



*Tonga*

# **MINERALS ACT**

**Chapter 20.02**

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## MINERALS ACT

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# MINERALS ACT

## AN ACT TO ESTABLISH THE OWNERSHIP AND PROVIDE FOR THE CONTROL OF MINERALS FOUND WITHIN THE KINGDOM<sup>1</sup>

Commencement [25th November, 1949]

### 1 Short title

This Act may be cited as the Minerals Act.

### 2 Interpretation

In this Act and any regulations made thereunder, if not inconsistent with the context—

“**land**” includes all submerged lands lying within the maritime zones of the Kingdom;<sup>2</sup>

“**mine**” means any place, pit, shaft, drive, level or other excavation wherein or whereby an operation for or in connection with any mining purpose is carried on;

“**to mine**” means to disturb, remove, cart, carry, wash, sift, refine, crush or otherwise deal with any earth for the purpose of obtaining gold or any other mineral therefrom;

“**minerals**” includes gas in a natural state as well as the following as defined in (a), (b), (c), (d), (e) and (f), but shall not include clay, coral, lime, sand, or other stone or such other common mineral substances as the Prime Minister may by notice in the Gazette declare not to be minerals for the purpose of this Act—

- (a) “**precious metals**” which includes gold, silver, platinum, palladium, iridium, osmium, or ores containing them and all other substances of a similar nature;
- (b) “**precious stones**” which includes amber, amethyst, beryl, cat's eye, chrysolite, diamond, emerald, garnet, opal, ruby, sapphire, turquoise, and all other such stones;
- (c) “**coal**” which includes coal in all its varieties and all other substances of a similar nature;
- (d) “**petroleum**” which means—
  - (a) any naturally occurring hydrocarbon, whether in gaseous, liquid or solid state;
  - (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
  - (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following—hydrogen sulphide, nitrogen, helium and carbon dioxide,and includes any such petroleum that has been returned to its natural reservoir;<sup>3</sup>
- (e) “**earthly minerals**” which includes asbestos, barytes, bauxite, china-clay, fuller's earth, graphite, gypsum, marble, mica, nitrates, phosphates, potash, salt, slate, soda, sulphur, talc and all other substances of a similar nature;
- (f) “**metalliferous minerals**” which includes aluminium, antimony, arsenic, bismuth, cadmium, chromium, cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel, tin, tungsten, uranium, vanadium, zinc and all other minerals and mineral substances other than those defined above;<sup>4</sup>

“**mining lease**” means a lease issued under the provisions of this Act for the purpose of mining for minerals;

“**mining operations**” and “**mining purposes**” means mining for minerals as herein defined and include—

- (a) the stacking, storing, and treatment of any substance supposed to contain any minerals;
- (b) the erection, maintenance and use of machinery, dams, channels, buildings and other works connected with any such operations or purposes;
- (c) the deposit or discharge of debris, refuse and waste water produced from or consequent upon any such operations or purposes;
- (d) the lawful use of land, water-course and water and the doing of all lawful acts incident or conducive to any such operations or purposes;

“**owner**” means the holder of any estate, tax allotment, town allotment, or lease granted and registered in accordance with the provisions of the Land Act;

“**prospect**” and “**prospecting**” means to search for minerals and include such working as is reasonably necessary to enable the prospector to test the mineral bearing qualities of the land;

“**prospector**” means the holder of a prospecting licence;

“**prospector's licence**” or “**licence to prospect**” means the exclusive right of prospecting for all minerals on the land to which such licence refers other than the minerals, if any, excluded by the express terms of the licence.

### 3 Reservation to the Crown of all minerals

Notwithstanding anything to the contrary contained in any other Act, all minerals of every description in or under all lands of whatsoever ownership or tenure and in whatsoever possession or enjoyment they may be, are and shall be deemed always to have been the property of the Crown and shall be deemed not to have been parted with under any alienation, grant, lease, licence or permit of such lands made before the commencement of this Act, and the Crown shall have full liberty at all times to search, dig for and carry away all such minerals of every description and for that purpose to enter upon the said lands or any part thereof.

