



LAWS OF SARAWAK

REPRINT

Chapter 56

MINERALS ORDINANCE, 2004

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LAWS OF SARAWAK
Chapter 56
MINERALS ORDINANCE, 2004

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LAWS OF SARAWAK
Chapter 56
MINERALS ORDINANCE, 2004

An Ordinance to make better provisions in the law relating to minerals other than mineral oil and their prospecting and mining and for other incidental matters.

[1st July, 2010]

*(Swk. L.N. 51/2010)

Enacted by the Legislature of Sarawak—

PART I
PRELIMINARY

Short title and commencement

1.—(1) This Ordinance may be cited as the Minerals Ordinance, 2004, and shall come into force on such date as the Majlis Mesyuarat Kerajaan Negeri may, by notification in the *Gazette*, appoint.

(2) The Majlis Mesyuarat Kerajaan Negeri may, by order published in the *Gazette*, suspend the operation of any of the provisions of this Ordinance for the whole of the State or any part of it.

Interpretation

2.—(1) In this Ordinance—

“alienated land” means any land (including any parcel of a subdivided building) in respect of which a registered title for the time being subsists, whether final or provisional, whether in perpetuity or for a term of years, or issued in the exercise of powers conferred by any previous land law, but does not include mining land;

“Authority” means the State Minerals Management Authority established under section 7(1);

“authorized officer” means any person duly authorized in writing by the Authority to enforce the provisions of this Ordinance and to exercise the powers of investigation and enforcement provided under Part X;

“Chairman” means the Chairman of the Authority appointed under section 7;

“Chief Inspector” means the Director of Minerals and Geoscience or any person appointed by the Minister to be the Chief Inspector of Mines;

“constitution”, in relation to a company, means the memorandum and articles of association of the company;

“Controller of Rivers” means the Controller of Rivers appointed under section 10(1)(a) of the Sarawak Rivers Ordinance, 1993 [*Cap. 4*];

“conveyance” includes a ship, train, vehicle, aircraft and any other means of transport by which persons or goods can be carried;

“development work” means any work carried out in relation to the physical construction of a mine;

“Director” means the Director of Lands and Surveys, and includes any person temporarily exercising the duties of that office;

“Division” means a Division specified or described in the Schedule to the Administrative Areas Order, 1987 [*Swk. L.N. 19/87*];

“environmental impact assessment” means a report made in accordance with guidelines published by—

- (a) the Controller of Environmental Quality appointed under section 3(9) of the Natural Resources and Environment Ordinance [*Cap. 84 (1958 Ed.)*]; or

(b) the Director General of Environmental Quality appointed under section 3 of the Environmental Quality Act 1974 [*Act 127*],

(as the case may be) containing an assessment of the impact a mining operation will have or is likely to have on the environment and the proposed measures that shall be undertaken to prevent, reduce, control or mitigate the impact on the environment;

“fossick” means to search for and to extract minerals by using simple implements and to remove the minerals as samples, specimens or lapidary work without any intention to sell the minerals;

“Government” means the Government of the State of Sarawak;

“Inspector” means any person appointed by the Minister to be an Inspector of Mines, and includes the Chief Inspector;

“land laws” includes the Land Code [*Cap. 81 (1958 Ed.)*] and its rules;

“land surveyor” means any person who is licensed under the Land Surveyors Ordinance, 2001 [*Cap. 40*] to undertake cadastral land survey in Sarawak, and includes any land surveyors in the service of the Government who is authorized by the Director in writing to undertake these surveys;

“lessee” means the person for the time being registered as the lessee of land comprised in a mining lease, and includes the holder of a mining certificate;

“mine”, when used as a noun, means any place, excavation or working wherein, whereon or whereby any operation connected with mining is carried on together with all buildings, premises, erections, water reservoirs, tailing ponds, waste, other dumps and appliances belonging or appertaining thereto above or below the ground or in or below the sea for the purpose of winning, obtaining or extracting any mineral by any mode or method or for the purpose of dressing, treating or preparing minerals ore;

“mine rehabilitation plan” means a rehabilitation plan approved under section 110;

“mineral ore” means any mineral of economic interest from which one or more valuable constituents may profitably be recovered by treatment;

“mineral tenement” means a panning licence, proprietary mining licence, prospecting licence (whether general or exclusive), mining lease or certificate, or any of them for the purpose of prospecting or mining of minerals or mineral ores, as the case may be;

“minerals” means all minerals and mineral substances other than mineral oils but does not include murrum, sand (other than sand used in the manufacture of glass), limestone, sandstone or other stone or such other mineral substances as the Yang di-Pertua Negeri may by notification in the *Gazette* declare not to be minerals for the purposes of this Ordinance;

“mining” means to disturb, remove, cast, carry, wash, sift, smelt, refine, crush or otherwise deal with any rock, stone, gravel, clay, sand, soil or mineral by any mode or method whatever for the purpose of extracting metal or mineral therefrom;

“mining land” means land comprised in a mining lease or mining certificate;

“mining lease” means a lease of land for mining purposes, and includes a lease for such purposes issued prior to the 1st day of January, 2004, and a mining certificate issued under section 47(1);

“Minister” means the Minister in the Government for the time being charged with the responsibility for land and minerals;

“occupied land” includes—

- (a) all alienated land; and
- (b) Native Area Land and Native Customary Land as defined in the Land Code [*Cap. 81 (1958 Ed.)*];

“owner”, in relation to any land, means—

- (a) the registered proprietor of the land;
- (b) any person or body having a registered interest affecting the land (including a sublease thereof);
- (c) any person having a beneficial interest protected by caveat affecting the land; and
- (d) any person having lawful occupation of the land in whom the land is vested under any written law;

“pan” or “panning” means to wash or sift for the purpose of obtaining minerals;

“panning licence” means a licence for panning of minerals issued under section 16;

“police officers” has the meaning assigned to it by the Police Act 1967 [*Act 344*];

“prospect” means to search for minerals, and includes fossicking and such working as is reasonably necessary to enable the prospector to test the mineral-bearing qualities of the land;

“prospecting area” means any land in respect of which a prospecting licence is for the time being in force;

“prospecting licence” means a prospecting licence, whether general or exclusive, issued under section 22(6) read with section 25;

“register” means the register of mining leases and the register of mining certificates kept under this Ordinance, and includes the Register kept under Part III of the repealed Ordinance;

“Registrar” means the public officer appointed to have custody of a register and to make entry or record thereon, and includes any person temporarily discharging the duties of that office;

“reserved forest area” means any forest reserve, protected forest or communal forest constituted under the Forests Ordinance [*Cap. 126 (1958 Ed.)*] or any law relating to forestry prior to the date of coming into force of that Ordinance;

“reserved land” shall have the meaning assigned to that expression by the Land Code [*Cap. 81 (1958 Ed.)*];

“rock material” shall have the meaning assigned to that expression by section 32(1)(d) of the Land Code [*Cap. 81 (1958 Ed.)*];

“sample” means a fraction of naturally occurring matter deemed to be indicative of the mass of which it forms a part;

“Secretary” means any person appointed by the Authority as its Secretary under section 7(2)(a), and includes any person temporarily discharging the duties of that office;

“State land” shall have the meaning assigned to it by the Land Code [*Cap. 81 (1958 Ed.)*];

“State Planning Authority” means the State Planning Authority established under section 228 of the Land Code [*Cap. 81 (1958 Ed.)*];

“State Water Authority” means the State Water Authority appointed under section 16(1) of the Water Ordinance, 1994 [*Cap. 13*];

“Superintendent” means the Superintendent of Lands and Surveys exercising powers as such in the Division in which the land concerned is situated, and includes the Director;

“unoccupied land” means land which is not occupied land;

“waste” includes any discarded overburden material, tailing, any intermediate product from mining or mineral processing stockpiled for further operations, water treated or stored in mining or mineral processing, and any chemical substance temporarily or permanently withdrawn from such operations;

“water licence” means a water licence issued under section 82;

“water permit” means a water permit issued under section 83.

(2) In this Ordinance, a reference to the Yang di-Pertua Negeri shall be construed as a reference to the Yang di-Pertua Negeri acting in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri or of a member acting under the general authority of the Majlis.

Application of Land Code

3.—(1) (a) The provisions of the Land Code [*Cap. 81 (1958 Ed.)*] shall, in so far as relevant, apply to any mining land or with regard to the use, occupation, right, interest or estate in or over mining land including the rights of the Government over such land as set out in the Land Code.

(b) In the event of any conflict pertaining to these matters, between the provisions of the Land Code and this Ordinance, the Land Code shall prevail.

(2) Unless the context otherwise requires, and subject to the provisions of this Ordinance, Part VII of the Land Code shall apply to the registration of any mining lease, mining certificate or any beneficial interests or rights therein.

Minerals vested in the State

4. There is and shall be vested solely in the Government minerals within or upon any land, including the bed of—

- (a) any river, stream, lake, pond or watercourses wholly within the State;
- (b) the foreshores; and
- (c) the sea within the territorial limits of the State.

PART II ADMINISTRATION

Administration of Ordinance

5. This Ordinance shall be administered by—

- (a) the Director of Lands and Surveys and assisted by the officers or persons named in section 3(1) of the Land Code [*Cap. 81 (1958 Ed.)*]; and
- (b) such other persons, having such designation, as the Minister may, by notification in the *Gazette*, appoint.

Direction of Minister

6. The Director shall be responsible to the Minister, and the Minister may from time to time give to the Director any general or special direction, not inconsistent with this Ordinance, as to the exercise and performance of the Director's functions and powers under this Ordinance, and any such direction shall become binding on the Director who shall forthwith take all steps necessary or expedient to give effect thereto.

State Minerals Management Authority

7.—(1) (a) There shall be established a body to be known as the State Minerals Management Authority, comprising—

- (i) the Minister, as Chairman;
- (ii) a Deputy Chairman;

- (iii) the State Financial Secretary;
- (iv) the Permanent Secretary to the Ministry responsible for land and minerals;
- (v) the Director of Lands and Surveys; and
- (vi) not less than three and not more than five other ordinary members.

(b) The Deputy Chairman and the members mentioned in paragraph (a)(vi) shall be appointed by the Majlis Mesyuarat Kerajaan Negeri, and shall hold office for such term, not exceeding three years, as the Majlis may determine, but shall be eligible for re-appointment.

(2) (a) The Authority shall appoint a Secretary upon such terms and conditions as it deems fit and proper.

(b) In the absence of such appointment, the Permanent Secretary to the Ministry responsible for land and minerals shall be the Secretary.

(c) The Secretary shall keep true and accurate records of proceedings of all deliberations and decision of the Authority.

(d) All decisions of the Authority shall be conveyed or communicated by the Secretary or in his absence, by any person appointed by the Authority to temporarily discharge or perform the duties of Secretary.

(3) The Chairman or in his absence, the Deputy Chairman, shall preside over meetings of the Authority.

(4) The Chairman or Deputy Chairman and any two other members of the Authority, shall constitute a quorum for a meeting thereof.

(5) The Authority may invite any public officer of the Government or the Federal Government to attend and participate in any of its meeting or to submit such report as may be needed by the Authority in the discharge of its functions.

(6) Subject to this Ordinance, the Authority may make rules to regulate its own procedures.

Functions and powers of Authority

8.—(1) The State Minerals Management Authority shall—

(a) perform any function conferred or vested in it by this Ordinance;

(b) cause to be prepared an annual report on prospecting for minerals and mining activities in the State during the preceding calendar year and submit the same to the Majlis Mesyuarat Kerajaan Negeri;

(c) provide, whenever necessary or expedient, proposal, advice or recommendation to the Majlis Mesyuarat Kerajaan Negeri on programmes, plans and policies to be undertaken or instituted to promote or increase investment in the mining sector or industry or to promote occupational health and safety in mining operations and upon mining land, and for the protection of the environment in any area where mining is carried out; and

(d) perform such other functions as the Majlis Mesyuarat Kerajaan Negeri may from time to time, by notification in the *Gazette*, determine.

(2) (a) The Authority shall, for the purpose of discharging its functions under this Ordinance, have the powers to call upon the Chief Inspector, Controller of Environmental Quality, the Director of Environment, Sarawak, and the Controller of Rivers, to submit and present to the Authority, any report, study or investigation which he either on his own motion or upon the directive of the Authority, has undertaken in respect of any mining area or mine or the effect of mining activities on the environment, mine or occupational safety or the waters of any river in the State.

(b) The Authority may, by notice, summon any holder of any mining tenement or the owner of any mining land to appear before the Authority to answer or explain any complaint or charges made against him in any report or study referred to in paragraph (a).

(c) Any person who fails to comply with the notice issued by the Authority under paragraph (b) shall be guilty of an offence and if he is the holder of a mineral tenement, the Authority may require him to show cause why the mineral tenement should not be revoked or cancelled.

(3) The Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, by order published in the *Gazette*, delegate any of its functions and powers to the Minister or to a committee constituted by the Authority.

Public servants

9. All members of the Authority appointed under section 7 shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

PART III

AUTHORITY TO PROSPECT AND MINING: LICENCES AND LEASES

Authority to prospect

10. No person shall prospect or mine in, upon or under any land, river, stream, lake, pond or watercourse or the foreshore and seabed within the territorial limits of the State, except when authorized by a valid mining tenement issued in accordance with this Part and subject to the terms and conditions stipulated in it.

Persons to whom mineral tenement may be granted or transferred

11.—(1) Subject to this Ordinance, a mineral tenement may only be granted or transferred to—

(a) a person who is a citizen of Malaysia and who is permanently residing in Sarawak;

(b) a company incorporated in Malaysia under the relevant law relating to companies and authorized by its constitution to prospect for or to mine minerals;

(c) a body expressly empowered to hold mining land under any other written law; or

(d) subject to subsection (3), a foreign company as defined in the relevant law relating to companies and registered as such under that law and authorized by its constitution to prospect for or to mine minerals.

(2) Subject to this Ordinance, any person may be granted more than one mineral tenement.

(3) No mineral tenement shall be granted to a foreign company without approval of the Majlis Mesyuarat Kerajaan Negeri and subject to such special conditions as the Majlis may consider fit to impose.

Mineral tenement may be granted over State land, etc.

12. Except as otherwise provided in any written law and subject to this Ordinance, a mineral tenement may be granted over any State land, alienated land, occupied land, reserved land or reserved forest area.

Mineral tenement in certain land areas

13. The Authority may, for the issuance of any mineral tenement, by notification in the *Gazette*—

(a) require a special application procedure; and

(b) require special conditions,

to be complied with in respect of certain areas or category of land subject to existing land use or classification under Part II of the Land Code [*Cap. 81 (1958 Ed.)*].

Areas closed to mineral tenement

14. The Authority may, after consultation with the State Planning Authority, prescribe areas where no mineral tenement shall be granted.

Declaration of mineral reserve

15.—(1) The Authority may, after consultation with the State Planning Authority, by notification in the *Gazette*—

(a) declare any land, not subject to reservation under any written law, as a mineral reserve; and

(b) specify the types of activities which are not allowed for the purpose of reserving such land for mineral tenements.

(2) The Authority may at any time, by notification in the *Gazette*, vary or revoke a mineral reserve in whole or in part.

Panning Licence

Application for panning licence

16.—(1) No person other than a natural person shall apply for a panning licence.

(2) An application for a panning licence shall be made to the Superintendent in the prescribed form.

(3) No panning licence shall be granted in an area—

(a) where the State Planning Authority has ordered closed to panning for minerals;

(b) within any reserved land;

(c) within any prospecting area without the written permission of the holder of the prospecting licence; or

(d) within any alienated land, occupied land or mining land without the written permission of the owner or the lessee.

(4) Upon receipt of an application under subsection (2), the Superintendent may, after seeking the direction of the Director, grant or refuse to grant such a licence and his decision shall be final.

(5) Where an application for a panning licence is granted, such licence shall be issued in Form A as set out in the Schedule, upon payment of the prescribed fee, and shall be subject to such terms and conditions as may be specified in it or as may be prescribed.

(6) The Director shall have the power to close at any time any area which has not been ordered closed under subsection (3)(a) to panning for minerals, and report such closure to the Authority.

Statutory conditions of panning licence

17. It shall be a condition of every panning licence granted under this Ordinance that the holder of the licence—

- (a) shall carry the licence on his person when engaged in activities specified therein and produce the licence when lawfully required;
- (b) shall pay the royalties due under the licence; and
- (c) shall refrain from the use of power-operated equipment to win minerals.

Duration of panning licence

18. A panning licence shall be valid for a term not exceeding one year and shall not be renewable.

Licence personal to the holder and not transferable

19. A panning licence shall be personal to its holder and shall not be transferable.

Rights under panning licence

20. A panning licence shall, subject to this Ordinance and to the terms and conditions specified in the licence, confer upon its holder the rights—

- (a) to pan for any mineral specified in the licence; and

(b) to store, transport or sell the minerals panned and to dispose of any waste,
within the area specified in it.

Suspension and revocation of panning licence

21.—(1) The Director may, at any time he deems necessary, collectively suspend temporarily, for a period not exceeding sixty days, the rights of all holders of panning licences to conduct panning operations in any area.

