repeal and saving

1. Without prejudice to any existing prospecting or mining rights granted under any convention, agreement or other form of permit, license or lease and without prejudice to any liability incurred thereunder, all future rights to explore, prospect or mine for minerals in the Republic shall be governed by the provisions of this Code. In addition, the following law and Regulations are hereby repealed:

(a) the Mining Code (Law No. 72 of 22 November 1970); and

(b) the Mining Regulations (Decree No. 173 of 3 April 1971).

2. Pursuant to this Code references to the "Mining Code" and "Mining Regulations" in any other legislation of the Republic shall be deemed to be replaced by references to this Code and the Mining Regulations promulgated hereunder.

3. Any convention, agreement or other form of permit, license or lease granted or entered into by the Government pursuant to Law No. 77 of 22 November 1970 which is in effect as of the effective date of this Code shall continue in effect and shall be implemented in accordance with its terms and the provisions of such Law and the regulations promulgated thereunder until such convention, agreement or other form of permit, license or lease has expired or terminated in accordance with its terms or the provisions of such Law.

4. Any other law or provision relating to exploration, prospecting or mining contrary to or inconsistent with the provisions of this Code is also repealed.

Article 108

Somali text to prevail

Where there is a conflict between the Somali text and any other text of this Code and the Regulations, the former shall prevail.