

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT No. 82 OF 2018

The Mines and Mineral Development Act, 2015
(Act No. 11 of 2015)**The Mining Appeals (Tribunal) Rules, 2018**

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IN EXERCISE of the powers contained in section 101 of the Mines and Minerals Development Act, 2015, the following Rules are made:

PART I

PRELIMINARY

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|--|----------------|
| 1. These Rules may be cited as the Mining Appeals (Tribunal) Rules, 2018. | Title |
| 2. In these Rules, unless the context otherwise requires—
“Chairperson” means the person appointed as Chairperson of the Tribunal under section 98 of the Act;
“party” means a party to the proceedings;
“member” means a member of the Tribunal;
“proceedings” means proceedings before the Tribunal;
“Register” means the Register of appeals;
“Secretariat” means the Secretariat of the Tribunal;
“Tribunal” means the Mining Appeals Tribunal established under section 98 of the Act; and
“Vice-Chairperson” means the person appointed as Vice-Chairperson of the Tribunal under section 98 of the Act. | Interpretation |

PART II

INSTITUTION OF APPEALS

- | | |
|---|--------------------------------------|
| 3. The Mining Cadastre Department of the Mining shall provide the necessary Secretariat services to the Tribunal for the performance of its functions under these Regulations. | Secretariat |
| 4. (1) A person may appeal to the Tribunal against an order or direction by the Minister in Form I set out in the Schedule within thirty days of the date of the order or direction.

(2) An appeal made under these Regulations shall be lodged with the Secretariat. | Institution of appeal |
| 5. The Secretariat shall, on receipt of an appeal, serve or cause to be served a copy of the appeal on the respondent. | Service of appeal |
| 6. (1) The Secretariat may, subject to any direction by the Chairperson, at any time after receiving the appeal, require the appellant to furnish, in writing, such particulars as may be necessary to ensure a fair hearing.

(2) The Secretariat shall, on receipt of the particulars referred to in subrule (1), send a copy of the statement to the respondent. | Power to require further particulars |

- Answer 7. The respondent shall lodge with the Secretariat an answer within seven working days of receipt of the appeal.
- Time and hearing of appeal 8. (1) The Tribunal shall determine the date, time and place of hearing of an appeal.
- (2) The Secretariat shall, at least fourteen days before the hearing of the Tribunal, cause the notice of the date, time and place of hearing of the Tribunal to be served on the appellant and respondent in Form II set out in the Schedule.
- (3) A party served with the notice referred to in subrule (2) may apply, in writing, to the Secretariat for a change of the date of hearing.

PART III

PROCEEDINGS OF TRIBUNAL

- Sittings of Tribunal 9. The Tribunal shall sit at a place and times that the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson may determine, within sixty days of receipt of an appeal.
- Proceedings of Tribunal 10. (1) The Tribunal shall hold its proceedings in public.
- (2) Despite subrule (1), the Tribunal may, on an application by a party to the proceedings, direct that the proceedings be held in camera.
- (3) Subject to the other provisions of these Rules and to any direction given by the Chairperson, the Tribunal may regulate its own procedure.
- (4) There shall preside at any proceedings of the Tribunal—
(a) the Chairperson; or
(b) in the absence of the Chairperson, the Vice-Chairperson.
- Quorum 11. (1) Three members of the Tribunal shall constitute a quorum, which shall include either the Chairperson or the Vice-Chairperson.
- (2) A hearing before the Tribunal shall for the purposes of Chapter XI of the Penal Code, be deemed to be a judicial proceeding.
- (3) The determination of any matter before the Tribunal shall be according to the opinion of the majority of the members on the matter, except that—
(a) in the event of an equality of votes, the person presiding at the sitting shall have a casting vote in addition to a deliberative vote; and

(h) where in any matter before the Tribunal the dispute to be resolved is on a point of law, the decision of the person presiding at the sitting shall prevail.

(4) A member who is present at a meeting or hearing of the Tribunal at which any matter in which the member's relative or associate is directly or indirectly interested in a private capacity is the subject of consideration shall, as soon as is practicable after the commencement of the meeting or hearing, disclose such interest and shall not, unless the Tribunal otherwise directs, take part in any consideration or discussion of or vote on any question relating to that matter.

(5) A disclosure of interest made under this rule shall be recorded in the record of proceedings at which it is made.

(6) The validity of any proceedings, act or decision of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(7) The Tribunal shall cause to be kept a record of its proceedings.

12. Where more than one appeal is given to the Secretariat by different appellants relating to the same matter, the Tribunal may on its own motion or on an application, in writing, by a party to the appeal order that the appeals be consolidated.