(2) The Director may, by notice in writing, revoke a panning licence issued under section 16 if he is satisfied that the holder of the licence—

(a) has breached any of the terms and conditions specified in the licence; or

(b) has contravened any of the provisions of this Ordinance.

(3) The decision of the Director to suspend or revoke a panning licence under this section shall be final.

(4) Where a panning licence has been revoked under subsection (2), the holder of the licence shall forthwith surrender the licence to the Superintendent for cancellation.

Prospecting Licence

Application for prospecting licence

22.—(1) An application for a prospecting licence, which may be a general or exclusive licence, shall be made in accordance with the procedure prescribed by the Authority.

(2) Every application shall be referred to the Director who will provide such information and data pertaining to the area over which the application relates or any matter relating thereto, to the Minister.

(3) For the purpose of considering an application for a prospecting licence, the Director shall verify for the Minister that the applicant—

(a) has complied with the requirements of this Ordinance; and

(b) is technically and financially qualified to prospect the area to which the application relates.

(4) The Minister may, after considering the application, determine whether the application should be—

(a) approved, in whole or in part—

(i) confirming that the applicant has complied with the requirements of this Ordinance; and

(ii) specifying the terms and conditions subject to which the prospecting licence is to be granted; or

(b) refused.

(5) The Director shall direct the Superintendent to notify the applicant in writing of the decision under subsection (4).

(6) If the application for a prospecting licence is approved, the Superintendent shall, as soon as practicable after being notified under subsection (5) and upon payment of the prescribed fee and the first year's licence fee, register the instrument of the licence and issue to the applicant a prospecting licence in Form B as set out in the Schedule subject to such terms and conditions as may be specified therein or as may be prescribed.

(7) If the applicant fails to pay the prescribed fee and the first year's licence fee as required under subsection (6) within sixty days after being notified of the approval of the prospecting licence such approval shall be deemed revoked.

Statutory conditions of prospecting licence

23.—(1) It shall be a condition of every prospecting licence granted under this Ordinance that the holder thereof—

(a) shall submit such information and periodical activity reports as may be prescribed;

(b) shall pay compensation to—

(i) in relation to alienated land or occupied land, the owner thereof; or

(ii) in relation to any State land including reserved forest area, the Superintendent,

for any loss, damage or disturbance to land and property;

(c) shall pay compensation to the lawful claimants to native customary rights for any loss, damage or disturbance to land and property;

(d) shall restore the prospecting area to a safe state and to such environmental standards as may be prescribed or to maintain it;

(e) shall relinquish any area required by the Government for a public purpose other than for any activity related to the prospecting or mining for minerals; and

(f) shall comply with such annual work programme expenditure and area relinquishment requirements as may be prescribed; and there shall be no variation of the level of annual work programme expenditure fixed from the level prescribed as on the date of issuance of the prospecting licence for the term of the licence.

(2) For the purpose of determining the level of annual work programme expenditure mentioned in subsection (1)(f), such annual work programme expenditure shall be based on per area unit of one hundred hectares.

Duration and renewal of prospecting licence

24.—(1) Subject to this section, a prospecting licence shall be issued for a term not exceeding two years.

(2) An application for renewal of a prospecting licence shall be made to the Director in the prescribed form at least six months prior to the expiry thereof.

(3) The Director or any officer authorized in writing by him shall, as soon as practicable upon receipt of the application for renewal of a prospecting licence, forward the application to the Minister for consideration.

(4) Where an application for renewal of prospecting licence is made at least six months prior to the expiry of the licence, the Minister may direct the renewal of the licence for a further period not exceeding two years if—

(a) the holder of the licence has complied with the terms and conditions specified in the licence;

(b) the holder of the licence has complied with the provisions of this Ordinance;

(c) the holder of the licence can show to the satisfaction of the Minister that further prospecting is justified; and

(d) the total duration of the prospecting licence including any renewal does not exceed four years.

(5) The decision of the Minister under this section shall be final.

General and exclusive prospecting licence

25.—(1) A general prospecting licence shall authorize the holder thereof to prospect for the minerals specified therein throughout the whole area specified therein but shall not preclude any other licence holder or party from prospecting for other minerals in the same area pursuant to a general prospecting licence issued under this Ordinance.

(2) An exclusive prospecting licence shall authorize the holder thereof the sole and exclusive right to prospect for any minerals specified in the licence within the area stated therein.

(3) Nothing herein shall be deemed to preclude the Minister from directing the issuance of an exclusive prospecting licence without first issuing a general prospecting licence if he is satisfied that the applicant for the prospecting licence has furnished sufficient information to show he is ready and able to prospect in the area defined by him.

Terms and conditions and endorsement upon renewal of licence

26. Upon renewal of a prospecting licence, the Minister may—

(a) impose such terms and conditions as it deems fit, taking into account any area relinquished before or at the time of the renewal; and

(b) direct the Director to cause the licence to be endorsed the particulars of such renewal.

Fee for renewal

27.—(1) Where an application for the renewal of a prospecting licence has been approved, such approval shall have effect upon payment of the prescribed fee.

(2) If the applicant fails to pay the prescribed fee for the renewal mentioned in subsection (1) within sixty days after being notified of its approval, such approval shall be deemed revoked.

Transfer of prospecting licence

28.—(1) A prospecting licence may, subject to the approval of the Minister, be transferable upon the death, dissolution, bankruptcy or insolvency of the holder thereof.

(2) An application for the transfer of a prospecting licence shall be in the form prescribed by the Authority.

Area of prospecting licence

29.—(1) The area of a prospecting licence granted under this Ordinance shall not exceed two hundred square kilometres for a general prospecting licence, and not exceeding twenty square kilometres for an exclusive prospecting licence.

(2) Extension of a general prospecting licence shall apply to an area equivalent to fifty per cent of the original licensed area in the first instance and thereafter for an area equivalent to ten per cent of the original licensed area.

Rights under prospecting licence

30. A prospecting licence shall, subject to this Ordinance and to the terms and conditions specified in the licence, confer upon the holder thereof the right—

- (a) to obtain access and to enter the prospecting area;
- (b) to explore on an exclusive basis for any mineral within the limits of the prospecting area;
- (c) to use water, sand and gravel, road, canal and river as required for prospecting within the limits of the prospecting area.

Voluntary relinquishment

31. Any holder of a prospecting licence may, by notice in writing, in such form and manner as may be prescribed, relinquish any area in respect of which such licence has been granted on every anniversary date of the licence.

Application for grant of mining lease by holder of prospecting licence

32.—(1) Subject to subsection (2), (3) or (4) and the other provisions of this Ordinance, the holder of a prospecting licence may apply for one or more mining leases or certificates in respect of any part of the land which is subject to the licence.

(2) Where the land in respect of which a prospecting licence has been granted consists, wholly or partly, of alienated land, the right of the holder of the licence to be granted mining lease or certificate over such land shall be subject to the condition—

(a) that the holder of the licence is the registered owner of the land; or

(b) that the holder of the licence will acquire the land and the cost of such acquisition has been paid; and

(c) that the Authority has recommended that the application be approved.

(3) Where the land in respect of which a prospecting licence has been granted consists, wholly or partly, of reserved land or reserved forest area, the right of the holder of the licence to be granted mining lease or certificate over such land shall be subject to the condition—

(a) that the reservation has been revoked; and

(b) that the Authority has recommended that the application for mining lease or certificate be approved.

(4) Where the land in respect of which a prospecting licence has been granted consists, wholly or partly, of occupied land, the right of the holder of the licence to be granted a mining lease or certificate over such land shall be subject to the condition—

(a) that the right of occupation has been validly terminated; and

(b) that the Authority has recommended that the application be approved.

(5) Subsections (2), (3) and (4) shall not apply where the holder of the prospecting licence applies for a mining lease or certificate in respect of any land beneath alienated land.

(6) Where the area in respect of which a prospecting licence has been granted includes any land which may be subject to a claim under native customary rights, the holder of a prospecting licence—

(a) may undertake prospecting activities on such land, subject to the terms and conditions specified in the prospecting licence;

(b) shall during the term of the licence, identify with the assistance of the Superintendent and conclude an agreement with the lawful claimants to native customary rights in respect of any possible application by the holder of the prospecting licence for a mining lease or certificate, and if no such agreement can be reached between the parties within a reasonable period, the Authority shall intervene to determine the terms and conditions of such agreement in such manner as it may determine; and

(c) shall append the agreement referred to in paragraph (b) to the prospecting licence for the purpose of applying for a mining lease or certificate.

Commencement of field prospecting activities

33.—(1) The holder of a prospecting licence shall commence field prospecting activities within three months from the date the prospecting licence is issued.

(2) The holder of a prospecting licence shall, upon commencement of prospecting activities, send a written notice as may be prescribed by the Authority to the Director, the Superintendent and the Director of Minerals and Geoscience, and should the prospecting area include any reserved land or reserved forest area, to the officer for the time being having the control over such land, stating—

(a) the prospecting licence number;

(b) the name and address of the holder of the prospecting licence; and

(c) the date of commencement of field prospecting activities.

(3) In this section, “prospecting activities” means activities physically undertaken within the prospecting area to prospect for minerals, and includes airborne geophysical and geomagnetic surveys and other related surveys.

Notice of discovery

34. The holder of a prospecting licence shall submit a notice of discovery in such form as may be prescribed, within twelve months from the discovery of any mineral deposit with economic potential to the Director, the Superintendent and the Director of Minerals and Geoscience together with such information as may be necessary to confirm the existence of the mineral deposit.

Bulk sampling, trial processing and sale of specimens and samples

35.—(1) The holder of a prospecting licence shall be entitled to take and remove from the land specimens and samples not exceeding the limit as may be specified in the licence or as may be prescribed.

(2) The holder of a prospecting licence shall be entitled to do

- (a) bulk sampling; and
- (b) trial processing,

of any mineral ore coming from the prospecting area not exceeding such limit as may be specified in the licence or as may be prescribed.

(3) With the prior written permission of the Director, the holder of a prospecting licence may sell any specimen or sample obtained for prospecting purposes and the proceeds from any such sale shall be subject to the payment of royalty as if the specimen or sample was obtained under mining lease.

(4) In this section, the expressions “bulk sampling” and “trial processing” mean the collection and treatment respectively, of a representative portion of the deposit solely for the purpose of determining the projected viability of developing the deposit.

Prospecting licence shall continue to remain in force until application for renewal is determined

36. If an application for renewal of a prospecting licence is made to the Minister—

- (a) within the period mentioned in section 24(2); and

(b) the term of the prospecting licence would, but for this subsection, expire,

the prospecting licence shall continue to remain in force until the application is determined but shall be deemed to have expired on the date on which the said application is refused.

Revocation of prospecting licence

37.—(1) The Authority may revoke a prospecting licence if it is satisfied that the holder of the licence—

(a) has breached any of the terms and conditions specified in the licence; or

(b) has contravened any of the provisions of this Ordinance.

(2) For the purpose of subsection (1), the Authority shall serve or cause to be served on the holder of a prospecting licence, a written notice of its intention to revoke the licence and the grounds on which it proposes to take such action, and it shall give the holder of the licence thereof an opportunity to make written representations thereon within thirty days from the date of service of the notice.

(3) The Authority shall also serve or cause to be served on any person or body—

(a) who has a lawful interest affecting the land in respect of which the licence has been granted; or

(b) who is in lawful occupation of any part of the land in respect of which the licence has been granted,

a copy of the written notice mentioned in subsection (2) to which there shall be appended an additional notice in such form as may be prescribed.

(4) Upon the expiry of the period of thirty days mentioned in subsection (2) and after considering any representation made by the holder of the licence and after holding an inquiry, the Authority shall decide whether to—

- (a) proceed with the proposed action;
- (b) take action under section 38; or
- (c) take no further action.

(5) The Authority shall give the holder of the prospecting licence a written notice of its decision under subsection (4).

Imposition of fine, remedying of breach or contravention

38.—(1) If the Authority is satisfied that there are grounds on which its power to revoke the prospecting licence is exercisable under section 37(4)(a) but the circumstances are not such as to justify revocation, the Authority may in its discretion—

- (a) make an order for the payment of a fine not exceeding five hundred thousand ringgit within a specified time; or
- (b) issue a notice in such form and manner as may be prescribed, specifying the necessary action to be taken to remedy the breach or contravention within a specified time.

(2) The Authority shall give the holder of the prospecting licence written notice of its decision under subsection (1).

(3) Upon service of the notice under subsection (2), the Authority shall endorse or cause to be endorsed the particulars of—

- (a) the order made under subsection (1)(a); or
- (b) the notice issued under subsection (1)(b),

as the case may be, on the prospecting licence kept in the register referred to in section 97.

(4) If the order made under subsection (1)(a) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(5) If the order made under subsection (1)(a) is not complied with, the Authority may make an order declaring the prospecting licence revoked.

(6) Notwithstanding subsection (4), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the prospecting licence revoked.

(7) If the notice issued under subsection (1)(b) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(8) If the notice issued under subsection (1)(b) is not complied with, the Authority shall make an order declaring the prospecting licence revoked.

(9) Notwithstanding subsection (7), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the prospecting licence revoked.

When revocation to take effect

39.—(1) The revocation of a prospecting licence shall take effect on the date the order of revocation is made under section 37, 38 or 80, as the case may be.

(2) Where an order of revocation as mentioned in subsection (1) has been made, the holder of such licence shall forthwith surrender such licence to the Secretary who shall forward the same to the Superintendent for action to be taken under section 102.

Entry in register

40. Where a prospecting licence has been revoked or expired, as the case may be, the Superintendent shall enter or cause to be entered a memorial of such revocation or expiry in the register wherein the licence is recorded as provided for under section 102.

Surrender of prospecting licence

41.—(1)(a) A surrender of a prospecting licence shall be made to the Director in the form prescribed by the Authority. The form shall be signed by the licensee who shall also return the licence to the Director.

(b) The Director shall transmit the form for surrender of the prospecting licence to the Secretary and notify the Registrar who shall cause an entry in the register kept under section 97(b) of the surrender of the prospecting licence.

(2) The liability of the holder of a prospecting licence—

(a) to pay any fee, royalty, penalty or other money that is payable on or before the date of surrender;

(b) to perform any obligation required to be performed on or before the date of surrender; and

(c) for any act done or default made on or before the date of surrender,

shall not be affected by the surrender of the licence under subsection (1).

Restriction on application for prospecting licence

42.—(1) Where a prospecting licence is revoked or surrendered, no application for either a prospecting licence in respect of the same or any area within or overlapping the previous prospecting area shall, unless the Authority otherwise decides, be considered for approval within a period of one year from the date of revocation or surrender, as the case may be.

(2) Notwithstanding section 24, any former holder of a prospecting licence whose licence has reached its maximum total duration of four years shall be given priority on an application for either a prospecting licence in respect of the same or any area within or overlapping the previous prospecting area:

Provided that no such application shall be considered for approval within a period of one year from the date of expiration of the maximum total duration of the said licence.

Mining Lease

Land over which mining lease may be granted

43.—(1) Subject to subsection (2), a mining lease may be granted over any State land.

(2) Subject to section 32, no mining lease shall be granted in respect of any area within the prospecting area in respect of which a prospecting licence has been granted except with the written consent of the holder of such licence.

Application for mining lease

44.—(1) An application for a mining lease shall be made to the Authority in a form prescribed by the Authority, and upon receipt thereof the Secretary shall transmit the same to the Director, for his comments and recommendations.

(2) An application for a mining lease shall include a prefeasibility study which shall include—

(a) a general description of the proposed mining scheme;

(b) the expected commencement date of mineral production (to be stated as the number of months from the date of issuance of the mining lease);

(c) a schedule of estimated annual raw ore production for the term of the mining lease;

(d) such information as may be prescribed; and

(e) such other information as the Authority may reasonably require for the discharge of its functions in relation to the application.

(3) Upon receipt of the comments and recommendations of the Director under subsection (1), the Authority shall consider the application.

(4) In considering an application for a mining lease, the Authority shall verify that the applicant—

(a) has complied with the requirements of this Ordinance; and

(b) is technically and financially qualified to develop and mine the area to which the application relates.

(5) The Authority shall subject to section 50 either—

(a) approve the application:

(i) confirming that the application has complied with the requirements of this Ordinance; and

(ii) specifying the terms and conditions subject to which the lease is to be granted; or

(b) refuse to approve the application.

(6) The Secretary shall notify the applicant and the Director in writing of its decision under subsection (5).

(7) If the application for a mining lease is granted, the Director shall, as soon as practicable—

(a) upon payment of the prescribed fee;

(b) upon payment of the first year's rent;

(c) subject to compliance with boundary survey requirements under section 46(1) and upon payment of the survey fee, if the survey was carried out by a land surveyor; and

(d) upon payment of the fee for mining lease plan,

cause to be issued to the applicant a mining lease in Form C as set out in the Schedule—

(i) subject to such terms and conditions as may be specified therein or as may be prescribed; and

(ii) stating the type of mineral in respect of which the holder of the mining lease may be permitted to mine.

(8) If the applicant fails to pay the prescribed fee, the first year's rent and the survey fee required under subsection (7)(c) within sixty days after being notified of the approval of the mining lease, such approval shall be deemed revoked.

