PAPUA NEW GUINEA
MINING FISCAL REGIME

SUBMISSION TO TAX REVIEW COMMITTEE

BY

DEPARTMENT OF MINERAL POLICY & GEOHAZARDS MANAGEMENT

JUNE 2014
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1. INTRODUCTION

Papua New Guinea mining tax and fiscal regime ranges from income tax that are entirely captured in the Income Tax Act 1959, the Mining Act 1992 for fees, rents royalties etc, the Mineral Resources Authority Act 2005 for the collection of production levies and others such as the Stabilization Act 2000 and relevant taxation laws that are administered by Papua New Guinea Internal Revenue Commission and PNG Customs.

Other mining fiscal rates are determined from time to time through the National Executive Council (NEC) decisions as policy directives. Amendments to the mining fiscal rates are subject to the NEC decisions. The current 2 percent mineral royalty rate, the special support grant rate, the tax credit scheme rate and the nomination of State corporate entities to take up State equity interest in mining projects are all NEC policy decisions.

The Department of Mineral Policy and Geohazards Management (DMPGM) and the Mineral Resources Authority (MRA) administer and participate in the decision making processes for the mineral royalties, tax credits and special support grants. The State equity participation is not a tax component, it is an existing mineral policy directive for the State to exercise and take up its 30 percent equity participation rights in any mining projects in Papua New Guinea.

The mining fiscal provisions associated with benefit sharing and local participation were the predominant issues noted during the April 2011 and August 2013 Regional Consultation Forums. There were calls for the State to increase royalty rate from current 2 percent to rates ranging from 3, 4, 5 and up to 10 percent. The tax credit rates to be increased from current 0.75 percent to rates ranging from 2, 3, 4 and 5 percent and the special support grant to be increased from current 0.25 percent to rates ranging from 1 to 2 percent.

About 80 percent of the public and stakeholders discussions at the said two Regional Forums were on the financial benefits, business participation and employment opportunities. It has been very challenging to us as a Department to provide direct answers to the questions raised.

The DMPGM strategised and seek assistance from the Commonwealth Secretariat to assist the Department to addresses those challenges. The Commonwealth Secretariat reviewed PNG Mining Fiscal Regime commencing in 2011. A draft report was present to the Department in March 2012. We are yet to receive final advisory report. Our correspondences with the Commonwealth Secretariat for the final report have been further delayed to date.

We took into consideration observation made by the Commonwealth Secretariat in their draft report on the mineral royalty.

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¹ Draft Commonwealth Secretariat Advisory Report sent to Tax Review Secretariat (via Lucas)
2. PAPUA NEW GUINEA MINING TAX AND FISCAL PROVISIONS

2.1 Mandatory Tax

The Papua New Guinea Income Tax Act 1959 has provisions on the category of taxes. The main mandatory taxes for the mining sector include the following-

(a) Income Tax (resident Companies) 30%
(b) Income Tax (non-resident companies) 40%
(a) Interest withholding tax 15%
(b) Dividend withholding Tax 10%
(c) Income Tax (salary or wages tax (Rates) Act 1979, Schedule 1 Tables A, B & C.

The Department does not have much comment on the mandatory taxes. We will be available to discuss further if the Tax Review Committee flags up issues of discussion.

2.2 Mineral Royalty

Papua New Guinea applies value-based/ad valorem type of mineral royalty regime. The mineral royalty rate is calculated at 2 percent of the annual free on board revenue or net smelter returns whichever is appropriate.

The percentage mineral royalty break ups are negotiated between the State, landholders, local-level government and the Provincial Government(s) during the Memorandum of Agreement (MoA) negotiations. The agreed mineral royalty percentages from the cash component are agreed and captured in the MoA.

The Mining Act 1992 allows for 20 percent of the cash mineral royalties to be paid direct to the mining lease area landholders. Further break up of royalty percentage are agreed to at MoA meetings with parties to the MoA. The agreed percentages are captured in the Memorandum of Agreement.

The Department of Mineral Policy and Geohazards Management (DMPGM) through two of the mineral policy and legislation review regional forums in April 2011 and August 2013 respectively noted mineral royalty to be a predominant. Comments and responses received from the provincial governments, local level governments and the landowners for the mineral royalty rate to be increased from current rate of 2 percent to about 10 percent. It is challenging to accommodate such calls made by public. It is on record and State will consider making decisions by weighing people’s interest as well as taking into account the industry’s positions.