### 4 Control by Crown<sup>5</sup>

The entire control of the exploration, prospecting, working and winning of all minerals below any land in the Kingdom is subject to the control of Cabinet. No person shall explore or prospect for or mine any such mineral save in accordance with the provisions of this Act and of regulations made thereunder and in compliance with all conditions prescribed by or under powers conferred by this Act.

### 5 Exploration licences<sup>6</sup>

Cabinet may from time to time by means of an exploration licence grant to any person or persons or company the right to enter upon any lands within the Kingdom where the same shall be lands owned by the Crown or otherwise, and to explore and examine geologically the surface, and to a depth not exceeding 50 feet below the surface, of the land comprised in the licence in such manner as Cabinet may think fit and subject to any regulations made under this Act:

Provided that the licensee shall make and pay reasonable compensation to owners, including the Crown or any lessee of land, for all injury suffered by them which may be done by the licensee or his agents and servants in exercise of the liberties and powers granted under his licence to the surface of and to any crops upon any land under cultivation, and shall at all times keep indemnified the Government from and

against all actions, suits, claims and demands by owners or lessees of land in respect of any such injury and against all costs and expenses relating thereto.

## **6 Issue of prospecting licences<sup>7</sup>**

The Minister of Lands with the consent of Cabinet may from time to time by means of a prospecting licence grant to any person or persons or company the right to enter upon lands within the Kingdom, whether the same shall be owned by the Crown or otherwise, and to mine, bore, quarry, dig, search for, win and work all or any mineral within any such lands as Cabinet may think proper, and such licence shall provide, inter alia—

- (a) for the payment by the licensee or licensees to the Minister of Lands of the prescribed royalty in respect of such minerals so won and worked as aforesaid; and
- (b) for the payment by the licensee or licensees to the Minister of Lands of compensation for all or any damage done to property the subject of such licence and the manner in which such payment is to be assessed.

## **7 Lands other than Crown lands<sup>8</sup>**

In the event of any lands so entered upon being the property of owners other than the Crown, the Minister of Lands shall pay to such owners such part of the royalty which he shall receive in respect of the winning and working of minerals within such lands as may from time to time be determined by Cabinet, and shall also pay to owners any such compensation which may be paid to him by virtue of the provisions of section 6 hereof.

## **8 Mining leases<sup>9</sup>**

On the expiration of such prospecting licence as aforesaid the Minister of Lands may, with the consent of Cabinet, grant to the licensee or licensees or to any person or persons or company a lease in such form as may be approved by Cabinet of the minerals in or under the lands the subject of such prospecting licence (hereinafter called the mining lease), and such mining lease shall inter alia provide for the reservation of the rents and royalties to be paid by the lessee or lessees to the Minister of Lands.

## **9 Lease of lands without consent of owners<sup>10</sup>**

It shall be lawful for the Minister of Lands, with the consent of Cabinet, to lease for any period not exceeding the term of a mining lease such land as may be required for the purposes of the mining lease and as may be necessary for the effectual working of the borings, diggings or works connected therewith, whether the owners agree thereto or not:



Provided that such surface rent shall be payable by the lessee as may be assessed by the Minister of Lands and approved by Cabinet in respect of the part or parts of the lands so used and occupied and such surface rent shall be paid to the Minister of Lands and through him to the owners of the land in the manner provided for the payment of rents under the Land Act.

## 10 Compulsory acquisition

When the lessee under the mining lease desires to occupy the surface of any land above or adjacent to the area of his mining lease he shall have the same rights of compulsory acquisition as are conferred upon the Crown under Part IX of the Land Act subject to the following modifications —

- (a) he cannot compulsorily acquire any greater interest than a lease for the unexpired portion of the mining lease of such portions as may be required for the purposes of the mining lease and as may be necessary for the effectual working of the borings, diggings or works connected therewith; and
- (b) in assessing compensation regard shall be had to all loss or damage caused to the owner or lessee by reason of severance of land, destruction of crops or improvements and by reason of any other cause occasioned to the owner or lessee by the compulsory acquisition of his land.

## 11 Minerals under other than Crown lands<sup>11</sup>

In the event of any mineral so leased being in or under any lands the property of any owners other than the Crown, the Minister of Lands shall pay to such owners such parts of the rents and royalties accruing from such mining lease as may from time to time be determined by Cabinet.