Proceedings
to be
consolidated

13. (1) A person appearing as a party before the Tribunal may appear in person or be represented by a practitioner.

Appearance
before
Tribunal

(2) The respondent shall be afforded an opportunity to be heard in answer to the appeal.

14. (1) Where an appellant does not appear at the time and place appointed for the hearing, the Tribunal may strike off or dismiss the appeal.

Default of
appearance

(2) Where the respondent does not appear at the time and place appointed for the hearing of the appeal, the Tribunal may—

(a) proceed to hear an appeal; or

(b) adjourn the hearing on terms that the Tribunal considers appropriate.

(3) Where proceedings are dismissed or determined under this rule in the absence of a party, that party may, on an application, in writing, made by that party within fourteen days of the dismissal or determination, apply to the Tribunal to set aside the dismissal or determination and give the reasons for that party's absence from the hearing.

(4) Where the Tribunal is satisfied that the reasons given by a party under subrule (3) are sufficient to set aside the dismissal or determination made under subrule (1) and (2), the Tribunal may set aside that dismissal or determination.

Tribunal
hearing

15. At the hearing—

(a) the appellant shall present the evidence which the appeal is based;

(b) the respondent may adduce evidence to rebut the evidence of the appellant;

(c) the appellant may address the Tribunal by way of reply to the respondents's evidence;

(d) a party may call a witness or witnesses to adduce evidence; and

(e) the parties may, at the conclusion of the hearing, present oral or written submissions to the Tribunal.

Evidence

16. (1) The Tribunal may receive, as evidence, a statement, document, information or other matter that may assist it effectively consider an appeal.

(2) The Tribunal may take judicial notice of a fact.

(3) Evidence before the Tribunal may be given orally or, if the parties to the proceedings consent or the Tribunal so orders, by affidavit.

(4) The Tribunal may, at any stage of the proceedings, make an order requiring the personal attendance of a deponent for examination and cross examination.

Production
of document
or
information

17. (1) A party may, at any time during the hearing give to the other party a notice to produce any document to which the appeal relates which is in possession of that party.

(2) A party to the proceedings shall, on request, produce to the Secretariat, any document or other information which the Tribunal may require and which is in the power of that party to produce, and shall afford to every party to the proceedings an opportunity to inspect those documents or copies of the documents, and to make copies of the documents.

(3) A notice to produce any document shall be in Form III set out in the Schedule.

Additional
information

18. (1) The Tribunal may, during the hearing receive additional information relating to an appeal that it may consider necessary to enable it dispose of a matter.

(2) The Tribunal may, summon witnesses, call for the production and inspection of any book, document, record and other thing and examine the witness.

(3) A person giving evidence or summoned to give evidence or to produce a book, document, record or other thing before the Tribunal, is entitled to the same privileges and immunities as if the person were summoned to attend or were giving evidence in a civil proceeding before a High Court.

19. (1) An interlocutory application in any proceedings shall be made to the Tribunal.

Interlocutory
applications

(2) An interlocutory application shall be in writing and shall state the title of the proceedings and the grounds on which the application is made.

(3) Where an interlocutory application is made with the consent of all the parties, the consent shall be in writing and signed by, or on behalf of, the parties.

(4) Where an interlocutory application is not made with the consent of all the parties, a copy shall, be served on the other party or parties and the interlocutory application shall state that service has been effected.

(5) A party who objects to an interlocutory application may, within fourteen days, after the service of a copy on the party, send written notice of objection to the Tribunal and a copy to the applicant.

(6) The Tribunal shall, before making an order on an interlocutory application, hear the parties to the application.

(7) An appeal shall not lie against a decision of the Tribunal on an interlocutory application.

20. (1) An appellant may withdraw the appeal—

Withdrawal
of appeal

(a) at anytime before the hearing of the appeal; or

(b) with the consent of the Tribunal at anytime during the hearing of the appeal, but before a final determination by the Tribunal.

(2) An appellant who intends to withdraw the appeal shall lodge a notice of withdrawal, in writing, to the Secretariat.

(3) The Secretariat shall serve a copy of the notice of withdrawal referred to under subrule (2), on the parties to the appeal.

- (4) The Tribunal may, where the hearing of an appeal has commenced, after receiving the notice of withdrawal under subrule (2), allow the appellant to withdraw the appeal.
- Consent order 21. (1) Where the parties agree on the terms of an order to be made by the Tribunal, particulars of the terms agreed on shall be in writing and signed by all the parties.
- (2) The parties shall send the terms agreed on under subrule (1) to the Secretariat.
- (3) The Tribunal may, in accordance with the terms agreed on under subrule (1), make an order in the presence or absence of the parties.
- Postponement of hearing 22. (1) The Tribunal may postpone the commencement of the hearing of an appeal or an application to withdraw the appeal.
- (2) A hearing of an appeal may be adjourned.