Right to mine contingent on obtaining approval of mine feasibility study, plan for rehabilitation, etc.

45.—(1) The lessee shall not commence any development work or mining on the land in respect of which the lease has been granted until after the approval of—

(a) a mine feasibility study under section 55, if such study is required by the Authority;

(b) a mine rehabilitation plan, if so required, under section 108; and

(c) an environmental impact assessment, if so required, under the Natural Resources and Environment Ordinance [*Cap. 84 (1958 Ed.)*] or any other written law relating to environment.

(2) The lessee is required to obtain the approval of the study, plan and document mentioned in subsection (1) within three years from the date the mining lease is issued.

Survey of mining lease area

46.—(1) Subject to subsection (2), where an application for a mining lease has been approved, a boundary survey of the area specified in the application shall be carried out at the expense of the lessee before the mining lease is issued.

(2) Where the area specified in the application for a mining lease includes land which is subject to claim arising out of native customary rights and such application has been approved as mentioned in subsection (1), the Director may issue a mining lease specifying areas, within the area specified in such application, where development work and mining may commence before the completion of the boundary survey.

(3) Subject to subsection (2), no development work or mining shall commence under a mining lease until the mining land in respect of which the lease is granted has been surveyed.

Issue of mining certificate

47.—(1) Where an application for a mining lease has been approved under section 44, but a boundary survey of the area specified in the application has not been undertaken or completed, the Authority may authorize the issue to the applicant, a mining certificate in Form D as set out in the Schedule to enable the applicant to proceed with mining activities pending the completion of the boundary survey.

(2) Section 28 of the Land Code [*Cap. 81 (1958 Ed.)*] relating to survey for the purpose of alienation shall, with such modification as may be necessary, apply in respect of boundary survey for the purpose of a mining lease and to any survey matter relating thereto.

(3) No development work or mining shall commence on the mining land unless a mining certificate has been issued under subsection (1).

Duration and renewal of mining lease

48.—(1) A mining lease shall be granted for the maximum economic life of the mine or mining operations but shall not exceed an initial term of twenty-one years.

(2) A mining lease may be renewed in whole or in part for a term based on the economic life of the mine or mining operations but such renewal shall not exceed twenty-one years, provided that the Authority may reduce, vary or increase the area covered by the lease.

(3) An application for renewal of a mining lease shall be made to the Authority in the prescribed form at least twelve months prior to the expiry of the mining lease.

(4) The Registrar shall, as soon as practicable upon receiving the application for renewal of a mining lease, cause to be registered the application in such manner as may be prescribed.

(5) Where an application for renewal of a mining lease is made to the Authority at least twelve months prior to the expiry of the lease, the Authority may renew the lease if—

(a) the lessee has complied with the terms and conditions specified in the original lease;

(b) the lessee has complied with the requirements of this Ordinance;

(c) the lessee can show to the satisfaction of the Authority that there are mineral reserves to justify a renewal or there is a need to maintain the property for use as an integral part of the mining operations on the adjoining mining land; and

(d) in the case of an application for renewal of a mining lease authorizing a large scale operation, a modified mine rehabilitation plan has been approved.

(6) Where the application to renew a mining lease is refused by the Authority, the Secretary shall notify the lessee in writing of its decision stating the reasons therefor.

(7) Any person aggrieved by the refusal of the Authority to renew a mining lease under subsection (6) may, within thirty days after being notified of such refusal, appeal in writing to the Majlis Mesyuarat Kerajaan Negeri whose decision shall be final.

(8) As soon as practicable after an application for the renewal of a mining lease is approved, the Registrar shall cause an endorsement of such approval under his signature and seal, including the new expiry date of the mining lease, to be recorded in the register and on the mining lease itself.

(9) If an application for renewal of a mining lease is made to the Director—

- (a) at least twelve months prior to the expiry of the lease;
- and
- (b) the term of the lease would, but for this subsection, expire,

the lease shall continue in force in respect of the land to which the application relates until the application is determined.

(10) Where an application for renewal of a mining lease is made less than twelve months prior to the expiry of the lease, the Authority may approve the application if it satisfies the conditions specified in subsection (5) but shall impose on the lessee, upon renewal of the lease a late filing fee of such amount as may be prescribed.

Transfer of mining lease or certificate

49.—(1) A mining lease or certificate may, subject to the approval of the Minister, be transferable.

(2) An application for the transfer of a mining lease or certificate shall be made to the Minister through the Secretary or in such other manner as may be prescribed by the Authority.

Area of mining lease

50. The area of a mining lease granted under this Ordinance shall be of such size reasonably required for the mine as the Authority may determine after consultation with the State Planning Authority provided that if a mining lease or certificate is to be issued for an area exceeding two thousand hectares, the concurrence of the Majlis Mesyuarat Kerajaan Negeri shall be obtained prior to the issuance thereof.

Lessee to be granted priority in applying for prospecting licence in respect of contiguous areas

51. Subject to this Ordinance, the holder of a mining lease or certificate authorizing a large scale operation may apply for and be granted on a priority basis a prospecting licence for areas contiguous to the mining land in respect of which the mining lease has been granted if—

- (a) no other mineral tenement for such contiguous land has been granted;
- (b) the lessee has complied with the requirements of this Ordinance; and
- (c) the lessee has complied with the terms and conditions specified in the mining lease.

Rights under mining lease or certificate

52.—(1) A mining lease or certificate shall, subject to this Ordinance and to the terms and conditions specified therein, confer upon the holder thereof the rights—

- (a) to exclusively mine the land in respect of which the lease or certificate has been granted in accordance with an order and conditions set by the Natural Resources and Environment Board for the protection of the environment in the area and such other orders or directives as may be issued by the Director of Minerals and Geoscience in regard to the safety measures and mining practices to be observed;
- (b) subject to section 53—
 - (i) and any other law relating to minerals, to store, transport, process and sell any mineral extracted and dispose of any waste;
 - (ii) to use any timber, sand or gravel as required for mining within the mining land;

(iii) to use such portions of the mining land as may be required for the purpose of erecting houses, lines, sheds or other buildings as may be reasonable for the purposes of the mine or for use by the employees at the mine;

(iv) to do any act or thing and establish and maintain any road and facility to effectually carry out mining operations, on or under the land; and

(v) to use, occupy and enjoy the land in respect of which a mining lease or certificate has been granted for mining purposes.

(2) The mining lease or certificate shall not, subject to this Ordinance and to the terms and conditions specified in the lease or certificate, entitle the holder the exclusive right, within the mining land in respect of which the lease or certificate has been granted to use any public road, rail, canal, river and telecommunications system as may be required for mining.

(3) In this section, “process” means any activity whereby minerals or minerals ores are treated for the beneficiation thereof but excludes smelting and refining.

Prohibition

53. The holder shall not, unless authorized under any other written law, remove beyond the boundaries of the mining land in respect of which the lease or certificate has been granted for any purpose—

(a) any timber or other forest produce;

(b) any coral, earth, gravel, guano, loam, rock, sand, shell, clay, brick, lime, cement or other commodity manufactured from such materials; or

(c) any rock or other materials,

obtained from the said land.

Statutory conditions of mining lease or certificate

54.—(1) It shall be a condition of every mining lease or certificate granted under this Ordinance that the holder thereof—

(a) shall cause to be kept true and sufficient books of account of the mining and other business carried on upon the mining land, and of the disposal of the minerals obtained; and to produce such books upon a request by the authorized officers;

(b) shall submit such information and periodical activity reports as may be prescribed;

(c) shall allow scientific surveys if there is no interference with mining;

(d) shall maintain the mining land under the lease or certificate to a safe state and to such environmental standards as may be prescribed;

(e) shall comply with the approved environmental impact assessment, if such assessment is required under any written law;

(f) shall comply with the approved plan for rehabilitation, if required under this Ordinance;

(g) shall allow over or through the mining land access to any adjoining land as shall not, in the opinion of the Director, interfere with mining operations;

(h) shall allow the construction and use on the mining land of such watercourses, canals, pipelines and transmission lines, public roads and public utilities as shall not, in the opinion of the Director, interfere with mining operations or rights under the lease or certificate;

(i) shall allow on the mining land any traditional farming held under native customary rights.

(2) Time shall be deemed to be of the essence of every condition subject to a fixed term by which the holder of a mining lease or certificate is required to do any act.

Submission of mine feasibility study

55.—(1) The holder of a mining lease or certificate, having regard to the nature of its mining operations, may be required by the Authority to submit a mine feasibility study and design of any mine or structure relating to mining activities for the approval of the Authority which may approve or reject it. The Authority shall seek the professional opinion of the Chief Inspector in its consideration of the mine feasibility study.

(2) If the Authority approves the mine feasibility study submitted under subsection (1), the holder of a mining lease or certificate shall, subject to this Ordinance, mine the land in respect of which the mining lease or certificate has been granted in accordance with the approved mine feasibility study.

(3) The holder of a mining lease or certificate may—

(a) submit such number of mine feasibility studies or design drawings and specifications as may be necessary in order to obtain the approval of the Authority under subsection (1); and

(b) submit proposed revisions or amendment to the mine feasibility study or design drawings and specifications approved under subsection (1) to the Authority which may approve or reject such proposed revisions.

(4) The mine feasibility study or design drawings and specifications required under subsection (1) shall include—

(a) a mine construction schedule;

(b) the planned production commencement date;

(c) a schedule of planned annual raw ore production for the terms of the lease or certificate; and

(d) such other information as may be prescribed or requested by the Authority.

Notice of commencement of development work and mining

56. The holder of mining lease or certificate shall, within fourteen days before the commencement of any development work on the land which is the subject of the mining lease or certificate, submit a written notice as may be prescribed of such commencement and the date thereof to the Director, the Superintendent and the Chief Inspector.

When development work and mining to commence

57.—(1) The holder of a mining lease or certificate shall commence development work within nine months from the date of registration of the lease or certificate:

Provided that where the lease or certificate is subject to a condition or requirement under this Ordinance prohibiting the commencement of development work until such condition or requirement is satisfied, the holder shall commence development work within nine months of the date on which such condition or requirement has been satisfied.

(2) The Director, in consultation with the Authority, may forfeit the mining land under section 58 if the holder of a mining lease or certificate fails to commence work on the land in respect of which the mining lease or certificate has been granted within one year from the production commencement date specified in any mine feasibility study report submitted under section 55.

(3) The Director, in consultation with the Authority, may forfeit the mining land under section 58 if the level of annual ore production is less than twenty per cent of the planned raw ore production for that year as stated for two consecutive years, if in the year following that two years' period the annual ore production is twenty per cent or less of the planned raw ore production level for that year as stated in the said study.

Liability to forfeiture

58.—(1) The Authority may forfeit the mining land in respect of which a mining lease or certificate has been granted if it is satisfied that the holder thereof—

(a) has breached any of the terms and conditions specified in the lease or certificate; or

(b) has contravened any of the provisions of this Ordinance.

(2) For the purpose of subsection (1), the Secretary shall serve or cause to be served on the holder written notice of its intention to forfeit the mining land and the grounds on which it proposes to take such action, and it shall give the holder an opportunity to make written representations thereon within thirty days from the date of service of the notice.

(3) The Secretary shall also serve or cause to be served on any person or body—

(a) who has a registered interest affecting the mining land in respect of which the mining lease or certificate has been granted; or

(b) who is in lawful occupation of any part of the mining land in respect of which the mining lease or certificate has been granted,

a copy of the written notice mentioned in subsection (2) to which there shall be appended an additional notice in such form as may be prescribed.

(4) Upon the expiry of the period of thirty days mentioned in subsection (2) and after considering any representation made by the holder and after holding an inquiry, the Authority shall decide—

(a) whether to proceed with the proposed action;

(b) whether to take action under section 59; or

(c) whether to take no further action.

(5) The Secretary shall give the holder written notice of its decision under subsection (4).

Imposition of fine, remedying of breach or contravention

59.—(1) If the Authority is satisfied that there are grounds on which its power to forfeit the mining land is exercisable under section 58(4) but the circumstances are not such as to justify forfeiture, the Authority may in its discretion—

(a) make an order for the payment of a fine not exceeding two hundred and fifty thousand ringgit within a specified time; or

(b) issue a notice in such form and manner as may be prescribed, specifying the necessary action to be taken to remedy the breach or contravention within a specified time.

(2) The Secretary shall give the holder a written notice of its decision under subsection (1).

(3) Upon service of the notice under subsection (2), the Authority shall endorse or cause to be endorsed the particulars of—

(a) the order made under subsection (1)(a); or

(b) the notice issued under subsection (1)(b),

in the document of the mining lease kept in the register referred to in section 97.

(4) If the order made under subsection (1)(a) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(5) If the order made under subsection (1)(a) is not complied with, the Authority shall make an order declaring the mining land in respect of which the mining lease or certificate has been granted forfeited to the Government.

(6) Notwithstanding subsection (4), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the mining land in respect of which the mining lease or certificate has been granted forfeited to the Government.

(7) If the notice issued under subsection (1)(b) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(8) If the notice issued under subsection (1)(b) is not complied with, the Authority shall make an order declaring the mining land in respect of which the mining lease or certificate has been granted forfeited to the Government.

(9) Notwithstanding subsection (7), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the mining land in respect of which the mining lease or certificate has been granted forfeited to the Government.

When forfeiture to take effect

60.—(1) The Registrar shall, as soon as practicable after the making of an order of forfeiture under section 58, 59 or 61 with respect to any mining lease or certificate, publish or cause to be published in the *Gazette* a notification of forfeiture in such form as may be prescribed and any such forfeiture shall take effect upon such publication.

(2) Where an order of forfeiture as mentioned in subsection (1) has been made, the holder shall forthwith surrender the mining lease or certificate to the Registrar for cancellation.

(3) The Registrar shall, as soon as practicable after the notification mentioned in subsection (1) is published, enter or cause to be entered a memorial thereof in the register as provided for under section 102.

Effects of forfeiture

61. Upon the taking into effect of any forfeiture in relation to any mining lease or certificate under this Ordinance—

(a) the mining land, in respect of which the mining lease or certificate has been granted shall revert to, and vest in, the Government as State land, freed and discharged from any title or interest subsisting or capable of arising immediately before the forfeiture took effect;

(b) there shall also vest in the Government any building or other structures including roads then existing on the mining land other than properties of the holder of the mining lease or certificate capable of removal; and

(c) any rent due to the Government in respect of the mining land shall remain due and owing and may be recoverable by the Government.

Surrender of land

62.—(1) An application to surrender the mining land in respect of which the mining lease or certificate has been granted, in whole or in part, shall be made to the Secretary in the prescribed form.

(2) The liability of the holder—

(a) to pay any rent, fee, royalty, penalty or other money that is payable on or before the date of surrender;

(b) to fulfill any requirement for rehabilitation;

(c) to perform any obligation required to be performed on or before the date of surrender; and

(d) for any act done or default made on or before the date of surrender,

shall not be affected by the surrender of the mining lease or certificate under subsection (1).

(3) In the case where the entire mining land under the mining lease or certificate is to be surrendered—

(a) the holder shall, before making any application under subsection (1), give to the Secretary—

(i) in the case of a mining lease or certificate authorizing a small scale operation, at least three months' notice; or

- (ii) in the case of a mining lease or certificate authorizing a large scale operation, at least six months' notice,
- of his intention to apply to surrender such land; and
- (b) the Secretary shall, upon the Authority approving the application for surrender under this section—
- (i) notify the holder and the Director in writing of such approval; and
- (ii) cause to be entered a memorial of the surrender in the register as provided for under section 102.
- (4) Upon the entering of the memorial under subsection (3)(b)(ii), the mining land in respect of which the mining lease or certificate has been granted shall revert to and vest in the Government.
- (5) In the case where only part of the mining land under the mining lease or certificate is to be surrendered, the Secretary shall—
- (a) notify the holder and the Director in writing whether the application for surrender is approved;
- (b) cause a boundary survey of the area not surrendered to be completed at the expense of the holder; and
- (c) upon surrender of the original document of the mining lease or certificate, notify the Director, who shall, as soon as possible, cause to be issued to the holder a mining lease or certificate in respect of that portion of mining land which remains not surrendered which shall in all respects be subject to the same terms and conditions as the original lease or certificate.
- (6) There shall be no surrender under this section unless the written consent of every person having an interest registered against the mining lease or certificate has been delivered to the Secretary.

Proprietary Mining Licence

Application for proprietary mining licence

63.—(1) An application for a proprietary mining licence shall be made by the owner of any alienated land to the Director in the prescribed form.

(2) No proprietary mining licence shall be granted in respect of any area within a prospecting area in respect of which a prospecting licence has been granted except with the written consent of such licence holder.

(3) An application for a proprietary mining licence shall include a pre-feasibility study which shall include—

(a) a general description of the proposed mining scheme;

(b) the expected commencement date of mineral production (to be stated as the number of months from the date the proprietary mining licence is issued);

(c) a schedule of estimated annual raw ore production for the term of the proprietary mining licence; and

(d) such other information as may be prescribed or requested by the Superintendent.

(4) Upon receipt of an application under subsection (1), the Director shall refer the application, with his comments, to the Authority for decision under subsections (5) and (6).