The Commonwealth Secretariat is assisting DMPGM on the Mining Fiscal Regime. However, this has been very slow in furnishing final report. Discussions on the mineral royalty are captured in the draft report. Commonwealth Secretariat compared some of the mineral royalty rates applied in other mining jurisdictions. The Department considers and recommend mineral royalty regime to be applied on different classes of minerals exploited. That is;

1. Mineral Royalty rate for both onshore and offshore mining to be applied as follows-

   (i) Precious stones at 10% FOB
   (ii) Precious metals and mini-precious stones at 4% FOB
(iii) Base metals at 2% FOB
(iv) Others at 1% FOB

2. Alternatively, we recommend the current ad valorem royalty regime and the mineral royalty rate to be increased from current 2 percent to 4 percent FOB.

2.3 Tax Credits Scheme

The Tax Credit Scheme (TCS) was introduced in 1992 and was approved by the National Government after proposals and recommendations submitted by the Industry. The scheme commenced by an Act of Parliament No.38 which amended Section 219 C (2) of the Income Tax Act 1959.

The TCS was set at 0.75 percent of the assessable income. Later in 1997 the rate was then increased to 2 percent. However, the rate was then reduced back to 0.75 percent in 2000 in accordance with the National Executive Council Decision. The 0.75 percent rate has effect in 2001 and remains current to date.

The objectives of the TCS are-

(a) To extend by way of capital works and maintenance of Government’s infrastructure on the national development priority sectors in the mining and petroleum project provinces and other parts of Papua New Guinea.

(b) To assist where possible in developing, planning and implementation capacity at either the Provincial, District, Local Government or Ward levels.

Mining companies use their resources and capacity to implement infrastructure projects within the mine host province(s) and elsewhere in Papua New Guinea. The Department of National Planning and Monitoring coordinates the TCS funded programs. The TCS is administered through the TCS Guideline.

The Department sees the TCS to be a successful program. The Department encourages more of the impact social, economic and infrastructure projects to be carried out through the Scheme. The industry is in support of the increase.

The Department highly recommends for the TCS rate to be increased from current 0.75% to 2%.

2.4 National Infrastructure Credits

This is a new establishment with the amendment to Section 219 C (2) of the Income Tax Act 1959. The National Executive Council determines and makes decisions on major national infrastructure projects to be funded. Examples of recent decisions made are the refurbishment of Marea Huas and the upgrading of the Port Moresby Rugby League Stadium in Port Moresby, National Capital District.

The Department suggests for a proper guidelines and policy to be developed to assist in the decision making process. Our leaders need to make informed decisions as per Government policy and legislative Guidelines.
2.5 Special Support Grant

Special Support Grant (SSG) is appropriated to the mine host provincial government(s) annually at the rate of 0.25 percent of the annual assessable income. The grant is paid by the National Government from its consolidated revenues in compliance with Section 95 (2) (d) of the Organic Law on Provincial and Local-level Government Act 1998.

The Department of National Planning and Monitoring co ordinate and administers the Special Support Grants. The SSG is administered through the SSG Guideline.

*The Department through Mining Policy amendments is calling for the SSG to be phased out and removed completely. The financial benefits derived from mining have to be equally distributed to non resource provinces. The proposed increase in the tax credit rate can compensate for the projects in the mine host provinces.*

2.6 Compensation & Valuer General Rates

Compensation is not a direct benefit or part of fiscal regime. It is a recognition given to customary landholders for accessing their customary land and some consequential damages done to the land and economic trees.

The purpose of compensation is for the exploration and mining lease holders-

(a) Entering and occupying the land, and
(b) Loss or damage suffered or foreseen to be suffered.