## 12 Royalties

There shall be payable to the Crown through the office of the Minister of Lands by all holders of exploration licences, prospecting licences and mining leases in respect of all minerals won and worked by them the royalties prescribed hereunder—

- (a) for gold, five per centum of the value thereof;
- (b) for silver, one per centum of the value thereof;
- (c) for other minerals, such royalties as may from time to time be prescribed by regulations.

## 13 Leases to Tongan or British subjects

- (1) A person holding a licence or lease granted under the provisions of this Act shall at all times be and remain a Tongan subject or a British subject, and a

company holding any licence or lease shall at all times be a Tongan company or a company registered in some part of the British Commonwealth.<sup>12</sup>

- (2) For the purposes of this section the expression “British subject” shall be deemed to include a citizen of the Republic of Ireland and the expression “company registered in some part of the British Commonwealth” shall be deemed to include a company registered in the Republic of Ireland.<sup>13</sup>

#### **14 Government officers prohibited from acquiring rights<sup>14</sup>**

No person whilst in the service of the Government of Tonga shall directly or indirectly acquire or hold any right or interest under any exploration licence, prospecting licence or mining lease, and any licence, lease or other document purporting to confer any such right or interest on any such person shall be null and void:

Provided that a person temporarily employed may, with the permission of Cabinet, retain rights and interests acquired prior to accepting Government employment.

#### **15 Right of entry for inspection**

Any officer of the Government duly authorized in that behalf by the Minister of Lands, or any police officer may enter upon any land upon which prospecting or mining operations are being conducted or which is the subject of any lease or licence under this Act and inspect any prospecting or mining operations or works connected therewith.

#### **16 Penalties**

Unless for any offence a penalty is expressly provided by this Act or by regulations made thereunder, any person who commits a breach of the provisions hereof or disobeys a lawful order of the Minister of Lands or any Deputy Minister of Lands shall be liable on summary conviction to a fine not exceeding \$100 or to imprisonment not exceeding 3 months or to both such fine and imprisonment.

#### **17 Power to make regulations<sup>15</sup>**

Cabinet may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary for the carrying out or giving effect to the provisions of this Act.

#### **18 Application of regulations**

Regulations made under this Act may be made to apply to the whole of the Kingdom or to any particular part thereof and shall be judicially noticed in every court of justice.

**19 Penalty under regulations**

- (1) Regulations made under this Act may impose for any breach thereof or for any disobedience of a lawful order of the Minister of Lands or any authorized person a penalty not exceeding \$200 or imprisonment for any term not exceeding 12 months and may authorize the cancellation of any lease or licence granted hereunder.

**Commencement and publication**

- (2) Regulations made under this Act shall come into operation upon the date specified in such regulations and shall be published in the Gazette.

**20 Application**

This Act shall be read subject to the Petroleum Mining Act, and where at variance, the Petroleum Mining Act shall prevail.<sup>16</sup>

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**ENDNOTES**

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- <sup>1</sup> 1988 Revised Edition Cap 133 - Acts 14 of 1949, 7 of 1951, 11 of 1968, 3 of 1969, 30 of 1978  
Amended by Act 30 of 1978, commencement 1 October 2007  
Amended by Act 11 of 2009, commencement 26 July 2013
- <sup>2</sup> Amended by Act 11 of 2009
- <sup>3</sup> Inserted by Act 11 of 1968
- <sup>4</sup> Amended by Act 11 of 1968
- <sup>5</sup> Amended by Act 42 of 2010
- <sup>6</sup> Amended by Act 42 of 2010
- <sup>7</sup> Amended by Act 42 of 2010
- <sup>8</sup> Amended by Act 42 of 2010
- <sup>9</sup> Amended by Act 42 of 2010
- <sup>10</sup> Amended by Act 42 of 2010
- <sup>11</sup> Amended by Act 42 of 2010
- <sup>12</sup> Substituted by Act 11 of 1968
- <sup>13</sup> Added by Acts 7 of 1951 and 11 of 1968
- <sup>14</sup> Amended by Act 42 of 2010
- <sup>15</sup> Amended by Act 42 of 2010
- <sup>16</sup> Added in consequence of, and to give effect to, section 15 of Cap. 46.08