(5) In considering an application for a proprietary mining licence, the Authority shall verify that the applicant—

(a) has complied with the requirements of this Ordinance; and

(b) is technically and financially qualified to develop and mine the area to which the application relates.

(6) The Authority shall, as soon as practicable, determine whether the application should be—

(a) approved, in whole or in part—

(i) confirming that the applicant has complied with the requirements of this Ordinance; and

(ii) specifying the terms and conditions subject to which the licence is to be granted; or

(b) refused.

(7) The Secretary shall notify the applicant and the Superintendent in writing of its decision under subsection (6).

(8) If the application for a proprietary mining licence is approved by the Authority, the Superintendent shall, as soon as practicable after being notified under subsection (7), and upon payment of the prescribed fee, direct the Registrar to register the instrument of proprietary mining licence and issue to the applicant a proprietary mining licence in Form E as set out in the Schedule subject to such terms and conditions as may be specified therein or as may be prescribed.

(9) If the applicant fails to pay the prescribed fee for a proprietary mining licence within sixty days after being notified of its approval, such approval shall be deemed revoked.

(10) Upon the registration of a proprietary mining licence in the register of proprietary mining licences—

(a) the Registrar shall record or cause to be recorded an entry of such registration in the register wherein the title to the land licensed to be mined is recorded; and

(b) the Registrar shall inform the Superintendent of any entry or memorial made or cancelled in the register document of title in respect of which the proprietary mining licence has been issued and the Superintendent shall, upon being so informed, make such necessary changes in the licence.

(11) The rights and obligations of a proprietary mining licence shall, while such licence continues in force, attach to and be inseparable from the registered title to the land licensed to be mined.

(12) A proprietary mining licence shall not be transferable or charged or dealt with otherwise than by means of and incidental to a transfer or charge of, or other dealing with, the title to the land licensed to be mined:

Provided that every transfer or charge of, or other dealing with, the said title shall extend to and include the mining rights conferred by such licence.

Limitations on proprietary mining licence

64. The following provisions of this Ordinance shall, with such modifications as may be necessary, apply to a proprietary mining licence:

- (a) section 44, but the holder of a proprietary mining licence may be required by the Authority to submit a plan for rehabilitation or to make payment to the Mine Rehabilitation Fund;
- (b) section 48, but in no case shall the duration of a proprietary mining licence exceed the expiry date of the alienated land title to which the proprietary mining licence relates; and
- (c) sections 50, 52, 53, 54, 55 and 56.

Revocation of proprietary mining licence

65.—(1) The Authority may revoke a proprietary mining licence if it is satisfied that the holder of the licence—

- (a) has breached any of the terms and conditions specified in the licence; or
- (b) has contravened any of the provisions of this Ordinance.

(2) For the purpose of subsection (1), the Authority shall serve or cause to be served on the holder of a proprietary mining licence written notice of its intention to revoke the licence and the grounds on which it proposes to take such action, and it shall give the holder of the proprietary mining licence an opportunity to make written representations thereon within thirty days from the date of service of the notice.

(3) The Authority shall also serve or cause to be served on any person or body—

(a) who has a lawful interest affecting the land in respect of which the licence has been granted; or

(b) who is in lawful occupation of any part of the land in respect of which the licence has been granted,

a copy of the written notice mentioned in subsection (2) to which there shall be appended an additional notice in such form as may be prescribed.

(4) Upon the expiry of the period of thirty days mentioned in subsection (2) and after considering any representation made by the holder of the licence and after holding an inquiry, the Authority shall decide—

(a) whether to proceed with the proposed action;

(b) whether to take action under section 66; or

(c) whether to take no further action.

(5) The Authority shall give the holder of the proprietary mining licence and the Superintendent written notice of its decision under subsection (4).

Imposition of fine, remedying of breach or contravention

66.—(1) If the Authority is satisfied, after consultation with the Director, that there are grounds on which its power to revoke a licence is exercisable under section 65(4)(a) but the circumstances are not such as to justify revocation, the Authority may in its discretion—

(a) make an order for the payment of a fine not exceeding two hundred thousand ringgit within a specified time; or

(b) issue a notice in such form and manner as may be prescribed, specifying the action necessary to be taken to remedy the breach or contravention within a specified time.

(2) The Authority shall give the holder of the proprietary mining licence and the Director written notice of its decision under subsection (1).

(3) Upon service of the notice under subsection (2), the Authority shall endorse or cause to be endorsed the particulars of—

(a) the order made under subsection (1)(a); or

(b) the notice issued under subsection (1)(b),

as the case may be, on the proprietary mining licence kept in the register referred to in section 97.

(4) If the order made under subsection (1)(a) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(5) If the order made under subsection (1)(a) is not complied with, the Authority shall make an order declaring the proprietary mining licence revoked.

(6) Notwithstanding subsection (4), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the proprietary mining licence revoked.

(7) If the notice issued under subsection (1)(b) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(8) If the notice issued under subsection (1)(b) is not complied with, the Authority shall make an order declaring the proprietary mining licence revoked.

(9) Notwithstanding subsection (7), if the Authority is satisfied that the breach or contravention continues, it shall make an order declaring the proprietary mining licence revoked.

When revocation to take effect

67.—(1) The revocation of a proprietary mining licence shall take effect on the date the order of revocation is made under section 65, 66 or 80, as the case may be.

(2) Where an order of revocation as mentioned in subsection (1) has been made, the holder of such licence shall forthwith surrender such licence to the Secretary who shall transmit the same to the Registrar for him to take the action under section 102.

Entry in register

68. Where a proprietary mining licence has been revoked or expired, as the case may be, the Director shall enter or cause to be entered a memorial of such revocation or expiry in the register wherein the title to the land is recorded as provided for under section 102.

Surrender of proprietary mining licence

69.—(1) An application to surrender a proprietary mining licence shall be made to the Director in the prescribed form. The form shall be signed by the licensee who shall also return the proprietary mining licence to the Director.

(2) The liability of the holder of a proprietary mining licence

—
(a) to pay any fee, royalty, penalty or other money that is payable on or before the date of surrender;

(b) to perform any obligation required to be performed on or before the date of surrender; and

(c) for any act done or default made on or before the date of surrender,

shall not be affected by the surrender of the licence under subsection (1).

(3) Upon the surrender of a proprietary mining licence, the Registrar shall enter or cause to be entered a memorial of the surrender in the register wherein the title to the land is recorded as provided for under section 102.

PART IV
ACCESS TO LAND

Access to reserved land or reserved forest area for prospecting

70.—(1) Where any land in respect of which a prospecting licence has been granted includes any reserved land or reserved forest area, the holder of the prospecting licence shall not carry out any prospecting activities, other than that conducted from aerial observation or by remote sensing methods, in respect of the reserved land or reserved forest area unless the prospecting activities are carried out in such manner and subject to such requirements as may be prescribed under the law declaring or constituting the reservation.

(2) Subject to subsection (3), where the law under which the reservation is declared or constituted does not prescribe the manner in which any prospecting activities shall be carried out then the holder of the prospecting licence shall not carry out any prospecting activities, other than that conducted from aerial observation or by remote sensing methods, in respect of the reserved land or reserved forest area unless the holder thereof has obtained prior written permission of the officer for the time being having the control over such land before commencing prospecting activities.

(3) Where a temporary occupation licence or a similar right to use the land has been granted over any reserved land or reserved forest area, as the case may be, the holder of the prospecting licence shall not carry out any prospecting activities, other than that conducted from aerial observation or by remote sensing methods, in respect of the land unless the holder thereof has obtained prior written permission of the holder of the temporary occupation licence or a similar right.

(4) The holder of a prospecting licence shall respect the rights of claimants to native customary rights pertaining to the area covered by the licence.

Access to alienated land or occupied land for prospecting

71.—(1) Where any land in respect of which a prospecting licence has been granted includes any alienated land or occupied land, the holder of the prospecting licence shall not carry out any prospecting activities, other than that conducted from aerial observation or by remote sensing methods, in respect of the land unless the holder thereof—

(a) has obtained prior written permission of the owner of the alienated land or occupied land, as the case may be; or

(b) has obtained, if the alienated land or occupied land is subject to the category “agriculture” or to any condition requiring its use for any agricultural purpose, an access order under subsection (3),

and any such written permission or access order shall be appended to the licence.

(2) Where the written permission has been obtained under subsection (1)(a), the holder of the prospecting licence shall, before commencing any prospecting activity, submit such written permission to the Superintendent in such manner as may be prescribed.

(3) If the holder of the prospecting licence—

(a) has failed to obtain the written permission mentioned in subsection (1)(a) within a period of six months from the date the licence is issued; or

(b) has obtained the written permission mentioned in subsection (1)(a) but the written permission is subsequently withdrawn,

and the land in respect of which the prospecting licence has been granted is subject to the category “agriculture” or to any condition requiring its use for any agricultural purposes, the holder thereof shall notify the Superintendent in writing of such fact.

(4) The Superintendent shall, as soon as practicable after receiving the notice under subsection (3), conduct an inquiry for the purpose of determining—

- (a) whether or not an access order should be granted; and
 - (b) the terms and conditions of the access order, if any.
- (5) An access order may include the following matters:
- (a) the date on which the access order shall come into force, but such date shall be no sooner than forty-five days from the date the access order is made;
 - (b) the periods, if any, during which the holder of the prospecting licence is to be permitted access to the land;
 - (c) the parts of the alienated land or occupied land in or on which the holder of the prospecting licence may prospect and the means by which the holder thereof may gain access to these parts of the land;
 - (d) the kind of prospecting activities that may or may not be carried out in or on the land;
 - (e) the conditions to be complied with when prospecting in or on the land;
 - (f) the measures which the holder of the prospecting licence needs to take in order to protect the environment while having access to the land and prospecting in or on the land;
 - (g) the compensation to be paid to any owner of the alienated land or occupied land—
 - (i) as a consequence of the holder of the prospecting licence prospecting in or on the land; and
 - (ii) for any loss or interference with the owner's right to use the land for monetary gain that may be reasonably attributed to the prospecting activities;
 - (h) the amount of security, if any, to be deposited with the Superintendent under section 75(1)(a) by the holder of the prospecting licence for payment for his damages, if any, under section 23(1)(b);

(i) the manner of resolving any dispute arising in connection with the access order;

(j) the manner of varying the access order; and

(k) such other matters as the parties to the access order may agree to include in the access order.

(6) Any person aggrieved by the decision of the Superintendent to grant or refuse an access order or with the terms of any such access order made under this section may, within thirty days after the date the access order is made or refused, appeal in writing to the Authority whose decision shall be final.

(7) Where an appeal is made under subsection (6), the access order shall have no effect until disposal of the appeal.

(8) Without prejudice to any proceedings which may be brought against the holder of a prospecting licence in respect of any contravention of an access order, the owner of the land to which the order relates may, if the holder of a prospecting licence contravenes such order, deny the holder thereof access to the land until—

(a) the contravention ceases; or

(b) the contravention is remedied to the reasonable satisfaction of the owner of such land.

(9) Where the holder of a prospecting licence has been denied access to the land under subsection (8), he may appeal in writing to the Superintendent whose decision shall be final.

Mining beneath alienated land

72.—(1) Subject to this Ordinance, a mining lease may be granted in respect of any land beneath alienated land or native customary land.

(2) The provisions of section 44 relating to an application for mining lease shall, with such modifications as may be necessary, apply to an application for mining lease beneath alienated land.

(3) A mining lease granted beneath any alienated land shall extend downward—

(a) from the depth specified in the document of title of the alienated land as its lowest boundary; or

(b) in the case where the document of title of the alienated land does not specify a depth boundary, from the depth to which the owner has the right to use and enjoy the land for the purposes of such title.

(4) The Authority may, in granting a mining lease beneath any alienated land, in addition to the conditions specified in section 54, impose such other conditions as it deems necessary, including the following:

(a) that the lessee and every person employed in relation to the mining lease shall use the land specified in the mining lease in the manner least injurious to the owner of the overlying alienated land or occupied land; and

(b) that the lessee shall, in conducting mining operations, take all reasonable precautions to prevent the occurrence of subsidence of the overlying alienated land or occupied land.

(5) The Authority may, in granting a mining lease beneath any land subject to claim under native customary rights, in addition to the conditions specified in section 54, impose such other conditions as it deems necessary, including the following:

(a) that the lessee and every person employed in relation to the mining lease shall use the land specified in the mining lease in the manner least injurious to such claimants; and

(b) that the lessee shall, in conducting mining operations, take all reasonable precautions to prevent the occurrence of subsidence of the overlying land subject to such claims.

(6) The claimant to native customary rights lawfully created over land affected by any mining operation beneath such land shall have the right to make a claim for compensation under section 74.

Access to mining land beneath alienated land

73.—(1) The lessee of a mining lease granted in respect of land beneath alienated land shall not be entitled to access through or on the alienated land to the land beneath except—

(a) with the prior written permission of the owner of the alienated land; or

(b) in accordance with an access order as determined by the Superintendent under this section,

and any such written permission or access order shall be appended to the lease.

(2) The provisions of section 71, other than subsection (1) thereof relating to access to alienated land shall, with such modifications as may be necessary, apply to access to land beneath alienated land.

PART V

COMPENSATION

Compensation

74.—(1) The owner of any alienated land or occupied land—

(a) in respect of which a prospecting licence has been granted; or

(b) in respect of which a mining lease beneath any such land has been granted,

is entitled to compensation for any loss or damage suffered by him resulting or arising from the prospecting activities or mining operations, as the case may be; and the holder of the prospecting licence or the lessee shall be liable to pay compensation in accordance with this Ordinance for any such loss or damage.

(2) The officer for the time being having the control of reserved land or reserved forest area in respect of which a prospecting licence has been granted is entitled to compensation for any loss or damage suffered by the Authority resulting or arising from the prospecting; and the holder of the prospecting licence shall be liable to pay compensation in accordance with this Ordinance for any such loss or damage.

(3) The amount of compensation payable under subsection (1) or (2) may include compensation for—

- (a) any damage to the surface of the land or any part thereof;
- (b) any damage to the crops, trees or livestock on the land or damage to buildings and improvements thereon;
- (c) any deprivation of possession or use of the surface of the land or any part thereof;
- (d) any loss or restriction of surface right of way or other easements; or
- (e) any disruption to agricultural activity.

(4) The owner of any alienated land or occupied land, or the officer for the time being having the control over reserved land or reserved forest area, seeking compensation under this section shall notify the Director stating the particulars of his claim.

(5) The amount of compensation payable under subsection (1) or (2) may be determined by an agreement—

- (a) between the holder of the prospecting licence or the lessee, as the case may be, and the owner of such land; or
- (b) between the holder of the prospecting licence and the officer for the time being having the control over the reserved land or reserved forest area,

respectively.

(6) If no agreement under subsection (5) is reached within a period of six months after the giving of the notification under subsection (4)—

- (a) the owner of any alienated land or occupied land;
- (b) the officer for the time being having the control over reserved land or reserved forest area; or
- (c) the person liable to pay the compensation under subsection (1) or (2), as the case may be,

may apply to the Director to determine the amount of compensation payable in such form and manner as may be prescribed. In the determination of such compensation, the Director may seek the professional advice of a qualified valuer.

(7) The Director shall, upon an application made under subsection (6), determine the compensation payable in accordance with such procedure as may be prescribed.

(8) Any person who is aggrieved by the decision of the Director under subsection (7) may, within thirty days of being notified of such decision, appeal to the High Court.

(9) The powers vested in the Director under this section may be exercised by an officer specially authorized by him in writing.

Deposit for payment of compensation

75.—(1) The Authority may require any person to whom—

- (a) a prospecting licence has been granted in respect of any area which consists of or includes alienated land, occupied land, reserved land or reserved forest area;
- (b) a mining lease has been granted in respect of any land beneath alienated land;

(c) a prospecting licence has been granted in respect of any area which consists of or includes land subject to claim under native customary rights; or

(d) a mining lease has been granted in respect of any land beneath land subject to claims under native customary rights,

to deposit from time to time with the Superintendent such amount of money as it may specify as security for the payment of compensation which the person may be liable to pay under this Ordinance.

(2) Any deposit paid under subsection (1) shall, on loss or damage being caused by the holder of the prospecting licence or the lessee, as the case may be, for any reason specified in section 74, be paid out by the Superintendent to the person entitled thereto.

(3) Where the whole or any part of an amount deposited under subsection (1) has not been paid out under subsection (2), the Superintendent shall refund such amount, with no adjustment for interest on the amount deposited, to the holder of the prospecting licence or the lessee, as the case may be, as soon as practicable—

(a) in the case of a prospecting licence, after the licence is surrendered, expired or revoked, whichever shall first occur; and

(b) in the case of a mining lease, after the mining lease is surrendered, expired or forfeited, whichever shall first occur:

Provided that the Superintendent shall not refund any amount under this section until all claims to compensation under this section have been settled.

(4) The amount required as a deposit under subsection (1) shall not operate to relieve any person from any liability in respect of any claim for compensation.

PART VI
FINANCIAL OBLIGATIONS

Licence fees and rent

76.—(1) Subject to subsection (6)—

(a) the holder of a prospecting licence shall, in respect of the land which is subject to the licence, pay licence fee; and

(b) the lessee shall, in respect of the mining land which is subject to the mining lease or certificate, pay rent,

annually to the Government.