The compensation agreements are signed between the landholders and the mining companies or mining lease holders. *Section 154, 155, 156, 157, 158 159 and 160 of the Papua New Guinea Mining Act 1992* gives effect to landholders to be entitled to compensation payments for-

(a) Deprivation of possession or uses of land
(b) Damage to natural surface of land
(c) The loss or damage to the impoundments
(d) Loss of earnings from the cultivation
(e) Loss or restrictions of a right of way, easement or other rights.
(f) Disruptions to agricultural activities and
(g) Social disruption

The current *Value General* rates do apply in determination of the value of economic trees. The actual Valuer General rates do not reflect the value of the economic trees within the mining lease areas or townships. Landowners expressed concerns at the two regional forums on the application of the Valuer General rates to pay for damages to economic trees and food crops.

*Taking into account people’s concerns raised, the Department recommends for the review of the Value General rates. Rates apply to mining sector, particularly in the mine host provinces should be treated separate from other non mining provinces. Rates must take into account the market prevailing prices and assessment and compensation has to be paid on the current market value.*
2.7 Fees, Rents and Security

The Papua New Guinea Mining Act 1992 Sections 146 and 147 and the Mining Act Regulations Sections 24, 26, 27 & 28 gives effect for the fees, rents and securities to be paid to the State as per the rates listed in SCHEDULE 2 of the Regulations. Table 1 in APPENDIX “A” shows the fees, rents and securities prescribed in SCHEDULE 2. The Mineral Resources Authority (MRA) collects the fees, rents and the securities.

*The fees, rents and securities should remain same.*

2.8 State Equity Participation

The current mineral policy handbook calls for the State to take up to 30% equity interests in any mining projects in Papua New Guinea. The Mining Act 1992 Section “16A (1) (2) and Section 17 give effect to the State power to enter into Agreements on the acquisition of State Interests.

When State takes up equity interest in operational mining projects, a five (5) percent is given free carry to the mine host provincial government(s) and the mining lease area landholders. Both parties share 2.5 percent each. The landholders’ interests are managed by the Mineral Resources Development Company Limited (MRDC) through its subsidiary companies. State nominates State corporate entities to take up equity interest in mining projects in Papua New Guinea. Petromin PNG Holdings Ltd is one such nominee in taking part in equity interest in Deep Sea Mining at its Solwara 1 project.

Papua New Guinea has a unique setting with regards to mineral ownership and the customary rights to land. State recognizes and gives back 5 percent to the mine host provincial governments and the mine project area landowners. These are unique arrangements that is been practiced in Papua New Guinea. It is a National Government call for the State to maintain the current 30 percent rights and acquire additional 20 percent. State and its people do not want to be seen as an observer in their own land. We must have ownership of the project and participate in the development phase of the mine. Policy provides that opportunity and the negotiation and decisions the Government make is entirely an investment decision. The Petromin PNG Holdings Limited or the new proposed Kumul structure and the Mineral Resources Development Company have successfully managed and State, landowners and the mine host provincial government equity interests. The State is building on from these success stories in equity participation.

*The Department in line with the National Government’s call recommends for the 30 percent equity participation rights to remain and an additional 20 percent to be reserved for State to take up equity interest.*

*The Department also would like to have further consultation on the Production Sharing Agreement concept. The concept is applied in oil, gas and petroleum sectors in other parts of the world. The concept may work well in the geothermal and coal seam methane sectors where drilling and extraction of resources are similar to oil and gas.*
3. MINE CLOSURE BOND AND TRUST

The Ok Tedi Mine has a Mine Closure Code that administer it’s mine Closure Trust to implement mine closure obligations that it owes to the people of Western Province and Papua New Guinea. The administration and management of the Ok Tedi Closure Trust is independently managed and administered by complying to the mine closure code. Currently, Independent State of Papua New Guinea does not have specific policy or legislation to regulate mine closure obligations.

The Department of Mineral Policy and Geohazard Management (DMPGM) had developed PNG Mine Closure Policy. The policy is ready for cabinet submission. One of the clauses of the policy calls for the establishment of mine closure bonds and mine closure trusts. The mine closure bond is an obligation to the Miner or Developer to take due diligence and consideration to implement demolishing of equipment and plant, rehabilitate and monitor the environment. The standard and practice to demolish plant and equipment is guided by Mine Health and Safety Act. The Department of Environment and Conservation (DEC) provide oversight and supervisory role in that regard with their environmental bond to ensure that the standard, practice are upheld and comply with Environment Act 2000 and good practice. The mine closure trust has to be co-managed by the State and the mine project company.

