

OUR VIEW ON THE SPLITTING OF A MINING LICENCE – *Mark McKee (Commercial Partner)*

There is no provision in the Mines and Minerals Act that expressly provides for or deals with a splitting of a Mining Licence by a holder into several smaller licences (or the conversion of any part of such licence into a separate licence).

Our view is that where the holder of a licence (as opposed to a third party) requires another mining licence over an area of land already subject to its current licence, then the Minister will require that such new licence be obtained by:

1. Surrendering such part of its current Mining Lease Area as is required for the new licence and;
2. making a substantive application for the new licence and mining area.

The obvious risk with the above process is that an applicant might not be granted the new licence and as a result will lose the area surrendered.

A less risky way of “splitting a licence” is that implied or permitted by the wording of section 39 (1) (b) of the Mines and Minerals Act, CAP 66:01

Section 39 (1) (b) allows the Minister to grant a licence over an existing mining licence area provided that the holder of such existing licence consents to such grant of licence. This provision can in our view be used to achieve a splitting of a mining licence provided the following steps are followed:

- The holder establishes one or more wholly owned subsidiaries in order to satisfy the requirement of being a separate and distinct person for the purposes of section 39(1) (b),
- The subsidiaries then make application for licences over parts of the holders current Mining Licence Area,
- The application would be supported by:
 - a) a section 37(3) waiver from the Minister [being a waiver of the requirement that the applicant hold a prospecting or retention licence]
 - b) the licence holder granting written consent the effect that is has no objection to the subsidiaries obtaining a mining licence over part of its Mining Licence Area,
- Once the respective licences have been granted to the subsidiaries the licence holder would surrender those parts of the licence area that are the subject of the Mining Licences granted to the subsidiaries.

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