(2) The amount of licence fee or rent payable under subsection (1) in any year shall be calculated by multiplying the area of land subject to the licence or lease in that year with the respective rate of holding fee or rent prescribed as of the date of such licence fee or rent is payable.

(3) Any licence fee and rent payable under this Ordinance shall be paid at such time and place and in such manner as may be prescribed.

(4) The Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, revise—

(a) the rate of licence fee payable in respect of a prospecting licence; and

(b) the rate of rent payable in respect of mining land,

and such rates shall be based on land area and be prescribed by the Authority.

(5) No rate of licence fee revised under subsection (4)(b) shall have effect before the expiry of a period of ten years from the most recent date of revision.

(6) The Authority may, in circumstances deemed to justify such a course of action, grant—

(a) to the holder of a prospecting licence a total or partial waiver of the holding fee; and

(b) to the lessee a total or partial waiver of the rent.

Royalty

77.—(1) Subject to subsections (5) and (8), the holder of a mineral tenement shall pay to the Government royalty on any mineral —

(a) won and sold or intended for sale; or

(b) won and utilized, or to be utilized, for any commercial or industrial purpose.

(2) Subject to Clause (3B) of Article 110 and to Clause (4) of Article 112C of the Federal Constitution and subsections (3) and (4), the Majlis Mesyuarat Kerajaan Negeri may prescribe the rate of royalty to be paid on any mineral.

(3) The amount of royalty for any mineral may be prescribed as—

(a) a percentage of the market value of the mineral won; or

(b) an amount payable on the basis of any specified volume or weight of the mineral won.

(4) The rate of royalty applicable to the lessee or holder of a proprietary mining licence shall be fixed for the first ten years of the lease or licence, at the level prescribed as of the date of the lease or licence was registered and any change in the prescribed rate of royalty made after the date on which the lease or licence was registered shall not apply to the lessee or holder of the proprietary mining licence during the said ten years' period.

(5) The Authority may, in circumstances deemed to justify such a course of action, grant to the holder of a mineral tenement, on a yearly basis, a total or partial waiver of royalty.

(6) The Authority or any officer authorized in writing by it may inspect and examine any book, record and account and obtain any information necessary to ascertain the quantity or value of minerals won in respect of a mineral tenement and any information necessary to verify the amount of any royalty payable.

(7) Where a mineral tenement is held by more than one person, any person having an interest in the mineral tenement shall be held jointly and severally liable for the payment of the royalty in respect of the mineral tenement.

Market value

78. For the purpose of section 77(3)(a), the market value of any mineral shall be determined by such method and in such manner as may be prescribed by the Authority.

Property in minerals

79. The property in minerals shall pass to the person—

(a) who has lawfully won the minerals and in consideration of and upon payment of royalty or commutation fee, as the case may be; or

(b) if no royalty is payable in respect of the minerals lawfully won, upon recovery of the minerals.

Collection of arrears of fee, rent, royalty, etc.

80.—(1) Where any fee, rent or royalty payable under this Part is in arrears, the Authority shall serve or cause to be served on the holder of the mineral tenement a notice of demand in such form as may be prescribed.

(2) A note of the service of the notice under subsection (1) shall be endorsed at the instance of the Authority on the document or instrument of the mineral tenement, as the case may be, to which the notice relates.

(3) If the whole of the sum demanded by a notice under subsection (1) is tendered to the Authority within the time specified herein, the notice shall thereupon cease to have effect and the Authority shall cause to be cancelled the note endorsed pursuant to subsection (2).

(4) If by the end of the period specified in the notice of demand the sum demanded by the notice has not been tendered to the Authority, it shall thereupon by order declare—

(a) in the case of a prospecting licence, the licence revoked, and the provisions of sections 37 and 38 shall have effect with respect thereto accordingly;

(b) in the case of a mining lease, the mining land in respect of which the mining lease has been granted forfeited to the Authority, and the provisions of sections 58 and 59 shall have effect with respect thereto accordingly; and

(c) in the case of a proprietary mining licence, the licence revoked, and the provisions of sections 65 and 66 shall have effect with respect thereto accordingly.

PART VII

PROVISIONS REGARDING WATER

Right to use water may be subject to licence

81.—(1) Subject to subsection (2) and section 94, a holder of a mineral tenement is entitled to the enjoyment of water as may be found on or beneath the land which is the subject of the mineral tenement for the purposes of such tenement.

(2) No holder of a mineral tenement shall—

(a) make, cause or permit to be made, any alteration in the water supply of any land for the purposes of the mineral tenement as may prejudicially affect the water supply enjoyed by any other persons or lands;

(b) obtain or cause to be obtained any water supply from any river, stream or watercourse flowing over or under the land which is the subject of a mineral tenement; or

(c) divert or cause to be diverted any water supply from lands outside the area covered by the mineral tenement to the land which is the subject of the mineral tenement,

except under the authority and in accordance with the terms and conditions of a licence or permit issued under this Part.

(3) Whenever any alteration or diversion has been made to any water supply, the holder of the mineral tenement who benefited therefrom shall, in the absence of proof to the contrary, be presumed to have made the same.

Application for water licence

82.—(1) An application for a water licence shall be made by the holder of a mineral tenement to the State Water Authority in the prescribed form.

(2) Upon receipt of an application under subsection (1) and after consultation with the Authority and such other relevant authorities it deems necessary, the State Water Authority may approve or refuse the application and its decision shall be final.

(3) The State Water Authority shall notify—

(a) the applicant;

(b) the Authority; and

(c) the Director,

in writing of its decision under subsection (2).

(4) A water licence which shall be in Form F of the Schedule shall, subject to this Ordinance and to the terms and conditions specified in the licence, confer upon the holder thereof the rights—

(a) to divert, extract, draw, store, make use of and discharge water existing on or directly adjacent to the land covered by the mineral tenement;

(b) to divert, extract, draw, store, make use of and discharge water from or across State land, alienated land, occupied land and reserved land for the purposes of the mineral tenement as provided in this Part; and

(c) to use water to generate power for use on the land covered by the mineral tenement.

(5) If the application for a water licence is approved, the holder thereof shall transmit a certified true copy thereof to the Authority.

(6) The term of a water licence shall not exceed the expiry date of the mineral tenement for which the water is to be used.

Application for water permit

83.—(1) An application for a water permit shall be made by the holder of a mineral tenement to the State Water Authority in the prescribed form.

(2) The term of a water permit—

(a) shall not exceed one year but may, upon application made in the prescribed form, be renewable at the discretion of the State Water Authority and upon renewal thereof it—

(i) may impose such terms and conditions as it deems fit; and

(ii) shall endorse on the permit the particulars of such renewal; and

(b) shall not exceed the expiry date of the mineral tenement for which the water is to be used.

(3) A water permit, which shall be in Form G of the Schedule, shall authorize the holder thereof to divert, make use of and discharge such water as is therein specified, in such places by such means, in such manner, in such quantities and on such conditions as the State Water Authority may think fit.

(4) A water permit shall not authorize the holder thereof to construct any works—

(a) upon alienated land or occupied land except with the written permission of the owner thereof; or

(b) upon reserved land except with the written consent of the public officer for the time being having the control thereof.

Temporary suspension of water licence

84.—(1) The State Water Authority may, by notice in writing to the holder of a water licence, suspend temporarily for a period not exceeding ninety days all or any rights given under a water licence issued under this Part if it is satisfied that—

(a) the holder of the licence or any person employed by him—

(i) has breached any of the terms and conditions specified in the licence; or

(ii) has contravened any of the provisions of this Ordinance or the Water Ordinance, 1994 [*Cap. 13*]; or

(b) conditions of severe drought require that the water be made available for other public purpose.

(2) The decision of the State Water Authority to suspend a water licence under subsection (1) shall be final.

Temporary suspension of water permit

85.—(1) The State Water Authority may, by notice in writing to the holder of a water permit, suspend temporarily for a period not exceeding ninety days all or any rights given under a water permit issued under this Part if it is satisfied that—

(a) the holder of the permit or any person employed by him

(i) has breached any of the terms and conditions specified in the permit; or

(ii) has contravened any of the provisions of this Ordinance or the Water Ordinance, 1994 [*Cap. 13*]; or

(b) conditions of severe drought require that the water be made available for other public purpose.

(2) The decision of the State Water Authority to suspend a water permit under subsection (1) shall be final.

Revocation of water licence

86.—(1) The State Water Authority may, after consultation with the Authority, revoke a water licence if it is satisfied that the holder of the licence—

(a) has breached any of the terms and conditions specified in the licence; or

(b) has contravened any of the provisions of this Ordinance or the Water Ordinance, 1994 [*Cap. 13*].

(2) For the purpose of subsection (1), the State Water Authority shall serve or cause to be served on the holder of a water licence written notice of its intention to revoke the licence and the grounds on which it proposes to take such action, and it shall give the holder of the water licence an opportunity to make written representations thereon within thirty days from the date of service of the notice.

(3) Upon the expiry of the period of thirty days mentioned in subsection (2) and after considering any representation made by the holder of the water licence and after holding an inquiry, the State Water Authority shall decide—

- (a) whether to proceed with the proposed action;
- (b) whether to take action under section 88; or
- (c) whether to take no further action.

(4) The State Water Authority shall give the holder of the water licence written notice of its decision under subsection (3).

Revocation of water permit

87.—(1) The State Water Authority may revoke a water permit if it is satisfied that the holder of the permit—

- (a) has breached any of the terms and conditions specified in the permit; or
- (b) has contravened any of the provisions of this Ordinance or the Water Ordinance, 1994 [*Cap. 13*].

(2) The decision of the State Water Authority under subsection (1) shall be final.

Imposition of fine, remedying of breach or contravention

88.—(1) If the State Water Authority is satisfied, after consultation with the Authority, that there are grounds on which its power to revoke the water licence is exercisable under section 86(3) (a) but the circumstances are not such as to justify revocation, the State Water Authority may in its discretion—

- (a) make an order for the payment of a fine not exceeding fifty thousand ringgit within a specified time; or
- (b) issue a notice in such form and manner as may be prescribed, specifying the necessary action to be taken to remedy the breach or contravention within a specified time.

(2) The State Water Authority shall give the holder of the water licence written notice of its decision under subsection (1).

(3) Upon service of the notice under subsection (2), the State Water Authority shall endorse or cause to be endorsed the particulars of—

- (a) an order made under subsection (1)(a); or
- (b) a notice issued under subsection (1)(b),

as the case may be, on the water licence kept in its records referred to in section 90.

(4) If the order made under subsection (1)(a) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(5) If the order made under subsection (1)(a) is not complied with, the State Water Authority shall make an order declaring the water licence revoked.

(6) Notwithstanding subsection (4), if the State Water Authority is satisfied that the breach or contravention continues, it shall make an order declaring the water licence revoked.

(7) If the notice issued under subsection (1)(b) is complied with, the endorsement under subsection (3) shall be cancelled accordingly.

(8) If the notice issued under subsection (1)(b) is not complied with, the State Water Authority shall make an order declaring the water licence revoked.

(9) Notwithstanding subsection (7), if the State Water Authority is satisfied that the breach or contravention continues, it shall make an order declaring the water licence revoked.

Surrender of water licence and water permit

89. Where a water licence or water permit has been revoked under this Part, the holder of the licence or permit, as the case may be, shall forthwith surrender the licence or permit to the State Water Authority respectively.

Revocation to be recorded

90. As soon as practicable after the revocation of a water licence, the State Water Authority shall record or cause to be recorded an entry of such revocation in its records.

Record of water licence on titles affected

91. Where any alienated land is affected by a water licence issued under this Part, the Registrar having custody of the register wherein the title to the land is recorded shall, on being notified of the issuance of such licence by the State Water Authority—

- (a) before the delivery of such licence by the State Water Authority—
 - (i) make in the register an entry of the grant of the licence, and the period thereof; and
 - (ii) certify on the licence that such entry has been made; and
- (b) on revocation of the licence, make in the register an entry of such revocation.

Diversion of water from or across alienated land, etc.

92.—(1) Where a water licence issued under this Part gives permission to divert water from or across any alienated land, occupied land, State land, reserved land, reserved forest area or mining land, it shall be lawful for the holder thereof—

- (a) to enter such land for the purposes specified in the licence;

- (b) to carry out all or any of the works thereby sanctioned;
- and
- (c) to exercise all or any of the rights conferred thereto:

Provided that the holder of the water licence shall send a written notice at least seven days before any such entry to the owner or the State Water Authority, as the case may be, informing the owner or the State Water Authority of such intent and of the owner's or the State Water Authority's rights to compensation as provided under subsection (3).

(2) Where a water permit granted under this Part gives permission to divert water from or across any State land or mining land, it shall be lawful for the holder thereof—

- (a) to enter the land for the purposes specified in the licence;
- (b) to carry out all or any of the works thereby sanctioned;
- and
- (c) to exercise all or any of the rights conferred thereto.

(3) A holder of the water licence or water permit shall be liable to make compensation to the owner or the State Water Authority, as the case may be, of any land affected by the works or exercise of rights under subsection (1) or (2), and in the absence of any agreement between the holder of the licence and the said owner or the State Water Authority in respect of any compensation, such compensation shall be determined by the Director in such manner as may be prescribed.

(4) Where—

- (a) diversion works have been placed on the land mentioned in subsection (1) or (2); and
- (b) the owner of the land through which the diversion works pass desires to use or deal with his land in such a manner as to render it necessary or convenient that the diversion works should be removed or altered to another part of the land,

the owner of the land may, by notice in writing, require the holder of the water licence or water permit to remove or alter the diversion works within a reasonable period.

(5) If the holder of the water licence or water permit does not comply with the requisition made under subsection (4), the owner of the land may apply to the Controller of Rivers to order the removal or alteration of the diversion works.

(6) The Controller of Rivers to whom an application is made under subsection (5) may, in his discretion, refuse the application or make an order, with or without conditions, for the removal or alteration of the diversion works.

(7) Any person who is aggrieved by the decision of the Director under subsection (6) may, within thirty days of being notified of such decision, appeal to the State Water Authority whose decision shall be final.

Alteration or interference with river banks

93.—(1) No person shall, in the enjoyment of a mineral tenement, alter or interfere with, or cause or permit to be altered or interfered with, the banks of any river, stream or watercourse unless—

(a) such alteration or interference is permitted in a water licence or water permit issued under this Part; or

(b) such person has obtained the written permission the Controller of Rivers under subsection (3).

(2) An application for written permission to alter or interfere with the banks of any river, stream or watercourse shall be made by the holder of a mineral tenement to the Controller of Rivers in the form prescribed by the Authority.

(3) Upon receipt of an application under subsection (2), the Controller of Rivers may, after consultation with such other relevant authorities as he deems necessary, give written permission to the holder of a mineral tenement to alter or interfere with the banks of any river, stream or watercourse.

(4) The Controller of Rivers may, by a written order, require any person who in the course of mining operations—

(a) alters or interferes with the banks of any river, stream or watercourse; or

(b) permits any other person to alter or interfere with the banks of any river, stream or watercourse,

to restore the same to the condition in which it was immediately prior to such alteration or interference or to remake the same in such manner as may be prescribed in the order.

(5) In the exercise of his powers under this section, the Controller of Rivers shall consult the Director.

Mineral tenement holder to permit use of excess and discharged water to others

94.—(1) The Superintendent may, by a written order, direct the holder of a mineral tenement to permit any other person to enter upon the land which is the subject of the mineral tenement and thereupon to erect, construct and maintain, at that person's own expense, any pump, line of pipes, flume, race or watercourse which, in the opinion of the Chief Inspector, may be necessary to enable him to take advantage of any excess or discharged water from such land, and to convert the same to his own use:

Provided that no such use, erection, construction or maintenance shall be permitted or continued if it is proved that it causes or is likely to cause prejudicial effect or result upon or towards any actual or prospective mining operations which is being or may be commenced or carried on upon the land affected by the mineral tenement.

(2) Where any land the subject of a mineral tenement is affected by an order issued under subsection (1), the holder of such mineral tenement may, within sixty days from the date of notification of the order, appeal against such order to the Authority whose decision shall be final.

Maintenance of water standards

95.—(1) Every holder of mineral tenement who uses water in connection with mining operations shall—

(a) before it is discharged into any river, stream or watercourse; or

(b) before it leaves the land affected by the mineral tenement,

comply with such water quality standards as may be prescribed by this Ordinance or the Environmental Quality Act 1974 [*Act 127*].

(2) The Chief Inspector shall, on receipt of a complaint made in writing describing the failure on the part of any person to comply with the requirement of subsection (1), hold an inquiry into the matter of such complaint, and may, with or without such complainant, at any time order any person who fails to comply with the requirement of subsection (1) to—

(a) undertake the necessary measure to ensure water quality standards are complied with; or

(b) suspend mining operations until such measures are taken to comply with water quality standards.

(3) Any measures taken to comply with an order issued under subsection (2) shall not operate to relieve any person from any liability arising under subsection (1).

(4) In the exercise of his powers conferred by this section, the Chief Inspector shall consult the Controller of Environmental Quality, the Director of Environment, Sarawak, and the Controller of Rivers.