PART IV

DECISION OF TRIBUNAL

- Decision of Tribunal 23. The Tribunal shall render a decision on any matter within sixty days after the conclusion of the hearing of the matter.
- Communication of decision of Tribunal 24. The Secretariat shall cause a decision of the Tribunal to be communicated to the parties concerned within seven days of making the decision.

PART V

GENERAL PROVISIONS

- Expenses of Tribunal 25. The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the purpose of these Rules.
- Costs 26. (1) The Tribunal may make orders for costs as it considers just having regard to the circumstances of the case.
- (2) Where the Tribunal makes an order for costs, the costs and charges in connection with any proceedings before the Tribunal shall be the costs reasonably incurred by a party in connection with proceeding or part of those costs that may be determined by the Tribunal.
- (3) The Tribunal shall assess the sum to be paid in accordance with the scale of fees for the time being in use by the High Court in civil cases.
- (4) A party aggrieved with the assessment by the Tribunal may apply to the Chairperson to review the decision, within fourteen days of the assessment.

27. A party who changes an address shall, within seven days of the change, by notice in writing, inform the Secretariat and the other parties of the change.

Change of
address

28. (1) A notice or any other document required by these Rules to be served, may be served by delivering it personally to the person to whom it is addressed or may, where the Chairperson, or Vice-Chairperson, is satisfied that the person cannot be found, or is not in the Republic, be served on or brought to the knowledge of that person in a manner that the Chairperson may direct.

Service of
notices,
documents,
etc.

(2) An application or communication to be made to the Tribunal in respect of any matter before the Tribunal shall be addressed to the Secretariat.

29. A person aggrieved with the decision of the Tribunal may appeal to the High Court.

Appeals

SCHEDULE
(Rules 3, 7 and 16)

(Seven copies)
Form I
(Rule 3(1))



REPUBLIC OF ZAMBIA

The Mines and Minerals Development Act, 2015
(Act No. 11 of 2015)

The Mining Appeals (Tribunal) Rules, 2018

NOTICE OF APPEAL

(1) Here
insert the full
names of the
parties

BETWEEN (1)

AND

(2) Here
insert the full
name of the
person filling
the appeal

(3) Here
insert the
part(s) of the
decision the
appellant is
aggrieved
with

(4) Signature
of the
Secretariat

.....
.....

TAKE NOTICE THAT (2)
Being dissatisfied with the decision of the *Minister/Secretariat given on the
..... day of 20 intends to appeal to the Tribunal/
Chairperson against the whole decision or against the part or parts of the
decision which decided that (3)
TAKE NOTICE that the appellant will rely on the following grounds of appeal:
GROUNDS: see overleaf attached
TAKE NOTICE that the appellant seeks the following reliefs:
RELIEFS - see overleaf attached

Dated this day of 20.....

(4).....

Secretariat

(5) Here
insert the
physical
address where
all docu-
ments will be
served

The appellants address of service (6)

.....
.....
.....

NOTES - *Delete where inapplicable



REPUBLIC OF ZAMBIA

Form II
(Rule 7(1))

The Mines and Minerals Development Act, 2015
(Act No. 11 of 2015)

The Mining Appeals (Tribunal) Rules, 2018

NOTICE OF HEARING

BETWEEN

(1)

AND

(1) Here
insert the full
names of
parties

(2) Here
insert the
names of
town

(3)
Here insert
the date

(4)
Here insert
the month

(5)
Here insert
the physical
address of
the venue
where the
hearing will
be held

(6) Signature
of the
Secretariat

.....

AND

.....

AND

.....

TAKE NOTICE THAT the above matter will be heard and determined by the
Mining Appeals Tribunal at

(2).....

on the (3) day of (4), 20..... at..... hours
in the noon.

Place of hearing (5)

Dated this day of, 20.....

(6).....

Secretariat



REPUBLIC OF ZAMBIA

Form III
(Rule 16(1))

The Mines and Minerals Development Act, 2015
(Act No. 11 of 2015)

The Mines Appeals (Tribunal) Rules, 2018

NOTICE TO PRODUCE DOCUMENTS

BETWEEN (1)
AND

(1) Here
insert the full
names of the
parties

AND

AND

(2) Signature
of the
Secretariat

TAKE NOTICE THAT at the hearing of this appeal, the appellant intends to produce the following documents:

Description of documents: Date of Documents

1.
2.
3.

(for other documents see overleaf)

Dated this day of, 20.....

(2).....
Secretariat

LUSAKA

10th September, 2018

[MMMD.101/3/22]

I C. MAMBILIMA,
Chief Justice