When the mine is open for operation, it has to be closed with proper bio-physical and social and economic rehabilitation and plant decommissioning. It needs money for the rehabilitation and clean up exercise.

The Department recommends for the Mine Closure Bond to be mandatory and Mine Closure Trust to be established for the purposes of mine closure. Management of the trust fund has to be guided by the Trust Instruments. All surplus funds from the trust after meeting all closure obligations have to be deposited into the National Government Consolidated Revenue.

The current taxation regime applicable to the mining taxpayers will invariably lead to un-recouped mine closure expenditure for the miner, if things were to remain as they are. Internal Revenue will need to address any deficiency in the Taxation Act in relation to the expenditure incurred on a mine closure plan; in particular, the tax treatment of expenditure on closure activities which occurs subsequent to the cessation of production activities at a mine. This review may require appropriate amendments to the Taxation Act.

The Developer must provide security for closure obligations prior to the commencement of construction of the mine in accordance with the Initial Mine Closure Plan (being the conceptual plan), submitted with the Feasibility Study and include estimated cost for closure and financial provisions. The quantum of the security is variable, and is based on the estimated cost of closing the mine and incorporates premature closure. The security will include the costs of technical and physical rehabilitation (that is, decommissioning the mine site and making it safe) and would be separated from the Environmental Bond proposed under the Environment Act 2000.

The original conceptual Mine Closure Plan will contain an estimate of the costs of implementing mine closure obligations and this estimate will be required to be updated as the plan is updated.
Each Developer must assist to implement the social objectives under the social economic development plan. The first is a future generations trust fund which is designed to give effect to the social and community objectives of the social economic development plan and the memorandum of agreement relating to the mine. These objectives include servicing the needs of future generations. The level of contributions to this trust fund will be as set out in the memorandum of agreement for the relevant mining project. The second trust fund is a public infrastructure services trust fund which is to provide funds for the development and maintenance of public infrastructure and social services in the areas affected by the mining project.

4. ENVIRONMENT BOND

Papua New Guinea Environment Act 2000 provides for the environment bond. The Department of Environment and Conservation is responsible for the administration and regulation of the bond.

Mining is carried out at the environmental costs. The Department is very mindful of the environmental consequences the mine may cause. The Environment Bond needs to be strengthened through significant administrative mechanisms.

5. PRODUCTION LEVY

The Mineral Resources Authority (MRA) collects the production levy. Section 30 (3) (4) of the Mineral Resources Authority Act 2005 imposes the production levy at the rate of 0.25 percent, or such other rate that does not exceed 0.5 percent of the assessable income. The exceeding rate is determined by the Minister responsible for treasury matters in consultation with the Minister for mining matters and the MRA Board.

The production levy paid from minerals produced from mining by the holder of a mining lease or special mining lease and the alluvial gold produced from mining. The Mineral Resources Authority expends the production levy on administrative and the operations of the Authority. The MRA Act 2005 allows some flexibility.

The Department suggest for the Production Levy to be increased from current 0.25 percent to 0.5 percent of the assessable income.

6. EXPLORATION

6.1 Type of Tenements

Tenements include exploration, mining retention, mining lease, alluvial mining lease, lease for mining purposes and mining easement. Chapter four of the Mining and Petroleum Taxation Issue Paper No. 1 discusses and raise some question on the exploration licenses.

In responding to the questions raised, we advise that, there has been a significant progress made on the subject. The changes and improvements are now captured in the 2014 version of the revised mining law. Changes include the size of the blocks, number and term of exploration licences and
merging of Special Mining Lease to Mining Lease for large scale mine projects. The revised mining policy and mining law captures the following changes-

(a) **Exploration Licence (EL)** is to be granted for a term not exceeding five (5) years. This is subjected to review of the exploration work programs and licence conditions after every three (3) years from the date of granting. The area of land has to be no more than 10,000 square kilometers for onshore and offshore areas of which no more than 1,250 square kilometers is onshore area. Areas will have the shape of cadastral blocks. The number of EL any one person may hold at any one time is limited to ten (10). Other requirements including granting of EL, extension, expenditure, approval and variations to exploration program and the reporting shall be done as per the mining act.