Provisions of this Part to prevail

96.—(1) The provisions of this Part shall have effect notwithstanding anything contained in any other written law regarding water.

(2) The term “water” in this Part shall where applicable include subterranean water.

PART VIII

RECORDING AND REGISTRATION

Registers of mineral tenements

97. The Registrar shall, for the purposes of this Ordinance, open a series of books to be known as—

- (a) the register of panning licences;
- (b) the register of prospecting licences;
- (c) the register of mining leases and certificates; and
- (d) the register of proprietary mining licences.

Preparation of licence, lease and certificate

98.—(1) Any licence, lease or certificate granted under this Ordinance shall be prepared in duplicate, one copy to be delivered by the Registrar to the holder of the licence, lease or certificate, as the case may be, and the other to be retained by the Registrar to be bound up in the appropriate registers referred to in section 97 and serially numbered therein.

(2) The Registrar shall not cause any panning licence, prospecting licence, proprietary mining licence, mining lease or certificate to be prepared, unless—

- (a) in the case of a panning licence and proprietary mining licence, the prescribed fees have been paid;
- (b) in the case of a prospecting licence, the prescribed fees and the first year's licence fee have been paid; and
- (c) in the case of a mining lease or certificate—
 - (i) the prescribed fees and the first year's rent have been paid; and

(ii) in the case of mining land which has been surveyed, and the survey fees, and if the survey was carried out by land surveyor, his fees, have been paid.

Description of area to be attached

99. A description of the area the subject of a licence, lease or certificate granted under this Ordinance shall be attached to both copies of the respective licence, lease or certificate referred to in section 98 and shall—

(a) in the case of a panning licence, prospecting licence, proprietary mining licence, be in such form and manner as may be prescribed; or

(b) in the case of a mining lease or certificate, consist of a plan of the land prepared by a land surveyor.

When licence, lease or certificate to have effect

100.—(1) The granting of a panning licence, prospecting licence and proprietary mining licence under this Ordinance shall take effect on the issuance of such licence.

(2) The granting of a mining lease or certificate under this Ordinance over State land shall take effect upon the registration of the mining lease or certificate.

Manner of issuing licence and registration of lease or certificate

101.—(1) The issuance of a panning licence shall consist of its authentication under the hand and seal of the Registrar or under the hand and seal of any person to whom the Registrar has delegated the power to grant such licence.

(2) The issuance of a prospecting licence or proprietary mining licence and the registration of a mining lease shall consist of its authentication under the hand and seal of the Registrar acting under the direction of the Authority.

(3) The date of issuance of any licence and the date of registration of any mining lease or certificate, as the case may be, shall be inscribed therein by the person issuing or registering the licence, lease or certificate.

Memorial on renewal, etc., to be entered in register

102.—(1) The Registrar shall enter in the appropriate register a memorial of renewals, extensions, transfers, surrenders, revocations, forfeitures, variations of conditions, changes of addresses or names or any other matters affecting the status of or any interests in any licence issued, or any lease registered, under this Ordinance.

(2) No such renewals, extensions, transfers, surrenders, revocations, forfeitures, variation of conditions, changes of addresses or names or other matters referred to in subsection (1) shall have effect until the memorial thereof has been entered under that subsection.

Acknowledgement of receipt

103. The officer issuing a licence or registering a mining lease or certificate under section 101 shall require an acknowledgement of the receipt of the copy of the licence, lease or certificate, as the case may be, from the person accepting such licence, lease or certificate in such form as may be prescribed.

Registered mining lease or certificate to be conclusive evidence

104. Every mining lease or certificate duly registered under this Part shall, subject to this Ordinance, be conclusive evidence—

(a) that the land described therein is to be used for the purpose stated in the lease or certificate by the person or body for the time being registered as the lessee or holder of the certificate; and

(b) of the conditions and other provisions subject to which the land is for the time being held by the person or body, so far as the same are required by any provision of this Ordinance to be specified in that document.

Lease or certificate shall be indefeasible

105. The granting of a mining lease or certificate under this Ordinance over State land to any person shall confer on the person a lease of the land which shall be indefeasible as provided in Part VII of the Land Code [*Cap. 81 (1958 Ed.)*].

Saving in respect of mining lease or certificate

106. Every mining lease or certificate subsisting at the commencement of this Ordinance shall continue to be in force under the Mining Ordinance [*Cap. 83 (1958 Ed.)*] under which it was issued until the expiration thereof.

Inspection of registers

107. Any person shall, upon payment of the prescribed fee, be permitted to inspect any register referred to in section 97 during the hours and on the days appointed by the Director.

PART IX

REHABILITATION

Rehabilitation planning

108. The Authority may, having regard to the scale and nature of the intended mining operations, require an applicant to submit a mine rehabilitation plan for approval of the Authority prior to the issue of a mining lease or to a renewal thereof.

Requirements of a rehabilitation plan

109. A mine rehabilitation plan shall provide for specific rehabilitation actions or programmes, inspections and presentation or submission of annual reports to the Authority, an estimate of the total costs of implementation of the said plan and a time schedule for the implementation thereof.

Approval or rejection of the plan

110.—(1) The Authority may approve the mine rehabilitation plan with such modification or variation thereto as the Authority may deem fit and may require the holder of a mining lease or certificate to:

(a) deposit with the Authority such sums of money as may be required to ensure compliance with the plan; or

(b) make such annual or periodical payment to the Authority as contribution towards payment of the rehabilitation costs; or

(c) provide such security as the Authority deems appropriate to execute or implement the approved mine rehabilitation plan.

(2) If the Authority shall reject the mine rehabilitation plan submitted by the applicant for mining lease, it may order the applicant to submit a new plan with such particulars, data or details as the Authority may require.

(3) No mining lease may be issued unless a mine rehabilitation plan as required by the Authority has been approved by it.

Mine Rehabilitation Fund

111.—(1) There shall be established a Mine Rehabilitation Fund for the purpose of rehabilitation of mining lands which are subject to mining leases or certificate.

(2) The Fund shall be administered by the Authority.

(3) There shall be paid into the Fund—

(a) any deposit or other sum or contribution which a holder of a mining lease or certificate may be required to pay under the terms of the lease for the rehabilitation of mining land or pursuant to the provisions of this Ordinance;

(b) any donation or contribution made by any other party or source for the rehabilitation of mining land; and

(c) any grant or contribution made or allocated by the Government for the rehabilitation of mining land.

(4) The Dewan Undangan Negeri may appropriate such sum as it deems necessary to be deposited into the Fund for rehabilitation or improvement of mining land or the implementation of any environmental protection measures recommended or ordered by the Natural Resources and Environment Board.

(5) The Fund and any sum accruing therefrom shall be used only for the implementation of the rehabilitation plan to which it relates and the Authority may, for the implementation of the mine rehabilitation plan, authorize payments from the Fund to the lessee, or other party so designated in the rehabilitation plan.

(6) The Authority shall—

(a) keep proper accounts and other records in respect of the operations of the Fund;

(b) cause to be prepared a statement of accounts in respect of each financial year; and

(c) cause its accounts to be audited annually by the Auditor General.

(7) In this section, “Fund” means the Mine Rehabilitation Fund established under subsection (1).

Non-payment into the Mine Rehabilitation Fund

112.—(1) Where the lessee fails to pay the sum payable into the Mine Rehabilitation Fund as required by the Authority or terms under the mining lease, the Authority shall—

(a) serve or cause to be served on the lessee a notice of demand in such form and in such manner as may be prescribed; and

(b) forward a copy of the notice to the Director who shall, upon receipt of the notice, cause a note of the service of the notice to be endorsed on the document of mining lease to which it relates.

(2) If the whole of the sum demanded under subsection (1)(a) is paid to the Authority within the time specified therein—

(a) the notice shall thereupon cease to have effect; and

(b) the note endorsed pursuant to subsection (1)(b) on the document of mining lease shall be cancelled accordingly.

(3) If by the end of the period specified in the notice of demand the whole of the sum demanded under subsection (1)(a) has not been paid to the Authority, the Authority may by order declare the mining land in respect of which the mining lease has been granted forfeited to the Government and the provisions of sections 60 and 61 shall apply.

PART X

ENFORCEMENT, INVESTIGATION AND EVIDENCE

Enforcement by authorized officer

113. An authorized officer may for the purpose of enforcing this Ordinance—

(a) call for and examine any book, document, instrument or record and make copies of or take extracts from such book, document, instrument or record which is in the custody or control of any person pertaining to any matter under this Ordinance;

(b) visit, enter, inspect and examine with or without previous notice any panning or storage facility area or mine or mineral processing plant at any time but shall not unnecessarily obstruct or impede any work therein;

(c) investigate in respect of any panning or storage facility area or mine or mineral processing plant concerning—

(i) the state and condition of any such area or plant;

(ii) any matter or thing connected with or related to the safety or health of any person or which causes or is likely to cause damage to property or is a nuisance;

(iii) the effect of any operation or practice upon the amenity of any area or place; or

(iv) compliance with the provisions of this Ordinance;

(d) take measures to ensure the use of proper precautions in all panning, mining, storage or mineral processing activities for the prevention of damage or danger to life or property;

(e) require any person whom he finds in an area where panning, mining, storage or mineral processing is undertaken to reveal his identity and purpose, and give such information as is required by this Ordinance and in such person's power to give; and

(f) take samples of any material whether solid, liquid or gas in or being discharged in or from any panning or storage facility area or mine or mineral processing plant.

Power of investigation

114.—(1) Any authorized officer shall have the power to investigate the commission of any offence under this Ordinance.

(2) Every person required by an authorized officer to give information or produce any document or other article relating to the commission of any offence which is in the person's power to give shall be legally bound to give the information or to produce the document or other article.

Power to require attendance of person acquainted with case

115.—(1) An authorized officer making an investigation under this Ordinance may by order in writing require the attendance before him of any person who appears to the authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.

(2) If any such person fails to attend as so required, the authorized officer may report such failure to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of such person.

(3) A person attending as required under subsection (1) shall be entitled to be paid the reasonable travelling and subsistence expenses incurred by him and it shall be lawful for the Director to pay such expenses.

Power to examine person acquainted with case

116.—(1) An authorized officer making an investigation under this Ordinance may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be legally bound to answer all question relating to the case put to him by the authorized officer:

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The authorized officer examining a person under subsection (1) shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish, and where the person examined refuses to sign or affix his thumb print on the statement, the authorized officer shall endorse thereon under his hand the fact of such refusal and the reason therefor, if any, stated by the person examined.

Power of arrest and seizure

117.—(1) An authorized officer may without warrant—

(a) arrest any person found committing or attempting to commit or abetting the commission of an offence under this Ordinance; and

(b) seize any thing which he considers necessary to seize in relation to the evidence necessary to establish the commission of any such offence.

(2) An authorized officer making an arrest under subsection (1)(a) shall without unnecessary delay hand over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person arrested as aforesaid shall be dealt with as provided by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Search with warrant

118.—(1) If it appears to a Magistrate, upon information on oath and after such inquiry as he considers necessary, that there is reasonable cause to suspect that in any building or place or on any land there is concealed or deposited any mineral, box, trunk, receptacle, package, conveyance or thing in respect of which an offence under this Ordinance is being committed or has been committed, the Magistrate may issue a warrant authorizing any authorized officer to whom it is directed, by day or night, with or without assistance, to enter the building, place or land and there search for and seize any such mineral, box, trunk, receptacle, package, conveyance or thing in respect of which the offence has or suspected to have been committed and any machinery, book, document or other things that is reasonably believed to furnish evidence of the commission of the offence.

(2) Any authorized officer acting under subsection (1) may if it is necessary so to do—

(a) break open any outer or inner door of the building or place or any other premise and enter thereinto;

(b) forcibly enter the place and every part thereof;

(c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under subsection (1); and

(d) break open any receptacle in order to inspect its contents.

(3) The authorized officer seizing any mineral, box, trunk, receptacle, package, conveyance or thing under subsection (1) shall—

(a) forthwith place on such mineral, box, trunk, receptacle, package, conveyance or thing a mark indicating that it has been seized;

(b) prepare a list of the things seized and forthwith, or as soon as practicable, deliver a copy signed by him to the owner or person from whom the things were seized present in the building or premise and if the building or premise is unoccupied, such authorized officer shall, wherever possible, post a list of the things seized on the building or the premise;

(c) forthwith report the seizure to the Director; and

(d) where practicable, remove the things seized, as soon as possible, for this custody.

Search without warrant

119. If it appears to an authorized officer that there is reasonable cause to suspect that in any building or place or on any land there is concealed or deposited any mineral, box, trunk, receptacle, package, conveyance or thing in respect of which an offence under this Ordinance is being or has been committed, and if he has reasonable grounds for believing that by reason of delay in obtaining a search warrant under section 118 the mineral, box, trunk, receptacle, package, conveyance or thing is likely to be removed or destroyed, he may exercise in, upon, and in respect of the building, place or land all the powers mentioned in section 118 in as full and ample a manner as if he was authorized to do so by a warrant under that section.

Temporary return of seized item

120. Where any thing has been seized under this Ordinance, the Director may, at his discretion, temporarily return such thing to the owner or the person from whom such thing was seized subject to such terms and conditions as the Director may impose, and subject in any case to sufficient security being furnished to his satisfaction that such thing shall be surrendered to him on demand or be produced before a court of competent jurisdiction.

Forfeiture of things seized

121.—(1) Any thing seized in exercise of any power conferred under this Ordinance shall be liable to forfeiture.

(2) An order for the forfeiture or for the release of any thing seized in exercise of any power conferred under this Ordinance shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the court that an offence under this Ordinance has been committed and that the thing was the subject matter of or was used in the commission of the offence, notwithstanding that no person may have been convicted of such offence.

(3) If there is no prosecution with regard to any thing seized in exercise of any power conferred under this Ordinance, such thing shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of service of a notice to the person from whom the thing was seized indicating that there is no prosecution in respect of such thing, unless before that date a claim thereto is made in the manner set out in subsections (4), (5) and (6).

(4) Any person asserting that he is the owner of the thing referred to in subsection (3) and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the authorized officer in whose possession such thing is held that he claims the same.

(5) On receipt of the notice referred to in subsection (4), the authorized officer shall refer the claim to the Director who—

(a) may order that such thing be released; or

(b) may direct the authorized officer to refer the matter to a Magistrate for decision.

(6) The Magistrate to whom a matter is referred under subsection (5)(b) shall issue a summons requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before the Magistrate and upon their appearances or default to appear, due service of the summons being proved, the Magistrate shall proceed to the examination of the matter and on proof that an offence under this Ordinance has been committed and that such thing was the subject matter of or was used in the commission of such offence shall order the same to be forfeited and shall, in the absence of such proof, order its release.

(7) Any thing forfeited or deemed to be forfeited shall be delivered to the Director and shall be disposed of by the Director—

(a) in accordance with the directions of the Magistrate; or

(b) if there is no such direction, in such manner as he deems fit.

(8) Where any thing seized in exercise of the powers conferred under this Ordinance is of a perishable nature or is subject to speedy and natural decay or where the custody of such thing involves unreasonable expense and inconvenience, or is believed to cause obstruction or hazard to the public, the Director may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

Cost of holding seized thing

122. Where any thing seized under this Ordinance is held in the custody of the Director pending completion of any proceedings in respect of an offence under this Ordinance, the cost of holding such thing in custody shall, in the event of any person being found guilty of an offence, be a debt due to the Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable

123. No person shall, in any proceedings before any court in respect of seizure of any thing seized in the exercise or the purported exercise of any power conferred under this Ordinance, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Power to stop and search conveyance

124.—(1) If any authorized officer has reasonable suspicion that any conveyance is carrying any thing in respect of which an offence under this Ordinance is being committed or has been committed, he may stop and examine the conveyance.

(2) The person in control or in charge of the conveyance shall, if required to do so by the authorized officer—

(a) stop the conveyance and allow the authorized officer to examine it; and

(b) open all parts of the conveyance, including receptacles therein or thereon, for examination and take all measures necessary to enable or facilitate the carrying out of such examination as the authorized officer considers necessary to make.

(3) Any person who fails or refuses to cooperate with the authorized officer to stop such conveyance or conduct a search of such conveyance shall be guilty of an offence.

Evidence

Presumption that minerals belong to the Government

125. Where in any proceedings taken under this Ordinance or in consequence of any thing done under this Ordinance a question arises as to whether any mineral or mineral product is the property of the Government, such mineral or mineral product shall be deemed to be the property of the Government unless the contrary is proved.

Certificate as to the value of mineral or mineral product, etc.

126. In any proceedings under this Ordinance a certificate signed by the Director stating—

- (a) the value of any mineral or mineral product;
- (b) the amount of fee, royalty, premium and other charges payable in respect of any mineral or mineral product; or
- (c) the cost of repairing any damage done by an offender,

shall be *prima facie* evidence of such value, fee, royalty, premium, charge or costs, without proof of the signature of the Director to such certificate.

Sample

127. Any authorized officer may, without payment, take a sample of any mineral as is necessary and reasonable for the examination and testing thereof and the sample so taken shall be accepted in any court, in the absence of any other evidence, as representative of the source material from which such sample has been taken.