(b) **Mining Retention License (MRL)** may be granted for a term not exceeding five (5) years. The MRL shall not be extended. The area of land has to be no more than 60 square kilometers. Areas will have the shape of cadastral blocks. The MRL application, granting, rights and obligations, approved justification; refusal and transferable requirements shall be done as per the mining act.

(c) **Mining Lease (ML)** may be granted for a term not exceeding forty (40) years. The area of land has to be no more than 60 square kilometers. Areas will have the shape of cadastral blocks. Other requirements including conditions of granting of ML, expansion, rights to enter and occupy land to conduct mining, exemptions and approved plans shall to be done as per the mining act. The ML will be granted for small, medium to large scale mining projects in Papua New Guinea.

(d) **Alluvial Mining Lease (AML)** may be granted for a term not exceeding five (5) years. The AML may be extended to a period not exceeding five (5) years on application by holder through assessment and recommendations by the Council. The area of land has to be no more than 5 ha. Areas will have the shape of cadastral blocks. Other requirements including conditions of granting of AML, application, rights to enter and occupy land to conduct mining, approved plans, variations, extension and reporting shall to be done as per the mining act.

(e) **Lease for Mining Purposes (LMP)** may be granted for the same term as that of the tenement which it is associated. Where no related term, it should not exceed twenty (20) years. The purpose of the LMP is for the mine project infrastructure and facilities. The area of land is no more than 60 square kilometers. Areas will have the shape of cadastral blocks. Other requirements including conditions of granting of LMP, application, rights to enter and occupy land, approved plans, variations, extension and reporting shall to be done as per the mining act.

(f) **Mining Easement (ME)** may be granted for the same term as that of the tenement which it is associated. The purpose of the ME is for the mine project infrastructure and facilities include a road, a tramway or railway, an aerial ropeway, a power transmission line, a pipeline, conveyor system, a bridge or tunnel, a water way and other ancillary facilities. The area of land is to be sufficient for the purpose and shall be a rectangular or polygonal
shape. Other requirements including conditions of granting of ME, application, rights to enter and occupy land, approved plans, variations of approved plans, extension and reporting shall to be done as per the mining act.

6.2 Exploration Expenditure Deductions

Papua New Guinea should now be looking at preserving land areas that have mineral potential to be explored in the future. The PNG LNG is now on board with the existing mining projects with a project life span of more than 30 to 40 years. Papua New Guinea is not necessarily in a need at this stage to grant exploration concessions to exploration companies. The existing exploration companies who are at advance stages of developing the mine such as Mt. Kare, Wafi Golpu, Frieda River, Woodlark, Yandera and other junior players should be continue under current exploration concession arrangements.

The Department recommends for the following incentives for mining explorations to be abolished as is no longer required-

(a) Double deduction of Exploration Expenditure for mining operations:

A double deduction is allowable on exploration expenditure pursuant to an exploration license issued under the Mining Act 1992 from which a mining development license was drawn on or after 1 January 2003.

(b) Loss Carry Forward

Loss incurred by a taxpayer in carrying out resource operations can be carried forward indefinitely.

(c) Pooling of Exploration Expenditure

Resource companies can make election to put all Exploration expenditure incurred outside of a resource project into a pool and claim 25% of the pooled expenditure as a deduction against income from the project. The deduction is limited to 25% of tax payable for mining companies and 10% of tax payable in the case of petroleum companies.

(d) Additional Provision For Allowable Capital Expenditure

As of 01 January 2003, capital expenditure incurred by a company carrying on mining project will be pooled and the deduction allowed will be 25% of the value of the pool at the end of that year. This applies to projects in which a mining lease or special mining lease was issued on or after 01 January 2003.

The DMPGM understands that Accelerated Deductions and the Additional Profit Tax have been abolished. There are no capital gains tax, zero rates of tax on Goods and Services Tax (GST). Under the Goods & Services Tax Act “the supply of goods or services, other than cars, to a resource company for use in resource operations are charged at the rate of zero percent.

The Department recommends for the Additional Profit Tax or the Resources Rent Tax to be introduced to be applied on profits that are beyond normal profit margins of the mining companies from the increased mineral prices.
There should be a capital gains tax. Capitals including transfer of interests of shares from one company to another within and abroad. The Exploration companies selling licenses and interest transferred within or abroad has to be taxed as well. This has not been regulated and exploration companies have taken advantage of it.