Certificate of analysis

128.—(1) In any prosecution under this Ordinance, a certificate of analysis purporting to be under the hand of an analyst shall, on production thereof by the prosecuting officer, be sufficient evidence of the facts stated therein unless such analyst shall be required to attend as a witness—

(a) by the court; or

(b) by the accused, in which case the accused shall give notice to the prosecuting officer not less than three clear days before the commencement of the trial:

Provided always that in any case in which the prosecuting officer intends to give in evidence any such report he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of the trial.

(2) In this section, “analyst” means—

(a) a person for the time being employed wholly or partly in chemical or physical analytical work relating to minerals in the Department of Minerals and Geoscience or the Government; or

(b) a person engaged in chemical or physical analytical work relating to minerals and employed by a laboratory recognized by the Department of Minerals and Geoscience.

(3) If any analyst is called by the accused as provided for by subsection (1), he shall be called at the expense of the accused unless the court otherwise directs.

Protection of informers

129.—(1) Except as hereinafter provided, no witness in any civil or criminal proceedings shall be obliged or permitted to disclose the name or address of any informer or the substance and nature of the information received from him or to state any matter which may lead to his discovery.

(2) If any book, document or paper which is in evidence or is liable to inspection in any civil or criminal proceedings contain any entry in which any informer is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far only as may be necessary to protect the informer from discovery.

(3) If on the trial for any offence under this Ordinance the court after full inquiry into the case believes that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, it shall be lawful for the court to require the production of the original complaint, if in writing, and permit inquiry, and require full disclosure, concerning the informer.

PART XI OFFENCES AND PENALTIES

Offences

130. Any person who contravenes or fails to comply with the provisions of sections 17, 23(1), 54(1), (b), (c) or (i), section 70, 71, 73, 75 or 93, shall be guilty of an offence.

Penalty for failure to submit notice

131. Any person who fails to submit any notice under section 34, 56 or 65 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Penalty for mining without obtaining approval of required plans

132. Any person who contravenes section 45 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Minerals unlawfully obtained

133. Any person who wins minerals by panning, prospecting or mining without a licence or lease issued or granted under this Ordinance shall be guilty of an offence and shall, on conviction, in addition to any other fine or term of imprisonment imposed under this Part, be ordered to pay to the Government—

(a) a sum not exceeding five times the royalty payable in respect of any minerals unlawfully taken; and

(b) a sum not exceeding three times the value of such minerals,

and any sum ordered to be paid shall be recoverable as a debt due to the Government.

Penalty for panning without licence

134. Any person who conducts panning without a valid licence issued under this Ordinance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Penalty for conducting prospecting without licence

135.—(1) Any person who conducts any prospecting authority—

(a) without a valid prospecting licence issued under this Ordinance; and

(b) in the case of alienated land, occupied land, reserved land or reserved forest area, without the written permission of the owner of the alienated land or occupied land, or the officer for the time being having the control over the reserved land or reserved forest area, or authorization under an access order as provided under section 71 or 73,

shall be guilty of an offence.

(2) For the purpose of subsection (1), “prospecting” shall not include fossicking.

Penalty for mining without licence or lease

136. Any person who conducts mining without a valid licence or lease issued under this Ordinance whether or not any mineral is won shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

Penalty for breach of term and condition

137. Any holder of a mineral tenement who breaches or fails to comply with any terms and conditions of such mineral tenement shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Unlawful removal from mining land

138. Except as otherwise authorized under any other written law, any person who removes beyond the boundaries of the mining land for any purpose—

(a) any timber or other forest produce;

(b) any plant, vegetable, animal, poultry or fish; or

(c) any coral, earth, gravel, guano, loam, rock, sand, shell, clay, brick, lime, cement or other commodity manufactured from such minerals, obtained from or on the mining land,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and be ordered to pay to the Authority the value of the thing removed and any sum ordered to be so paid shall be recoverable as if it were a fine so imposed.

Tampering with, removing, damaging or destroying any thing seized

139. Any person who tampers with, removes, damages or destroys any thing seized under this Ordinance shall be guilty of an offence.

Disappearance or destruction of any thing seized

140. Any person who causes the disappearance or destruction of any thing to be seized under this Ordinance with the intent to prevent the seizure thereof shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Penalty for failure to comply with lawful order or direction

141. Any person who fails to comply with any lawful order or direction issued or given by any authorized officer in the executions of his functions under this Ordinance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Offences with respect to information

142.—(1) Any person who—

(a) submits false information in any application, report or other document under this Ordinance;

(b) furnishes or causes to be furnished to any authorized officer any false particular, information or statement in respect of any matter which such officer requires to be given under this Ordinance;

(c) refuses to answer or gives a false answer to any question put to him by any authorized officer for the purpose of obtaining any particular, information or statement required to be given under this Ordinance;

(d) counterfeits, falsifies or uses when counterfeited or falsified any document required by this Ordinance or any instrument used in the transaction of any business or matter under this Ordinance;

(e) alters any document or instrument or counterfeits the seal, signature, initials or other marks of or used by any authorized officer for the verification of any such document or instrument or any other purpose in the conduct of any business or matter under this Ordinance;

(f) deceives any authorized officer, by fraud or otherwise, by issuing any document or making or causing to be made any entry in any book, document or instrument kept for the purpose of this Ordinance to enable any person to move, transport, deliver or export mineral ore in any manner other than such manner as may be prescribed;

(g) makes or attempts to make or causes to be made any incorrect entry in any book, document or instrument kept for the purposes of this Ordinance;

(h) uses or attempts to use any error in any book, document or instrument, or any incorrect entry in any book, document or instrument kept for the purposes of this Ordinance; or

(i) fails or refuses to produce any document as may be required by any authorized officer,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) In any prosecution under this section, when it has been proved that any application, information, statement, book, document or instrument is false, incorrect, misleading or counterfeited in whole or in part in any material particular, it shall be presumed, until the contrary is proved, that such application, information, statement, book, document or instrument was false, incorrect, misleading or counterfeited in any material particular, as the case may require, to the knowledge of the person supplying the same:

Provided that such person shall not be found guilty of an offence if he proves that he has acted in good faith and had no reasonable grounds for supposing that such application, information, statement, book, document or instrument is false, incorrect, misleading or counterfeited.

Obstruction of authorized officer

143. Any person who obstructs, impedes, assaults or interferes with any authorized officer in the execution of his functions under this Ordinance shall be guilty of an offence.

Use of confidential information

144. Any person who makes use of any confidential information in contravention of section 154 or 155 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit and imprisonment for a term not exceeding two years or to both.

Abuse of power

145. Any person who, in purported exercise of the powers under this Ordinance, vexatiously and unnecessarily seizes or detains any mineral, mineral product, conveyance, equipment, book, document or other thing shall be guilty of an offence.

Attempt and abetment

146. Any person who attempts to commit any offence under this Ordinance or abets the commission of any offence under this Ordinance shall be guilty of such offence and shall be liable to the penalty provided for the offence.

Offences committed by body corporate

147. Where a person charged with an offence under this Ordinance is a body corporate, every person who, at the time of the commission of such offence, is a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall be deemed to be guilty of the offence

unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

Offences committed by partner, agent or servant

148. Any person who would have been liable to any penalty under this Ordinance for any thing done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing has been done or omitted by his partner, agent or servant unless he proves that he took reasonable precautions to prevent the doing or omission of that thing.

Penalty for continuing offences

149. Any person who commits an offence under this Ordinance shall, in the case of a continuing offence, be liable, in addition to any fine provided under this Ordinance, to a further fine of two hundred ringgit for every day or part of a day during which the offence continues after conviction.

General penalty

150. Any person who is guilty of an offence under this Ordinance for which no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Compounding of offences

151.—(1) The Director or any person duly authorized in writing by him may compound any offence committed by any person under this Ordinance or its regulations, which is prescribed to be a compoundable offence, by making a written offer to such person to compound the offence upon payment to the Director or the person duly authorized by him such amount not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the offer.

(2) Any offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer or within such extended period as the Director or the person duly authorized by him may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(3) Where an offence has been compounded under subsection (1)—

(a) no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made; and

(b) any thing seized in connection with such offence shall be released forthwith.

(4) The power to compound offences under subsection (1) shall be exercised by the Director or person duly authorized by him personally.

Conduct of prosecution

152. Prosecution of any offence under this Ordinance or its regulations may be conducted by the Public Prosecutor or any person duly authorized in writing by him under section 377 of the Criminal Procedure Code [*Act 593*].

Recovery of money due to the Government

153. Any money payable to the Government under this Ordinance may be recovered by the Government by civil proceedings as a debt due to the Government.

PART XII

MISCELLANEOUS

Prohibition against disclosure of information

154.—(1) Subject to subsection (4), no information contained in any report submitted to meet the requirements as may be prescribed

regarding any prospecting licence to any authorized officer shall be disclosed by the authorized officer—

- (a) for a period of three years from the date of submission of the report; or
- (b) for a period of one year from the date of termination of the licence,

whichever period shall so first expire, except with the written consent of the holder of the prospecting licence.

(2) Subject to subsection (4), no information contained in any report submitted to meet the requirements as may be prescribed regarding any mining lease or proprietary mining licence to any authorized officer shall be disclosed by the authorized officer for a period of one year from the date of termination of the lease or licence except with the written consent of the holder of the mining lease or proprietary mining licence.

(3) All information submitted in support of an application for a mineral tenement or for the renewal thereof and supplied to any authorized officer shall be kept confidential by the authorized officer —

- (a) where the application is refused, for a period of six months from the date of such refusal; or
- (b) where the application is approved, for a period of six months from the date of termination of the mineral tenement.

(4) Nothing in subsection (1), (2) or (3) shall operate to prevent the disclosure of information where the disclosure is made—

- (a) for or in connection with the due administration of this Ordinance;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Ordinance;

(d) to any consultant to the State Planning Authority or the Authority or to any officer authorized in writing by the Minister to receive the information; or

(e) for or in connection with the preparation by the Government or the Federal Government of statistics in respect of prospecting or mining operations.

(5) In this section, “date of termination” means—

(a) in relation to a prospecting licence and proprietary mining licence, the date of surrender, revocation or expiry of the licence, whichever shall first occur;

(b) in relation to a mining lease, the date of surrender, forfeiture or expiry, whichever shall first occur.

Prohibition on abuse of information obtained in official capacity

155. Any authorized officer responsible for the administration of this Ordinance who has any information which if generally known might reasonably be expected to affect materially an exploration or mining activity which—

(a) he holds by virtue of his official capacity or former official capacity;

(b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity,

shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

Authority cards

156.—(1) Every authorized officer empowered to act under this Ordinance shall, on request, declare his office and produce to the person against whom the authorized officer is acting or from whom the authorized officer seeks any information his authority card as is officially issued to him.

(2) Any person may refuse to comply with any request, demand or order by any authorized officer acting under this Ordinance if the authorized officer refuses to declare his office and produce his authority card on demand being made by such person.

Protection of officers

157. No authorized officer responsible for the administration of this Ordinance shall incur personal liability for any loss or damage caused by any act or omission by him in carrying out the duties under this Ordinance unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

Boundary survey to solve dispute

158.—(1) In the event of a dispute regarding boundary between the holder of a prospecting licence and the owner of the land adjacent to or within the prospecting area in respect of which the licence has been granted, either party may apply to the Superintendent for a boundary survey to be carried out to solve the dispute.

(2) The cost of the boundary survey shall be paid by such party to the dispute as the Superintendent shall determine.

Service of notice

159.—(1) Any notice required to be given or served under this Ordinance may, unless any other form of service is prescribed, be sent by registered post to the person affected thereby.

(2) Where a notice is served by registered post, it shall be deemed to have been served on the day succeeding the day on which the notice would have been received, in the ordinary course of post, if the notice is addressed—

(a) in the case of a company incorporated in Malaysia, to the registered office of the company;

(b) in the case of a company incorporated outside Malaysia, either to the individual authorized to accept service of process under the Companies Act 1965 [*Act 125*], at the address filed with the Registrar of Companies or to the registered office of the company, wherever it may be situated;

(c) in the case of an individual or a body of persons, to the last known business or private address of such individual or body of persons.

(3) Where the person to whom there has been addressed a registered letter containing any notice which may be given under this Ordinance is informed of the fact that there is a registered letter awaiting him at a post office, and such person refuses or neglects to take delivery of such registered letter, such notice shall be deemed to have served upon him on the date on which he was so informed.

Non-application of Ordinance

160. This Ordinance shall not apply to—

(a) scientific or educational exploration unless such exploration is carried out with the intention to locate minerals for the purpose of mining; and

(b) mineral investigations carried out by the Department of Minerals and Geoscience to ascertain the non-existence of economic minerals within an area before releasing the said area for purposes other than mining.

State or its agent may conduct prospecting

161.—(1) The Government or its agent authorized by it in writing may conduct prospecting for minerals on any land within the State.

(2) Where—

(a) an employee of the Government; or

(b) an agent authorized under subsection (1),

conduct prospecting for minerals on any land other than State land, he shall be liable to pay compensation to the owner thereof for any loss, damage or disturbance caused by such prospecting activities.

(3) Where there is a dispute between the parties with regard to the amount of compensation payable under subsection (2), the matter shall be referred to the High Court for a decision.

(4) No agent authorized under subsection (1) to conduct prospecting for minerals may be granted a mining lease on any land which such agent has explored on behalf of the State.

Removal of dredging machine from one block of mining land to another

162.—(1) Where any person who occupies two or more blocks of mining land which are not contiguous—

(a) has been conducting mining operations on one of such blocks by means of a dredging machine; and

(b) has proven to the satisfaction of the Authority that for the economical working of another of such blocks it is necessary that the dredging machine be removed to such other block along a passage to be excavated by the dredging machine through the intervening lands,

it shall be lawful for the Authority, after holding an inquiry, to issue to such person a licence in Form H as set out in the Schedule, upon payment of the prescribed fee, subject to such terms and conditions as may be specified therein or as may be prescribed, to remove the dredging machine through the said land, and thereupon it shall be lawful for such person to enter upon the said land and to do such things as may be necessary to enable the dredging machine to be removed accordingly.

(2) Before issuing the licence under subsection (1), the Government—

(a) shall determine the route of the passage to be excavated by the dredging machine through the intervening land;

(b) shall be satisfied that such route is one that shall cause the least damage to the intervening land; and

(c) shall take into account the time convenient or suitable to the parties concerned in the removal of the dredging machine.

(3) The holder of a licence issued under this section shall be prohibited from conducting mining operations upon and removing any mineral from any land to which the licence applies.

(4) Any person desiring to make any claim for compensation in respect of any loss or damage which has been sustained by him by reason of any thing done or omitted to be done by the holder of the licence acting in pursuance of a licence issued under subsection (1) shall submit particulars of such claim in writing to the Authority not later than six months after such loss or damage shall have been sustained, and the Authority shall after such inquiry as it deems necessary make an order directing the holder of the licence to pay to the claimant compensation in such amount as specified in the order, and the decision of the Authority on the amount of compensation shall be final.

(5) A licence issued under subsection (1) shall be revoked by the Authority upon proof that the holder of the licence has failed to observe or comply with any of the terms and conditions thereof.

Provisions relating to inquiry

163.—(1) In this section, “Government” includes the Superintendent, the Chief Inspector and any other person required or empowered to hold an inquiry.

(2) Every inquiry held under any provision of this Ordinance

(a) shall be conducted in accordance with the provisions of this section;

(b) shall be held at such place and time as the Government may direct; and

(c) shall be open to the public unless the Government shall, for special reasons to be recorded by it, order otherwise.

(3) Before holding any inquiry, the Government—

(a) shall give notice of inquiry in such manner as it may consider appropriate in the circumstances of the case; and

(b) shall serve on any person or body who is to its knowledge interested in the subject matter thereof a copy of that notice to which there shall be appended an additional notice in such form as may be prescribed.

(4) The Government may, if it thinks it necessary or expedient to do so—

(a) at any time cancel or postpone the holding of any proposed inquiry, or change the venue thereof; or

(b) adjourn from time to time the hearing of any inquiry.

(5) Any person or body claiming to be interested in the subject matter of the proposed inquiry may, by registered letter addressed to the Government, apply a postponement or change of venue and such application—

(a) shall state the reasons for which the postponement or change of venue is sought; and

(b) shall indicate also the nature of any evidence proposed to be given or addressed by or on behalf of the applicant.

(6) Notice of any cancellation, postponement, change of venue or adjournment mentioned in subsection (4) shall be given by the Government to every person or body on whom notice of the inquiry has been given or served under subsection (3), and in such other manner as it may consider appropriate in the circumstances of the case.

(7) In conducting the inquiry, the Government shall have the following powers:

(a) to procure and receive all evidence, written or oral, and to examine any person as witness, as the Government deems necessary or desirable to procure or examine;

(b) to require the evidence, written or oral, of any witness to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he were giving evidence in the High Court) or by statutory declaration; and

(c) to summon any person to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession.