PNG IRC must be fully resourced and their staff trained to effectively monitor and administer the transactions of companies in terms of transferring capital and share interest within and abroad.

Tax Holidays should not be encouraged at this stage. There needs to be a clear policy directive which would be a living document for decision makers to make informed policy decisions. The Department of Treasury or PNGIRC needs to develop a policy guideline to administer tax concessions if there is non to administer. The Department understands that, tax holiday decisions are part of negotiations and captured in the Project Development Contracts.

7. OFFSHORE MINING

The PNG Offshore Mining Policy provides for the mineral royalties collected from the “Area” or “High Seas” to be paid to the State through the Mineral Resources Authority. The payment has to be made in accordance with the International Sea Bed Authority (ISA) rules, regulations and policy guidelines.

The mineral royalty collected within the national jurisdiction will be paid at the rate stated in clause 2.2 of the mineral royalties. The miner will pay the royalties to the State through the Mineral Resources Authority (MRA). The Authority will then distribute monies to the beneficiaries as per the Memorandum of Agreement. The Policy calls for the 20 percent of the royalties to be paid to the Coastal Area of Benefit, which refers to the people living along the coastline close to the project. The new PNG Offshore Mining policy calls for the 5 percent to be paid to the recognized women’s groups, 5 percent to Future Trusts and 10 percent to the Coastal Area of Benefit umbrella Association for business participation.

The Department recommends for further consultation on designing separate fiscal regime for the Offshore Mining. It is a unique environment and a new emerging industry. Offshore Mining involves capital investment, and high grade in mineral content to compensate the high risk investment.

8. GEOTHERMAL RESOURCES

Geothermal is a new resource in Papua New Guinea which has a potential to be developed into an industry of its own. One such developed project is at Lihir Gold Mine, which powers the Lihir Gold Project for its electricity.

The National Government has given directives through NEC Decision for the ownership to be 49 percent for landowners and 51 percent for the developer. Mining royalty rate may be applied but the process and environment that geothermal development and the end use product changes phases. That is from mineral water/steam to power generation.

The Department recommends for further consultation on designing royalty regime for geothermal resources.
9. FISCAL LAWS AND POLICIES

Extractive Industry in Papua New Guinea is a growing sector. The growth of the extractive industry sector purses fiscal policy and legal changes for our country to regulate the industry. There is need for review and development of policies and laws to encourage foreign investment, promote economic growth, national participation and equal benefit distribution.

All fiscal regime taxes and fiscal provisions need to be merged and captured in one policy document and law. Currently, tax and fiscal matters are mentioned in various legislations. For example, mining fiscal regime is mentioned in Income Tax Act 1959, Mining Act 1992, Mineral Resources Authority Act 2005, Dividend withholding Tax Rate Act, Resource Stabilization Act 2000, etc.

The Department suggest for Extractive Industry policies and laws to be merged to become one for effective and efficient administration of the sector.
### Table 1. SCHEDULE 2

**SCHEDULE 2.**

Reg. Sec. 24, 26, 27, 28

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<th><strong>SCHEDULE OF FEES, RENTS, SECURITY AND EXPLORATION EXPENDITURE REQUIREMENTS</strong></th>
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<td>Application for grant or extension of terms of:-</td>
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<td>Exploration Licence (includes extensions)</td>
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<tr>
<td>Mining Lease - up to 5 ha</td>
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<td>- over 5 up to 10 ha</td>
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<td>- over 500 ha</td>
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<td>Special Mining Lease</td>
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<td>Alluvial Mining Lease</td>
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<td>Lease for Mining Purposes</td>
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<td>Mining Lease</td>
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<tr>
<td>Application for consolidation of tenements</td>
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<tr>
<td>Extension of term for leases (other than exploration licences) - at 50% of grant fee</td>
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**Registration of:-**

<p>| Agreement for Joint Venture etc. (see Note 1) | 200.00 |
| Mortgage or Charge | 300.00 |</p>
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<td>Change of Name of Tenement Holder</td>
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<td>Search of Register - per entry</td>
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<td><strong>Annual rent in respect of:-</strong></td>
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<td>Exploration Licence (per sub block/annum) TERM 1</td>
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