(8) Where the Government is satisfied that a person, who, under subsection (7)—

(a) having been summoned to attend any such inquiry, fails to do so;

(b) having been required to produce any document or other thing, fails to do so; or

(c) having been required to answer any question, refuses to do so,

it may certify in writing the failure to attend or to produce the document or the refusal to answer questions, as the case may be, and inform the Magistrate accordingly.

(9) A person giving evidence under this section shall be legally bound to state the truth, whether or not such evidence is made wholly or partly in answer to any question.

(10) Where a certificate is given under subsection (8), the Magistrate shall inquire into the case and, if he is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or failed or refused to comply with the requirement as mentioned in the certificate he shall order the person to attend or to comply with the requirement at a hearing before the Government holding such inquiry to be held at a time and place specified in the order.

Power to demolish buildings or structures

164.—(1) If it appears to any authorized officer that there is reasonable cause to believe that any building or structure has been erected without authorization under this Ordinance for the purposes of prospecting or mining for minerals, such officer may destroy, demolish or remove any such building or structure or take possession of it in the name of the Government.

(2) This section shall not apply to an area within the local authority area.

PART XIII

REGULATIONS

Regulations

165.—(1) The Majlis Mesyuarat Kerajaan Negeri may make regulations in respect of any matter which may be prescribed under this Ordinance.

(2) In particular and without prejudice to the generality of subsection (1), such regulations may—

(a) generally prescribe and provide for fees, rents and royalties under this Ordinance and the manner for collecting and disbursing such fees, rents and royalties;

(b) prescribe the offences under this Ordinance which may be compounded and the method and procedure for compounding such offences;

(c) prescribe the powers and duties of officers appointed under this Ordinance;

(d) alter, add to or rescind any of the forms contained in the Schedule and prescribe additional forms;

(e) prescribe the submission of statistical returns and the keeping and production of books and plans by owner of any mine;

(f) prescribe the contents of any feasibility study, rehabilitation plan, survey, plan, report or any other assessment as may be necessary for the purpose of this Ordinance;

(g) prescribe the activities which are not allowed within a mineral reserve;

(h) prescribe the terms and conditions of a mineral tenement granted over any State land, alienated land, occupied land, reserved land or reserved forest area;

(i) prescribe the procedure and requirements for the grant or issue of mineral tenements;

(j) prescribe the procedure, manner and form for the application, granting, renewal, extension, issuance, registration and record of any mineral tenement, water licence and water permit; and

(k) provide for any other matter generally to give effect to the provisions of this Ordinance.

PART XIV

REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

Repeal, savings and transitional provisions

166.—(1) The Mining Ordinance [*Cap. 83 (1958 Ed.)*] is repealed.

(2) Notwithstanding subsection (1), all regulations, rules or orders made under or in accordance with the repealed Ordinance shall, in so far as they are not inconsistent with this Ordinance, continue in force until amended, revoked or replaced pursuant to this Ordinance.

(3) The Majlis Mesyuarat Kerajaan Negeri may, by order made under this section,—

(a) repeal or amend any other written law in force immediately before the coming into force of this Ordinance—

(i) which has been rendered obsolete or unnecessary by any provision of this Ordinance;

(ii) for the purpose of bringing the provisions thereof into accord with the provisions of this Ordinance; or

(iii) for supplementing the aforesaid provisions referred to in subparagraph (ii) in any respect;

(b) make such provision as it may consider necessary or expedient for the purpose of removing any difficulties occasioned by the coming into force of this Ordinance,

and any such order may be made so as to have effect as from the commencement of this Ordinance, and shall be published in the *Gazette*.

(4) Nothing in this Ordinance shall invalidate any licence, permit, right, privilege or other authority lawfully given under the repealed Ordinance and the same shall continue in force and be deemed to have been issued under this Ordinance.

(5) Any person who, immediately before the commencement of this Ordinance, was holding any office to which appointment may be made under this Ordinance shall continue in that office and be deemed for the purposes of this Ordinance to have been so appointed.

SCHEDULE

Licence No.:

FORM A

THE MINERALS ORDINANCE, 2004

(Section 16(5))

PANNING LICENCE

Name of holder of licence :
N.R.I.C. No. :
Address of holder of licence :
Term of licence :
Date of issue :
Date of expiry :
Date of cancellation :
Description of area :
Locality :
District :
Plan/Map Sheet No. :
Block/Land District :

This licence authorizes the holder thereof to pan for all minerals within the area described above from the issuance date to the expiry date of this licence, unless sooner cancelled, subject to the terms and conditions contained in the Minerals Ordinance, 2004, and to the conditions attached herewith.

2. Other conditions (*)

Dated this day of , 20 .

(L.S.)

.....
*Superintendent of Lands and Surveys
Division*

Fee: RM

Receipt No.:

File Reference:

(Note: * For any other conditions, a separate slip shall be attached to describe the additional terms and conditions as may be imposed by the Authority).

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CAP. 56

No. GPL/EPL No.

FORM B
THE MINERALS ORDINANCE, 2004
(Section 22(6))

PROSPECTING LICENCE

Name of holder of licence :
N.R.I.C. No. :
Address of holder of licence :
Term of licence :
Date of issue :
Date of expiry :
Description of area :
Locality :
District :
Plan/Map Sheet No. :
Block/Land District :

This licence authorizes the holder thereof the general right/exclusive right* to prospect for METALS/MINERALS* other than MINERAL OILS for the period of this licence subject to the terms and conditions contained in the Minerals Ordinance, 2004, and to the conditions attached herewith.

Name of minerals:

2. Other conditions (†)

Dated this day of , 20 .

(L.S.)

.....
Registrar

Fee: RM

Receipt No.:

File Reference:

* Delete whichever is not applicable.

(Note: † For any other conditions, a separate slip shall be attached to describe the additional terms and conditions as may be imposed by the Authority).

Mining Lease No.

FORM C
THE MINERALS ORDINANCE, 2004
(Section 44(7))

MINING LEASE

Name of holder of lease :
N.R.I.C. No. :
Address of holder of lease :
Term of lease :
Date of issue :
Date of expiry :
Locality :
District :
Plan/Map Sheet No. :
Block/Land District :
Annual rent/fee :
Royalty :
Description of area :

I. *Rights and Privileges*

This Mining Lease is issued to authorize the Lessee to mine the minerals mentioned hereof from the area of land described above and the Lessee shall have the rights and privileges and be subject to the terms and conditions specified in sections 52, 53, 54, 55, 56 and 57 of the Minerals Ordinance, 2004:

Name of Minerals:

II. *Non-transferable*

1. This Lease is non-transferable except in accordance with the provisions of section 49 of the Ordinance.
2. Where the Lessee is a Company, the transfer of controlling shares in the Company shall be deemed to be a transfer of the Lease.
3. No dealing affecting this Lease shall be effected without the prior consent of the State Minerals Management Authority.

III. *Compliance*

The Lessee shall at all times comply with:

- (a) all the provisions of the Ordinance in regard to the exercise of the rights and privileges hereby conferred;
- (b) all directions or orders issued by the Director of Lands and Surveys or the Chief Inspector in the carrying out of mining activities under this Lease.

IV. *Mere Grant*

No contract shall be implied or be deemed to have been formed between the Government and the Lessee by virtue of this Lease.

V. *Other Conditions (*)*

Dated this day of , 20 .

(L.S.)

.....
*Superintendent of Lands and Surveys
Division*

Registered at the Land Registry Office this day
of 20 at a.m./p.m.

.....
Registrar/Assistant Registrar

Fee: RM

Receipt No.

File Reference:

(Note: * For any other conditions, a separate slip shall be attached to describe the additional terms and conditions as may be imposed by the Authority. For example, the conditions involving the area of the Lease which may be subject to claims of Native Customary Rights is to be clearly specified including the detailed Schedule showing the area subject to claims).

Certificate No.

FORM D

THE MINERALS ORDINANCE, 2004

(Section 47(1))

MINING CERTIFICATE

Name of holder of Certificate :
N.R.I.C. No. :
Address of holder of Certificate :
Term of Certificate :
Date of issue :
Date of expiry :
Locality :
District :
Plan/Map Sheet No. :
Block/Land District :
Annual rent/fee :
Royalty :
Description of area :

I. *Rights and Privileges*

This Certificate authorizes the Holder thereof to mine the minerals mentioned hereof from the land described above and he shall have the rights and privileges and be subject to the terms and conditions specified in sections 52, 53, 54, 55, 56 and 57 of the Minerals Ordinance, 2004:

Name of minerals:

II. *Non-transferable*

1. This Certificate is non-transferable except in accordance with the provisions of section 49 of the Ordinance.
2. Where the Holder is a Company, the transfer of controlling shares in the Company shall be deemed to be a transfer of the Certificate.
3. No dealing affecting this Certificate shall be effected without the prior consent of the State Minerals Management Authority.

III. *Compliance*

The Holder shall at all times comply with—

- (a) all the provisions of the Ordinance in regard to the exercise of the rights and privileges hereby conferred; and
- (b) all directions or orders issued by the Director of Lands and Surveys or the Chief Inspector in the carrying out of mining activities under this Certificate.

IV. *Mere Grant*

No contract shall be implied or be deemed to have been formed between the Government and the Holder by virtue of this Certificate.

V. *Other Conditions* (*)

Dated this day of , 20 .

(L.S.)

.....
*Superintendent of Lands and Surveys
Division*

Registered at the Land Registry Office
this day of 20 at a.m./p.m.

.....
Registrar/Assistant Registrar

Fee: RM

Receipt No.

File Reference:

(Note: * For any other conditions, a separate slip shall be attached to describe the additional terms and conditions as may be imposed by the Authority. For example, the conditions involving the area of the Certificate which may be subject to claims of Native Customary Rights is to be clearly specified including the detailed Schedule showing the area subject to claims).

Licence No.

FORM E

THE MINERALS ORDINANCE, 2004

(Section 63(8))

PROPRIETARY MINING LICENCE

Name of holder of licence :
N.R.I.C. No. :
Address of holder of licence :
Term of licence :
Date of issue :
Date of expiry :
Date of cancellation :
Description of land :
Area :
Locality :
Block :
Land District :
Plan/Map Sheet No. :
Annual rent/fee :

This Proprietary Mining Licence is issued to authorize the holder hereof to mine the minerals mentioned hereof from the area of land described above subject to the rights and privileges and also subject to the terms and conditions specified in sections 52, 53, 54, 55, 56 and 57 of the Minerals Ordinance, 2004:

Name of minerals:

2. Other conditions (*)

Dated this day of , 20 .

(L.S.)

.....
*Superintendent of Lands and Surveys
Division*

Registered at the Land Registry Office
this day of 20 at a.m./p.m.

.....
Registrar/Assistant Registrar

Fee: RM

Receipt No.

File Reference:

(Note: * For any other conditions, a separate slip shall be attached to describe the additional terms and conditions as may be imposed by the Authority).

FORM F
THE MINERALS ORDINANCE, 2004
 (Section 82(4))
WATER LICENCE

Licence No.: WL
 Date of issue:
 Date of expiry:
 Date of cancellation:
 Name of holder of licence:
 N.R.I.C. No. (if applicable):
 Address of holder of licence:

Name of holder of mining lease/certificate
 if not the licence holder:
 Mining lease/Certificate/proprietary mining licence:
 Name of river/stream:
 Description of land:

Subject to existing rights in respect of water from the river/stream named above, the State Water Authority grants to the holder of this licence named above to take and use water from the said river/stream or to use, extract, draw or obtain water from the land described above if and when available for the purpose of mining operation subject to the terms and conditions contained in the Minerals Ordinance, 2004, and to the conditions attached herewith.

Dated

(L.S.)

.....
State Water Authority

Fee paid: RM.....

Receipt No.:.....

FORM G
THE MINERALS ORDINANCE, 2004
(Section 83(3))
WATER PERMIT

Permit No.: WP
Date of issue:
Date of expiry:
Date of cancellation:
Name of holder of permit:
N.R.I.C. No. (if applicable):
Address of holder of permit:

Name of holder of mining lease/Certificate
if not holder of this licence:
Name of river/stream:
Mining lease/Certificate/proprietary mining licence:
Description of land:

Permission is given to the holder of this permit to take water from the river/stream named above or from the land described for the purpose of mining operation subject to the terms and conditions contained in the Minerals Ordinance, 2004, and to the conditions attached herewith.

Dated

(L.S.)

.....
State Water Authority

Fee paid: RM.....

Receipt No.:.....

FORM H
THE MINERALS ORDINANCE, 2004
(Section 162(1))

LICENCE TO REMOVE DREDGING MACHINE

Licence No.: RDL

Name of holder of licence:

Locality/District:

Particulars of dredging machine:

Mining lease/certificate to be abandoned/vacated:

Mining lease to be worked:

Intervening land:

Period of licence: from to

This licence authorizes the holder thereof to remove the above dredging machine through the intervening lands subject to the terms and conditions contained in the Minerals Ordinance, 2004, and to the conditions attached herewith.

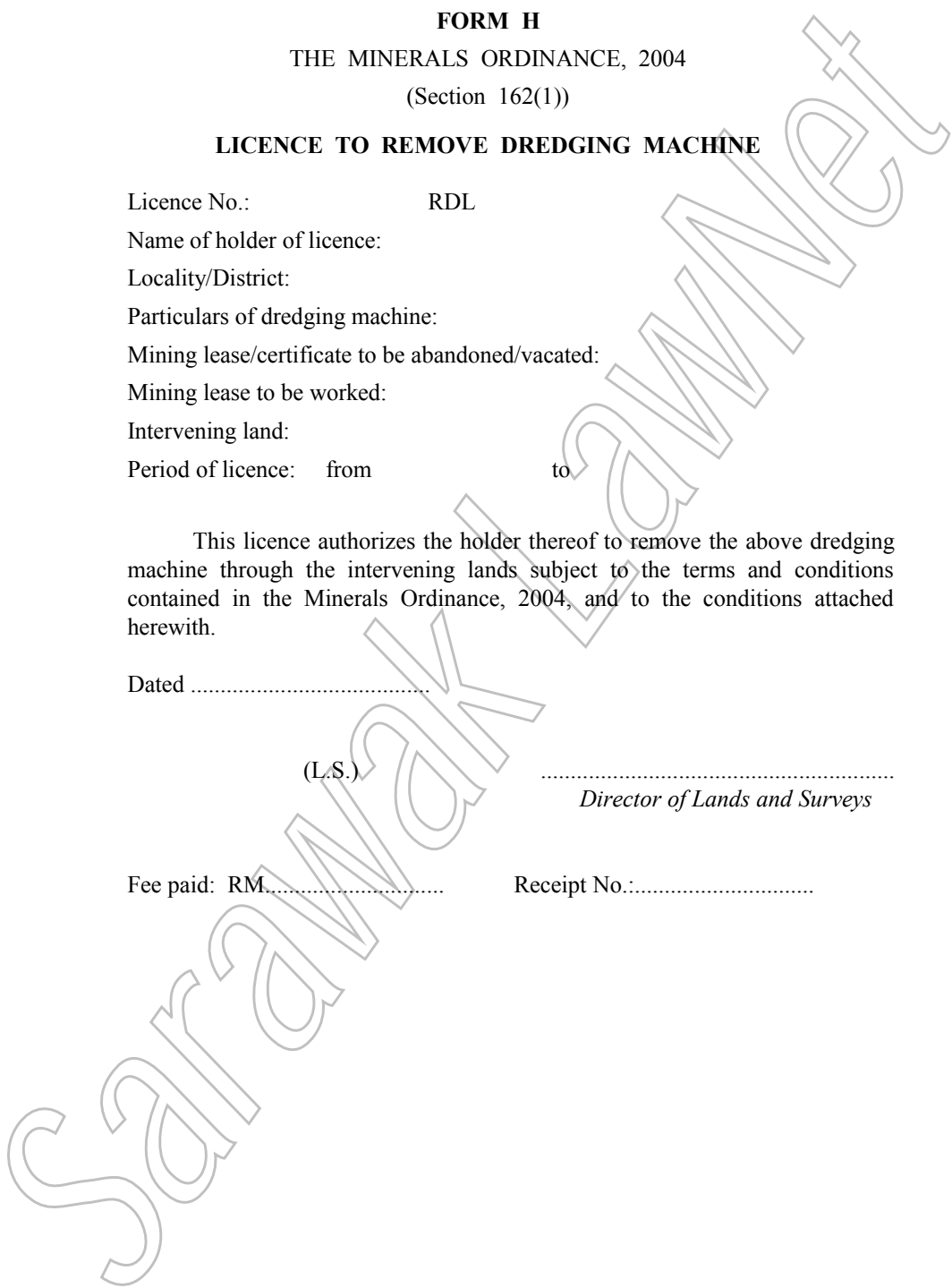
Dated

(L.S.)

.....
Director of Lands and Surveys

Fee paid: RM.....

Receipt No.:.....



MINERALS

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LAWS OF SARAWAK

Chapter 56

MINERALS ORDINANCE, 2004

LIST OF AMENDMENTS

Amending Law	Short Title	In force from
Swk. L.N. 51/2010	Date of Commencement of the Ordinance	1.7.2010

Sarawak LawNet

Sarawak LawNet



DICETAK OLEH PERCETAKAN NASIONAL MALAYSIA BERHAD, KUCHING, SARAWAK
BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK