

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

28TH AUGUST 1999.

No. 6 of 1999

An Enactment to provide for mineral tenements and for purposes connected therewith.

ENACTED by the Legislature of the State of Sabah as follows:

Short title, commencement and application.

1. (1) This Enactment may be cited as the Mineral Enactment 1999 and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint: Provided that the Minister may appoint different dates for the coming into force of different parts or provisions of this Enactment.

(2) This Enactment shall apply throughout the State; however the Minister may by order suspend the operation of the whole or any of the provisions of this Enactment in the State.

Interpretation.

2. (1) In this Enactment, unless the context otherwise requires –

"alienated land" means any land (including any parcel of a sub-divided building) in respect of which a registered title for the time being subsists, and whether granted under the Land Ordinance [*Cap. 68.*] or under any previous land law, but does not include mining land;

"authorised officer" means the Director, the Superintendent of Mines, the Collector and any other officer duly authorised in writing by the Minister;

"boundary survey" means a land survey under section 19 of the Land Ordinance [Cap. 68.];

"Chairman" means the Chairman of the Committee appointed under section 4;

"Collector" means any Collector of Land Revenue or Assistant Collector duly appointed under the Land Ordinance [Cap. 68.]; and in relation to this Enactment, references to the Collector shall be construed as references to the Collector or any Assistant Collector having jurisdiction in the district or sub-district in which the mineral titles apply;

"Committee" means the State Mineral Resources Committee established under section 4;

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

"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 appointed under section 47 of the Land Ordinance [Cap. 68.] and includes a Deputy Director of Lands and Surveys appointed thereunder;

"Director of Forestry" means the Director of Forestry appointed under section 3 of the Forest Enactment 1968 [En. No. 2 of 1968.];

"dulang licence" means a dulang licence issued under section 28;

"Enactment" includes all subsidiary legislation made thereunder;

"environmental impact assessment" means a report made in accordance with guidelines published by the Director General of Environmental Quality appointed under section 3 of the Environmental Quality Act 1974 [Act 127.],

or by the State Director of Conservation of Environment under any State law, 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 proposed measures that shall be undertaken to prevent, reduce or control the impact on the environment;

"exploration area" means any land in respect of which an exploration licence is for the time being in force;

"exploration licence" means an exploration licence issued under section 41;

"explore" means to search for mineral deposits and includes prospecting;

"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;

"fossicking licence" means a fossicking licence issued under section 21;

"individual mining licence" means an individual mining licence issued under section 35;

"large scale operation" means a mining operation within a mining lease area –

- (a) which exceeds any of the following production limits:
 - (i) in the case of extraction of minerals from primarily alluvial deposits, annual throughput of 3.5 million cubic metres per year;
 - (ii) in the case of underground mining operations, annual combined run-of-mine ore, waste and overburden production of 100,000 tonnes per year (waste material not exiting mine mouth to be excluded); or
 - (iii) in the case of open-cast mining operations extracting minerals from primarily non-alluvial deposits, annual combined run-of-mine ore, waste and overburden production of 300,000 tonnes per year;

- (b) with a capital and infrastructure investment exceeding one hundred and fifty million ringgit;
- (c) with more than 250 employees or workers at the mine site on a typical day (including all shifts); or
- (d) which uses any of the following mining practices:
 - (i) extensive and continued use of explosives;
 - (ii) continuous flotation circuits; or
 - (iii) extensive and continued use of toxic chemicals or agents;

"member" means a member of the Committee;

"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 mineral ores;

"mine rehabilitation plan" means a rehabilitation plan approved under section 126;

"mineral" means any substance whether in solid, liquid or gaseous form occurring –

- (a) naturally;
- (b) as a result of mining in or on the earth; or
- (c) as a result of mining in or under the sea or sea bed,

formed by or subject to a geological process but excludes water, rock material and "petroleum" as defined in the Petroleum Mining Act 1966 [Act 95.];

"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 fossicking licence, dulang licence, individual mining licence, prospecting licence, exploration licence, mining lease, proprietary mining

licence, or any of them for the purpose of exploration or mining of minerals or mineral ores, as the case may be;

"mining land" means any land in respect of which a mining lease or proprietary mining licence is for the time being in force;

"mining lease" means a mining lease granted under section 63 and a mining lease granted or issued under any previous written law relating to mining;

"mining operation" means the aggregate of all mines, including waste and tailing dumps, operating or planned in relation to mining land;

"Minister" means the Minister for the time being charged with the responsibility for mining and minerals;

"natural person" shall not include a minor;

"notice" includes any notification, assessment, instrument or other document authorised or required by this Enactment to be served on any person or body;

"occupied land" means any State land lawfully occupied, or vested in any person, under any written law;

"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 charge of any lease or sub-lease thereof);
- (c) any person or body having a lien over the land, or over any lease or sub-lease thereof;
- (d) any person or body having a claim under a tenancy exempt from registration which has become protected by an endorsement on the register document of title to the land;
- (e) any person or body having a claim protected by caveat affecting the land or any interest therein; and
- (f) any person having lawful occupation or control of the land or in whom the land is vested;

"police officer" has the meaning assigned to it in the Police Act 1967 [Act 344.];

"prescribed" means prescribed by regulations;

"proprietary mining licence" means a proprietary mining licence issued under section 81;

"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 issued under section 41 and includes a prospecting licence with hardrock extension, as the context may require;

"Registrar" means a Registrar of Titles appointed under section 47 of the Land Ordinance [Cap. 68.] and includes a Deputy Registrar of Titles;

"reserved forest area" means a Forest Reserve declared under the Forest Enactment 1968 or constituted under any written law;

"reserved land" means –

- (a) Forest Reserve declared under the Forest Enactment 1968 [En. No. 2 of 1968.] or constituted under any written law;
- (b) Parks constituted under the Parks Enactment 1984 [En. No. 6 of 1984.];
- (c) reserves for public or residential purpose declared under section 28 of the Land Ordinance [Cap. 68.]; or
- (d) Native Reserves declared under section 78 of the Land Ordinance [Cap. 68.];

"rock material" means any rock, stone, gravel, common sand, common earth, common clay, common laterite, loam, soil, mud, turf, coral, guano and any other rock material other than minerals, within or upon any land, and includes processed material therefrom;

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

"small scale operation" means a mining operation other than a large scale operation;

"specimen" means a fraction of naturally occurring matter not necessarily representative of the mass of which it forms a part;

"Superintendent of Mines" means the Superintendent of Mines appointed under section 7;

"Surveyor" means a Surveyor appointed under section 47 of the Land Ordinance [Cap. 68.];

"to mine" means intentionally to win minerals and includes any operation directly or indirectly and necessary therefor or incidental thereto, and "mining" shall be construed accordingly;

"to pan" means to wash or sift with a pan, dulong or rake for the purpose of obtaining minerals;

"treat" means to subject to any process whereby chemical or physical change takes place in the substance subjected thereto;

"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 100;

"water permit" means a water permit issued under section 101;

(2) Subject to subsection (1) and unless the context otherwise requires, all words and expressions used in this Enactment which are defined in the Land Ordinance [Cap. 68.] shall be deemed to have the meanings assigned to them by that Ordinance.

Minerals vested in the State Government.

3. There is and shall be vested solely in the State Government all minerals within or upon any land, including so much of the bed of any river, and of the foreshore and bed of the sea, as is within the territories of the State for the limits of the territorial waters if they

have not been specifically disposed of by the State Government in accordance with the provisions of this Enactment or any other written law.

PART II
ADMINISTRATION

CHAPTER 1
STATE MINERAL RESOURCES COMMITTEE

Establishment of Committee.

4. (1) There shall be established a committee to be known as the State Mineral Resources Committee.

(2) The Committee shall consist of the following members:

- (a) a Chairman, who shall be appointed by the Minister;
- (b) the Director, who shall be the Secretary;
- (c) the Director General of Mines or his authorised representative;
- (d) the Director General of Environmental Quality or his authorised representative;
- (e) the Director General of Geological Survey or his authorised representative;
- (f) the Director of Forestry or his authorised representative;
- (g) the Director of Environmental Conservation of the State or his authorised representative;
- (h) the Secretary of Natural Resources or his authorised representative;
and
- (i) three other members who shall be appointed by the Minister:

Provided that where the Minister appoints any person specified in paragraph (b), (c), (d), (e), (f) or (g) as Chairman, he shall appoint five members under this paragraph.

(3) A member appointed under paragraph (2)(a) or (2)(i) shall, unless he sooner resigns or his appointment has been revoked, hold office for a term of three years.

(4) The appointment of members under paragraphs (2)(a) and (2)(h) shall be published in the *Gazette*.

(5) The Minister may appoint any member as he thinks fit to exercise the functions of the Chairman during the period in which the Chairman is, for any reason, unable to exercise his functions, or during the period of any vacancy in the office of the Chairman, and such member shall, during the period in which he is exercising the functions of the Chairman under this section, be deemed to be the Chairman.

Functions of Committee.

5. The Committee shall –

- (a) perform any function conferred or imposed on it under this Enactment; and
- (b) perform any other function as the Minister may from time to time determine.

Meetings of Committee.

6. (1) The Committee shall meet as often as maybe necessary for the performance of its functions.

(2) At any meeting of the Committee, the Chairman and five other members shall form a quorum.

(3) Every meeting of the Committee shall be presided by the Chairman.

(4) If on any question to be determined there is an equality of votes, the Chairman shall have a casting vote.

(5) Subject to this Enactment, the Committee may determine its own procedure.

CHAPTER 2
APPOINTMENT AND FUNCTIONS OF OFFICERS

Appointment of officers.

7. (1) The Minister may appoint -
- (a) a Superintendent of Mines; and
 - (b) such other officers as may be necessary for the due administration of this Enactment.
- (2) The appointment of any officer under subsection (1) shall be published in the *Gazette*.

Functions of Director.

8. The Director shall -
- (a) be responsible for the due administration of this Enactment;
 - (b) exercise general control and supervision over all officers responsible for the administration of this Enactment;
 - (c) cause to be prepared, implemented and reviewed from time to time a programme for the management of mineral tenements;
 - (d) cause to be prepared an annual report on exploration and mining during the preceding calendar year and submit such report to the Minister before 30 June of each year; and
 - (e) perform such other functions as the Minister may from time to time determine.

CHAPTER 3
MISCELLANEOUS

Delegation of the powers and functions by the Minister.

9. The Minister may, by notification in the *Gazette*, delegate to the Secretary of Natural Resources or the Director the exercise or performance, subject to such

conditions, limitations or restrictions as may be prescribed in the notification, of any of his powers or functions under this Enactment:

Provided that –

- (a) this section shall not apply to any powers or functions of the Minister under this Enactment to make regulations; and
- (b) any notification given under this section with respect to any powers or functions shall not prevent the Minister from himself exercising or performing such delegated powers or functions in any case where it appears to the Minister expedient to do so.

Delegation of powers or functions by Director.

10. Subject to any written law for the time being in force, the Director may, in writing, delegate to any Registrar, Deputy Registrar, Collector, Lands and Surveys Officer or other officer appointed under this Enactment, the exercise or performance, subject to such conditions, limitations or restrictions as may be provided in the instrument of delegation, of any of his power or function under this Enactment:

Provided that any delegation under this section with respect to any powers or functions shall not prevent the Director from himself exercising or performing such delegated powers or functions in any case where it appears to him expedient to do so.

Members and officers to be public servants.

11. Members and officers appointed under this Part shall be deemed to be public servants within the meaning of the Penal Code [Act 574.].

PART III

MINERAL TENEMENT – GENERAL

Persons to whom mineral tenements may be granted or transferred.

12. (1) Subject to this Enactment, a mineral tenement may only be granted or transferred to –

- (a) a natural person;

- (b) a company incorporated under the relevant law relating to companies and authorised by its constitution to hold mining land;
- (c) a body expressly empowered to hold mining land under any other written law; or
- (d) a foreign company as defined in the relevant law relating to companies and registered as such under the said law and authorised by its constitution to hold mining land.

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

Mineral tenement may be granted over State land, etc.

13. Except as otherwise provided in any written law and subject to this Enactment, 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.

14. The Minister 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 land areas or land areas subject to certain types of existing land use.

Areas closed to mineral tenement.

15. The Yang di-Pertua Negeri may, by notification in the *Gazette*, prescribe areas where no mineral tenement shall be granted.

Area reserved for competitive bid.

16. The Yang di-Pertua Negeri may, by notification in the *Gazette*, determine any area where a mineral tenement shall be granted based on competitive bid.

Declaration of mineral reserve.

17. (1) The Yang di-Pertua Negeri may, 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 Yang di-Pertua Negeri may at any time, by notification in the *Gazette*, vary or revoke a mineral reserve in whole or in part.

Application of the Land Ordinance.

18. (1) The provisions of the Land Ordinance [*Cap. 68.*] as set out in Schedule II shall, with such modifications as may be necessary and in particular as set out in subsection (2), apply in relation to any mining land and to any document issued in respect of any mining lease or proprietary mining licence.
- (2) Unless the context otherwise requires, the application of the Land Ordinance [*Cap. 68.*] mentioned in subsection (1) shall apply in relation to mining leases and proprietary mining licences as they relate to titles and leases as defined in the Ordinance, subject to the following general modifications:
- (a) references to the Ordinance shall be taken as references to this Enactment;
 - (b) references to the alienation of land under the Ordinance shall be taken as references to the granting of mining lease;
 - (c) references to documents of title shall be taken as references to documents of mining lease or instruments of proprietary mining licences;
 - (d) references to owner shall be taken as references to a lessee or holder of a proprietary mining licence;
 - (e) references to the Registrar shall be taken as reference to the Director;

- (f) references to the Registry and Land Office shall be taken as references to the Office of the Director; and
- (g) references to alienated land shall be taken as references to mining land.

Application for transfer of mineral tenement.

19. (1) An application for the transfer of a mineral tenement shall be made to the Minister in the prescribed form.

(2) Upon receipt of an application under subsection (1), the Minister shall refer the application to the Committee for its recommendation.

(3) The Committee shall, in considering the application for the purpose of making its recommendation, take into account the qualification referred to –

- (a) in the case of a prospecting licence or exploration licence, in section 41(3)(b);
- (b) in the case of a mining lease, in section 63(4)(b); and
- (c) in the case of a proprietary mining licence, in section 81(5)(b).

(4) The Committee shall, as soon as practicable after considering the application, transmit to the Minister its recommendation.

(5) On receipt of the recommendation by the Committee under subsection (4), the Minister may approve or refuse the application whether or not the Committee recommends the approval or refusal of the application.

(6) The transfer of a mineral tenement shall be effective –

- (a) upon payment of the prescribed fee; and
- (b) upon the transfer being entered in the appropriate registers pursuant to section 120.

Effect of death, dissolution or other legal disability.

20. (1) Any fossicking licence, dulang licence and individual mining licence shall terminate upon the death or other legal disability of the holder of the licence.

(2) The provisions of section 19 shall apply in respect of a transfer of any prospecting licence, exploration licence and mining lease upon the death, dissolution or other legal disability of the holder of such mineral tenement.

PART IV
MINERAL TENEMENT - LICENCE AND LEASE

CHAPTER 1
FOSSICKING LICENCE

Application for fossicking licence.

21. (1) No person other than a natural person shall apply for a fossicking licence.

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

(3) No fossicking licence shall be granted in any area –

- (a) where the Minister has, by notification in the *Gazette*, ordered closed to fossicking;
- (b) within any reserved land;
- (c) within any prospecting or exploration area without the written permission of the holder of the prospecting licence or exploration 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 Director may grant or refuse to grant such a licence and his decision shall be final.

(5) Where an application for a fossicking licence is granted, such licence shall be issued in Form A as set out in Schedule I, upon payment of the prescribed fee, and

shall be subject to such terms and conditions as may be specified therein or as may be prescribed.

Statutory conditions of fossicking licence.

22. It shall be a condition of every fossicking licence granted under this Enactment 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; and
- (b) shall refrain from the use of power-operated equipment to win minerals.

Duration of fossicking licence.

23. A fossicking licence shall be valid for a term not exceeding one year and shall not be renewable.

Licence personal to the holder and not transferable.

24. A fossicking licence shall be personal to the holder thereof and shall not be transferable.

Rights under fossicking licence.

25. A fossicking licence shall, subject to this Enactment and to the terms and conditions specified in the licence, confer upon the holder thereof the right to fossick any mineral within the area specified therein.

Prohibition of utilisation or sale.

26. No mineral obtained under a fossicking licence shall be utilised for a commercial or industrial purpose, or sold.

Revocation of fossicking licence.

27. (1) The Director may, by notice in writing, revoke a fossicking licence issued under section 21 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 Enactment.

(2) The decision of the Director to revoke a fossicking licence under this section shall be final.

(3) Where a fossicking licence has been revoked under subsection (1), the holder of the licence shall forthwith surrender the licence to the Director.

CHAPTER 2 DULANG LICENCE

Application for dulang licence.

28. (1) No person other than a natural person shall apply for a dulang licence.

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

(3) No dulang licence shall be granted in any area -

(a) where the Minister has, by notification in the *Gazette*, ordered closed to panning for minerals;

(b) within any reserved land;

(c) within any prospecting or exploration area without the written permission of the holder of prospecting licence or exploration 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 Director may grant or refuse to grant such a licence and his decision shall be final.

(5) Where an application for a dulang licence is granted, such licence shall be issued in Form B as set out in Schedule I, upon payment of the prescribed fee, and shall

be subject to such terms and conditions as may be specified therein 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 paragraph (3)(a) to panning for minerals.

(7) The Director of Forestry shall have the power to close at any time any reserved forest area which has not been ordered closed under paragraph (3)(a) to panning for minerals.

Statutory conditions of dulang licence.

29. It shall be a condition of every dulang licence granted under this Enactment 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 dulang licence.

30. A dulang licence shall be valid for a term not exceeding one year and shall not be renewable.

Licence personal to the holder and not transferable.

31. A dulang licence shall be personal to the holder thereof and shall not be transferable.

Rights under dulang licence.

32. A dulang licence shall, subject to this Enactment and to the terms and conditions specified in the licence, confer upon the holder thereof 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 therein.

Suspension revocation of dulang licence.

33. (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 dulang licences to conduct panning operations in any area.

(2) The Director may, by notice in writing, revoke a dulang licence issued under section 28 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 Enactment.

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

(4) Where a dulang licence has been revoked under subsection (2), the holder of the licence shall forthwith surrender the licence to the Director.

CHAPTER 3
INDIVIDUAL MINING LICENCE

Declaration of individual mining area.

34. (1) The Yang di-Pertua Negeri may, by notification in the *Gazette*, declare any State land to be an individual mining area within which individual mining may be carried on exclusively under individual mining licences and may, at any time in like manner, vary or revoke any such declaration.

(2) No individual mining licence shall be granted in any area other than an area declared as an individual mining area under subsection (1).

(3) Where such declaration is revoked under subsection (1), any individual mining licence granted in the individual mining area shall be deemed to have been revoked.

Application individual mining licence.

35. (1) No person other than a natural person shall apply for an for individual mining licence.

(2) An application for an individual mining licence shall be made to the Director in the prescribed form.

(3) Upon receipt of an application under subsection (2), the Director may grant or refuse to grant such a licence with the approval of the Secretary of Natural Resources.

(4) Where an application for an individual mining licence is granted, such licence shall be issued in Form C as set out in Schedule I, upon payment of the prescribed fee, and shall be subject to such terms and conditions as may be specified therein or as may be prescribed.

Statutory conditions of individual mining licence.

36. It shall be a condition of every individual mining licence granted under the Enactment 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; and
- (b) shall pay the royalties due under the licence.

Duration of individual mining licence.

37. An individual mining licence shall be valid for a term not exceeding one year and shall not be renewable.

Licence personal to the holder and not transferable.

38. An individual mining licence shall be personal to the holder thereof and shall not be transferable.

Rights under individual mining licence.

39. An individual mining licence shall, subject to this Enactment and to the terms and conditions specified in the licence, confer upon the holder thereof the rights -

- (a) to mine any mineral specified in the licence;
- (b) to store, transport or sell the minerals extracted and to dispose of any waste; and
- (c) to obtain and use water, sand and gravel as required for mining,

within the individual mining area.

Suspension and revocation of individual licence.

40. (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 individual mining licences to conduct mining operations in any area.

(2) The Director may, by notice in writing, revoke an individual mining licence issued under section 35 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 Enactment.

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

(4) Where an individual mining licence has been revoked under subsection (2), the holder of the licence shall forthwith surrender the licence to the Director.

CHAPTER 4

PROSPECTING LICENCE AND EXPLORATION LICENCE

Application for prospecting licence or exploration licence.

41. (1) An application for a prospecting licence or exploration licence shall be made to the Minister in the prescribed form.

(2) Upon receipt of an application under subsection (1), the Minister shall refer the application to the Committee for its recommendation.

(3) In considering an application for a prospecting licence or exploration licence for the purpose of making its recommendation, the Committee shall verify that the applicant –

- (a) has complied with the requirements of this Enactment; and
- (b) is technically and financially qualified to explore the area to which the application relates.

(4) The Committee shall, as soon as practicable after considering the application, transmit to the Minister its report and recommendation whether the application should be –

- (a) approved, in whole or in part –
 - (i) confirming that the applicant has complied with the requirements of this Enactment; and
 - (ii) specifying the terms and conditions subject to which the prospecting licence or exploration licence, as the case may be, is to be granted; or
- (b) refused.

(5) On receipt of the report and recommendation by the Committee under subsection (4), the Minister may approve or refuse the application whether or not the Committee recommends the approval of the application or the refusal thereof and the decision of the Minister shall be final.

(6) The Minister shall notify –

- (a) the applicant;
- (b) the Committee; and
- (c) the Director,

in writing of its decision under subsection (5).

(7) If the application for a prospecting licence or exploration licence is approved the Director shall, as soon as practicable after being notified under paragraph (6)(c), and

upon payment of the prescribed fee and the first year's holding fee, register the instrument of the licence and issue to the applicant –

- (a) a prospecting licence in Form D as set out in Schedule I subject to such terms and conditions as may be specified therein or as may be prescribed; or
- (b) an exploration licence in Form E as set out in Schedule I subject to such terms and conditions as may be specified therein or as may be prescribed,

as the case may be.

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

Statutory conditions of prospecting licence or exploration licence.

42. (1) It shall be a condition of every prospecting licence or exploration licence granted under this Enactment that the holder thereof -

- (a) shall submit such information and periodical activity reports as may be prescribed; and
- (b) shall pay compensation to—
 - (i) in relation to alienated land or occupied land, the owner thereof;
 - (ii) in relation to State land, the Minister; or
 - (iii) in relation to reserved land or reserved forest area, the officer for the time being having the control over the land,for any loss, damage or disturbance to land and property;
- (c) shall restore the prospecting or exploration area to a safe state and to such environmental standards as may be prescribed or to maintain it;

- (d) shall relinquish any area required by the State Government for a public purpose other than for any activity related to the exploration or mining for minerals; and
- (e) 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 exploration licence for the term of the licence.

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

Duration and renewal of prospecting licence or exploration licence.

43. (1) Subject to this section -

- (a) a prospecting licence shall be issued for a term not exceeding two years; and
- (b) an exploration licence shall be issued for a term not exceeding ten years.

(2) An application for renewal of a prospecting licence or exploration licence shall be made to the Minister in the prescribed form –

- (a) in the case of a prospecting licence, at least six months; and
- (b) in the case of an exploration licence, at least twelve months,

prior to the expiry of the prospecting licence or exploration licence, as the case may be.

(3) The Minister or any officer authorised in writing by him shall, as soon as practicable upon receipt of the application for renewal of a prospecting licence or exploration licence as the case may be, register the application in such manner as may be prescribed.

(4) Where an application for renewal of a prospecting licence is made to the Minister at least six months prior to the expiry of the licence, the Minister or any officer

authorised in writing by him shall, within three months from the date of its registration, renew 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 Enactment;
- (c) the holder of the licence can show to the satisfaction of the Minister or any officer authorised in writing by him that further prospecting is justified; and
- (d) the total duration of the prospecting licence including any renewal does not exceed four years.

(5) Where an application for renewal of an exploration licence is made to the Minister at least twelve months prior to the expiry of the licence, the Minister or any officer authorised in writing by him shall, within six months from the date of its registration, renew the licence for a further period not exceeding five 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 requirements of this Enactment;
- (c) the holder of the licence can show to the satisfaction of the Minister or any officer authorised in writing by him that further exploration is justified; and
- (d) the total duration of the exploration licence including any renewal does not exceed fifteen years.

(6) Where an application for renewal is made to the Minister –

- (a) in the case of a prospecting licence, less than six months; or
- (b) in the case of an exploration licence, less than twelve months,

prior to the expiry of the prospecting licence or exploration licence, as the case may be, the Minister may –

- (i) consider approving the application if the holder of the licence satisfies the conditions specified in subsection (4) or (5); but shall impose on such holder, upon renewal of the licence, a late filing fees of such amount as may be prescribed; or
- (ii) refuse the application.

(7) Any decision –

- (a) of the Minister or any officer authorised in writing by him under subsection (4) or (5); or
- (b) of the Minister under subsection (6),

shall be final.

Terms and conditions and endorsement upon renewal of licence.

44. Upon renewal of a prospecting licence or exploration licence, as the case may be, the Minister –

- (a) may impose such terms and conditions as he deems fit, taking into account any area relinquished before or at the time of the renewal; and
- (b) shall endorse on the licence the particulars of such renewal.

Prospecting licence with hard rock extension.

45. (1) An application for an extension of prospecting licence for prospecting for minerals occurring in hard rock deposits shall be made by the holder of a prospecting licence to the Minister in the prescribed form.

(2) The Minister or any officer authorised in writing by him may, on receipt of an application under subsection (1), grant a prospecting licence with hard rock extension subject to such terms and conditions as may be specified in the extension or as may be prescribed.

(3) A prospecting licence with hard rock extension may be granted for a term not exceeding ten years beginning from the date of the original issuance of the prospecting licence.

Fee for renewal or extension.

46. (1) Where an application –

- (a) for the renewal of a prospecting licence;
- (b) for the renewal of an exploration licence; or
- (c) for the extension of a prospecting licence under section 45,

has been approved, such approval shall have effect –

- (i) in the case of a prospecting licence or exploration licence, upon payment of the prescribed fee;
- (ii) in the case of the extension of a prospecting licence, upon payment of the prescribed fee and the first year's holding fee.

(2) If the applicant fails to pay the prescribed fee, and the first year's holding fee, as the case may be, for the renewal or extension mentioned in subsection (1) within sixty days after being notified of its approval, such approval shall be deemed revoked.

Transfer of prospecting licence or exploration licence.

47. (1) A prospecting licence may be transferable –

- (a) if such licence has been granted a hard rock extension under section 45, or
- (b) upon the death, dissolution or other legal disability of the holder of the licence.

(2) An exploration licence may be transferable.

(3) An application for the transfer of a prospecting licence or an exploration licence shall be made in such manner as provided under section 19.

Area of prospecting licence or exploration licence.

48. (1) Subject to subsections (2) and (3), the area of –

- (a) a prospecting licence granted under this Enactment shall not exceed four hundred hectares; and
- (b) an exploration licence granted under this Enactment shall exceed four hundred hectares but shall not exceed twenty thousand hectares.

(2) Any number of prospecting licences may be granted to any person:

Provided that no person shall be granted under multiple licences a contiguous area exceeding eight hundred hectares.

(3) Any number of exploration licences may be granted to any person:

Provided that no person shall be granted under multiple licences a contiguous area exceeding forty thousand hectares.

Rights under prospecting licence or exploration licence.

49. A prospecting licence or exploration licence, as the case may be, shall, subject to this Enactment and to the terms and conditions specified in the licence, confer upon the holder thereof the rights –

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

Voluntary relinquishment.

50. Any holder of a prospecting licence or exploration 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 annual date of the licence.

Application for grant of mining lease by holder of prospecting licence or exploration licence.

51. (1) Subject to subsection (2), (3) or (4) and the other provisions of this Enactment, the holder of a prospecting licence or exploration licence may apply for one or more mining leases 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 or exploration licence has been granted consists, wholly or partly, of alienated land or occupied land, the right of the holder of the licence to be granted mining lease over such land shall be subject to the condition –

- (a) that the holder of the licence has the proprietorship of the land; or
- (b) that the holder of the licence has paid the cost of acquisition thereof and the land has been so acquired; and
- (c) that the Committee has recommended that the application be approved.

(3) Where the land in respect of which a prospecting licence or exploration 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 over such land shall be subject to the condition –

- (a) that the reservation has been revoked; and
- (b) that the Committee has recommended that the application be approved.

(4) Where the land in respect of which a prospecting licence or exploration 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 over such land shall be subject to the condition –

- (a) that the right of occupation has been terminated; and
- (b) that the Committee has recommended that the application be approved.

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

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

- (a) may explore such land, subject to the terms and conditions specified in the prospecting licence or exploration licence;
- (b) shall during the term of the licence, identify with the assistance of the Collector and conclude an agreement with the claimant to native customary rights in respect of any possible application by the holder of the prospecting licence or exploration licence for a mining lease, and if no such agreement can be reached between the parties within a reasonable period, the Minister shall intervene to determine the terms and conditions of such agreement in such manner as he may determine; and
- (c) shall append the agreement referred to in paragraph (b) to the prospecting licence or exploration licence for the purpose of applying for a mining lease.

Commencement of field exploration.

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

(2) The holder of an exploration licence shall commence field exploration within twelve months from the date the exploration licence is issued.

(3) The holder of a prospecting licence or exploration licence shall, upon commencement of field exploration, send a written notice as may be prescribed to the Director, Secretary of Natural Resources, the Superintendent of Mines and the Director General of Geological Survey, and should the prospecting or exploration 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 or exploration licence number;
- (b) the name and address of the holder of the prospecting licence or exploration licence; and
- (c) the date of commencement of field exploration.

(4) In this section, "field exploration" means exploration activities physically undertaken within the prospecting or exploration area and includes airborne geophysical and geomagnetic surveys and other related surveys.

Notice of discovery and verification.

53. (1) The holder of a prospecting licence or exploration 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 Secretary of Natural Resources, the Director, the Superintendent of Mines and the Director General of Geological Survey together with such information as may be necessary to confirm the existence of the mineral deposit.

(2) The Director or an authorised officer shall conduct a field investigation to verify the reported discovery under subsection (1) within three months from the date of the notification of discovery in such manner as he thinks fit.

(3) The Director shall report to the Minister the discovery under subsection (1) and the result of the investigation under subsection (2) as soon as practicable.

Keeping of representative samples, bulk sampling, trial processing and sale of specimens and samples.

54. (1) The holder of a prospecting licence or exploration licence shall keep and properly label a representative portion of all samples which have been used for the

determination of a mineral deposit discovered under section 53(1) for the duration of the prospecting licence or exploration licence, as the case may be.

(2) If drill core samples have been used for the determination of a mineral deposit under section 53(1), the core samples shall first be split along the middle, with one part of the split sample labelled and kept in core-box, in such location and place as may be specified, for the duration of the prospecting licence or exploration licence, as the case may be, or for the duration of the mining operation if the reported mineral discovery resulted in mining development.

(3) The Director or an authorised officer shall be entitled to take so much of the samples under subsection (1) as is necessary for verification or for any other purpose in such method and at such time as he deems fit.

(4) Subject to subsection (1), the holder of a prospecting licence or exploration 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.

(5) The holder of an exploration licence shall be entitled to do –

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

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

(6) With the prior written permission of the Minister –

- (a) the holder of a prospecting licence may sell any specimen or sample obtained for prospecting purposes; and
- (b) the holder of an exploration licence may sell any specimen or sample obtained for exploration purposes or from bulk sampling and trial processing,

and the proceeds from any such sale shall be subject to the payment of royalty as if the specimen or sample was obtained under a mining lease.

(7) 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 or exploration licence shall continue to remain in force until application for renewal is determined.

55. (1) If an application for renewal of a prospecting licence or exploration licence is made to the Minister -

- (a) within the period mentioned in section 43(2); and
- (b) the term of the prospecting licence or exploration licence would, but for this subsection, expire,

the prospecting licence or exploration 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.

(2) If an application for a prospecting licence with hard rock extension, or mining lease, or proprietary mining licence, is made by the holder of a prospecting licence or exploration licence –

- (a) while the prospecting licence or exploration licence continues in force; and
- (b) the terms of the prospecting licence or exploration licence would, but for this subsection, expire,

the prospecting licence or exploration licence shall continue to remain in force in respect of the land which is the subject of the application until the application is determined, and the land which is not the subject of such application shall be deemed to have been relinquished.

Revocation of prospecting licence or exploration licence.

56. (1) The Minister may, after consultation with the Committee, revoke a prospecting licence or exploration licence 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 Enactment.

(2) For the purpose of subsection (1), the Minister shall serve or cause to be served on the holder of a prospecting licence or exploration licence written notice of his intention to revoke the licence and the grounds on which he proposes to take such action, and he 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 Minister 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 the Minister shall decide –

(a) whether to proceed with the proposed action;

(b) whether to take action under section 57; or

(c) whether to take no further action.

(5) The Minister shall give the holder of the prospecting licence or exploration licence written notice of its decision under subsection (4).

Imposition of fine, remedying of breach or contravention.

57. (1) If the Minister is satisfied, after consultation with the Committee, that there are grounds on which his power to revoke the prospecting licence or exploration licence, as the case may be, is exercisable under section 56(4)(a) but the circumstances are not such as to justify revocation, the Minister may in his 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 necessary action to be taken to remedy the breach or contravention within a specified time.

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

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

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

as the case may be, on the prospecting licence or exploration licence kept in the register referred to in section 115.

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

(5) If the order made under paragraph (1)(a) is not complied with, the Minister shall make an order declaring the prospecting licence or exploration licence, as the case may be, revoked.

(6) Notwithstanding subsection (4), if the Minister is satisfied that the breach or contravention continues, he shall make an order declaring the prospecting licence or exploration licence, as the case may be, revoked.

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

(8) If the notice issued under paragraph (1)(b) is not complied with, the Minister shall make an order declaring the prospecting licence or exploration licence, as the case may be, revoked.

(9) Notwithstanding subsection (7), if the Minister is satisfied that the breach or contravention continues, he shall make an order declaring the prospecting licence or exploration licence, as the case may be, revoked.

When revocation to take effect.

58. (1) The revocation of a prospecting licence or exploration licence shall take effect on the date the order of revocation is made under section 56, 57 or 98, 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 Minister.

Entry in register.

59. Where a prospecting licence or exploration 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 licence is recorded as provided for under section 120.

Surrender of prospecting licence or exploration licence.

60. (1) An application to surrender a prospecting licence or exploration licence shall be made to the Director in the prescribed form.

(2) The liability of the holder of a prospecting licence or exploration 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 a prospecting licence or exploration licence.

61. (1) Where a prospecting licence or exploration licence is revoked or surrendered, no application for either a prospecting licence or exploration licence in respect of the same or any area within or overlapping the previous prospecting or exploration area shall 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 43, any former holder of a prospecting licence or exploration licence whose licence has reached its maximum total duration of four or fifteen years respectively shall be given priority on an application for either a prospecting licence or exploration licence in respect of the same or any area within or overlapping the previous prospecting or exploration 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 licences.

CHAPTER 5
MINING LEASE

Land over which mining lease may be granted.

62. (1) Subject to subsection (2), a mining lease may be granted by the Minister with the approval of the Cabinet over any State land, including State land beneath alienated land.

(2) Subject to section 51, no mining lease shall be granted in respect of any area within the prospecting or exploration area in respect of which a prospecting licence or exploration licence has been granted except with the written consent of the holder of such licence.

Application for mining lease.

63. (1) An application for a mining lease shall be made to the Minister in the prescribed form.

(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 Minister may reasonably require for the discharge of his function in relation to the application.

(3) Upon receipt of an application under subsection (1), the Minister shall refer the application to the Committee for its recommendation.

(4) In considering an application for a mining lease for the purpose of making its recommendation, the Committee shall verify that the applicant –

- (a) has complied with the requirements of this Enactment; and
- (b) is technically and financially qualified to develop and mine the area to which the application relates.

(5) The Committee shall, as soon as practicable after considering the application, transmit to the Minister its report and recommendation whether the application should be –

- (a) approved, in whole or in part –
 - (i) confirming that the application has complied with the requirements of this Enactment; and
 - (ii) specifying the terms and conditions subject to which the lease is to be granted; or
- (b) refused.

(6) On receipt of the report and recommendation by the Committee under subsection (5), the Minister may, subject to subsection (8) and any other provisions of this Enactment, approve or refuse the application whether or not the Committee

recommends the approval of the application or the refusal thereof and his decision shall be final.

(7) The Minister shall notify –

- (a) the applicant;
- (b) the Committee; and
- (c) the Director,

in writing of his decision under subsection (6).

(8) In the case where –

- (a) the Committee makes recommendation for the approval of a mining lease to two or more applicants;
- (b) the areas to which the applications relate overlap in whole or in part; and
- (c) such area of overlapping is not subject to a prospecting licence or exploration licence,

the Minister with the approval of the Cabinet may grant such overlapping area to the applicant which he deems best fit to mine the area.

(9) A mining lease granted under this section shall specify whether the lessee is authorised to conduct –

- (a) a small scale operation; or
- (b) a large scale operation.

(10) Any person who, at the time of the application –

- (a) holds a valid prospecting licence or exploration licence covering the area of land to which the application relates;
- (b) holds a valid mining lease authorising a large scale operation for the area of land to which the application relates and applies to alter such lease to a mining lease authorising a small scale operation;

- (c) holds a valid mining lease covering the area of land contiguous to the area of land to which the application relates; or
- (d) can show to the satisfaction of the Committee that the level of previous exploration or mining work, or both, in the area or area adjacent to the land which the application relates provides sufficient geological information to support the application,

may be authorised to conduct a small scale operation.

(11) Any person who, at the time of the application –

- (a) holds a valid prospecting licence or exploration licence covering the area of land to which the application relates; or
- (b) holds a valid mining lease authorising a small scale operation for the area of land to which the application relates and applies to alter such lease to a mining lease authorising a large scale operation,

may be authorised to conduct a large scale operation.

(12) If the application for a mining lease is granted the Director shall, as soon as practicable after being notified under paragraph (7)(c) –

- (a) upon payment of the prescribed fee;
- (b) upon payment of the first year's rent;
- (c) subject to the compliance with boundary survey requirements under section 65 and upon payment of the survey fee, if the survey was carried out by the Surveyor; and
- (d) upon payment of the fee for mining lease plan,

issue to the applicant a mining lease in Form F as set out in Schedule I -

- (i) subject to such terms and conditions as may be specified therein or as may be prescribed; and
- (ii) stating whether the mining lease authorises a small scale operation or large scale operation.

(13) If the applicant fails to pay the prescribed fee, the first year's rent and the survey fee required under subsection (12) within sixty days after being notified of the approval of the mining lease, such approval shall be deemed revoked.

(14) Section 50 of the Land Ordinance [Cap. 68.] shall apply for the calculation of the amount of rent required to be paid under subsection (12).

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

64. (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 73;
- (b) a plan for rehabilitation, if so required, under section 126; and
- (c) an environmental impact assessment, if so required, under the Environmental Quality Act 1974 [Act 127.] or any State law.

(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.

(3) Where the application to alter a lease authorising a small scale operation to a large scale operation is approved, no large scale mining or development work to implement large scale mining shall commence until the approvals under subsection (1) have been obtained.

Survey of mining lease area.

65. (1) 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) The provisions of the Surveyors Ordinance 1960 [Ord. No. 22 of 1960.] and section 19 of the Land Ordinance [Cap. 68.] 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 may commence under a mining lease until the mining land in respect of which the lease is granted has been surveyed.

Duration and renewal of mining lease.

66. (1) A mining lease shall be granted for the maximum economic life of the mine or mining operations, as the case may be, 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, as the case may be, but such renewal shall not exceed twenty-one years.

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

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

(5) Where an application for renewal of a mining lease is made to the Director at least twelve months prior to the expiry of the lease the Director shall, within six months from the date of its registration, 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 Enactment;
- (c) the lessee can show to the satisfaction of the Director 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 authorising 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 Director, he shall notify the lessee in writing of his decision stating the reasons therefor.

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

(8) As soon as practicable after an application for the renewal of a mining lease is approved, the Director 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.

(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 Director may consider approving 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.

67. (1) A mining lease may be transferable.

(2) An application for the transfer of a mining lease shall be in such manner as provided under section 19.

Area of mining lease.

68. The area of a mining lease granted under this Enactment shall be of such size reasonably required for the mine as the Minister may determine after consultation with the Committee.

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

69. Subject to the provisions of this Enactment, the lessee of a mining lease authorising a large scale operation may apply for and be granted on a priority basis a prospecting licence or exploration 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 Enactment; and
- (c) the lessee has complied with the terms and conditions specified in the mining lease.

Rights under mining lease.

70. (1) A mining lease shall, subject to this Enactment and to the terms and conditions specified in the lease, confer upon the lessee thereof the rights –

- (a) to exclusively mine the land in respect of which the lease has been granted in accordance with –
 - (i) in the case of a mining lease authorising a small scale operation, the pre-feasibility study submitted under section 63; or
 - (ii) in the case of a mining lease authorising a large scale operation, the mine feasibility study approved under section 73; and
- (b) subject to section 71 –
 - (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 purposes of growing plants or vegetables, or keeping animals, poultry or fish as may be reasonable for use by the employees at the mine;
- (iv) 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;
- (v) 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
- (vi) to use, occupy and enjoy the land in respect of which a mining lease has been granted for mining purposes.

(2) The mining lease shall not, subject to this Enactment and to the terms and conditions specified in the lease, entitle the lessee the exclusive right within the mining land in respect of which the lease 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 mineral ores are treated for the beneficiation thereof but excludes smelting and refining.

Prohibition.

71. The lessee shall not, unless authorised under any other written law, remove beyond the boundaries of the mining land in respect of which the lease has been granted 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 materials,

obtained from or raised on the said land.

Statutory conditions of mining lease.

72. (1) It shall be a condition of every mining lease granted under this Enactment that the lessee 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 authorised 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 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 Enactment;
- (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;
- (i) in the case of a mining lease authorising a small scale operation, shall not conduct any large scale operation on the mining land;
- (j) in the case of a mining lease authorising a large scale operation, shall not conduct any small scale operation on the mining land; and
- (k) shall allow on the mining land any traditional land use arising from native customary rights.

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

Submission of mine feasibility study for large scale operation.

73. (1) The lessee of a mining lease authorising a large scale operation shall submit a mine feasibility study for the approval of the Committee which may approve or reject it.

(2) If the Committee approves the mine feasibility study submitted under subsection (1), the lessee of a mining lease authorising a large scale operation shall, subject to this Enactment, mine the land in respect of which the mining lease has been granted in accordance with the approved mine feasibility study.

(3) The lessee of a mining lease authorising a large scale operation may –

- (a) submit such number of mine feasibility studies as may be necessary in order to obtain the approval of the Committee under subsection (1); and
- (b) submit proposed revisions to the mine feasibility study approved under subsection (1) to the Committee which may approve or reject such proposed revisions.

(4) The mine feasibility study 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; and
- (d) such other information as may be prescribed or requested by the Committee.

Notice of commencement of development work and mining.

74. The lessee shall –

(a) upon commencement of any development work on the land which is the subject of the mining lease; and

(b) within fourteen days before commencing to mine the said land,

submit a written notice as may be prescribed of such commencement and the date thereof to the Director and the Superintendent of Mines.

When development work and mining to commence.

75. (1) The lessee shall commence development work within nine months from the date of registration of the lease:

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

(2) The Minister may forfeit the mining land under section 76 if the lessee fails to commence mining on the land in respect of which the mining lease has been granted within one year from the production commencement date specified –

(a) in the case of a mining lease authorising a small scale operation, in the pre-feasibility study submitted under section 63; or

(b) in the case of a mining lease authorising large scale operation, in the mine feasibility study submitted under section 73.

(3) The Minister may forfeit the mining land under section 76 if the level of annual ore production is less than twenty per cent of the planned raw ore production for that year as stated –

(a) in the case of a mining lease authorising a small scale operation, in the pre-feasibility study submitted under section 63; or

(b) in the case of a mining lease authorising a large scale operation, in the mine feasibility study submitted under section 73,

for two consecutive years, if in the year following that two-year 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.

76. (1) The Minister may, after consultation with the Committee, forfeit the mining land in respect of which a mining lease has been granted if he is satisfied that the lessee –

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

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

- (3) The Minister shall also serve or cause to be served on any person or body –
- (a) who has a lawful interest affecting the mining land in respect of which the mining lease has been granted; or
 - (b) who is in lawful occupation of any part of the mining land in respect of which the mining lease 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 lessee and after holding an inquiry, the Minister shall decide –

- (a) whether to proceed with the proposed action;
- (b) whether to take action under section 77; or
- (c) whether to take no further action.

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

Imposition of fine, remedying of breach or contravention.

77. (1) If the Minister is satisfied, after consultation with the Committee, that there are grounds on which his power to forfeit the mining land is exercisable under section 76(4)(a) but the circumstances are not such as to justify forfeiture, the Minister may in his 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 Minister shall give the lessee written notice of his decision under subsection (1).

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

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

in the document of the mining lease kept in the register referred to in section 115.

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

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

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

(7) If the notice issued under paragraph (1)(b) is not complied with, the endorsement under subsection (3) shall be cancelled accordingly.

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

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

When forfeiture to take effect.

78. (1) The Director shall, as soon as practicable after making an order of forfeiture under section 76, 77, 98, 128 or 130 with respect to any mining lease, 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 lessee shall forthwith surrender the document of mining lease to the Director.

(3) The Minister 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 120.

Effects of forfeiture.

79. Upon the taking into effect of any forfeiture in relation to any mining lease under this Enactment –

- (a) the mining land in respect of which the mining lease has been granted shall revert to, and vest in, the State 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 State Government any building then existing on the mining land other than any of temporary construction and capable of removal; and
- (c) any rent due to the State Government in respect of the mining land shall be extinguished.

Surrender of land under mining lease.

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

(2) The liability of the lessee –

- (a) to pay any rent, fee, royalty, penalty or other money that is payable on or before the date of surrender;
- (b) to fulfil 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 under subsection (1).

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

- (a) the lessee shall, before making an application under subsection (1), give to the Director –
 - (i) in the case of a mining lease authorising a small scale operation, at least three months notice; or
 - (ii) in the case of a mining lease authorising a large scale operation, at least six months notice,of his intention to apply to surrender such land; and
- (b) the Director shall, upon approving the application for surrender under this section –
 - (i) notify the lessee and the Minister in writing of such approval; and
 - (ii) enter or cause to be entered a memorial of the surrender in the register as provided for under section 120.

(4) Upon the entering of the memorial under subparagraph (3)(b)(ii), the mining land in respect of which the mining lease has been granted shall revert to and vest in the State Government.

(5) In the case where only part of the mining land under the mining lease is to be surrendered, the Director shall –

- (a) notify the lessee and the Minister 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 lessee; and
- (c) upon surrender of the original document of the mining lease, issue to the lessee a mining lease 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.

(6) There shall be no surrender under this section unless the written consent of every person having an interest registered against the mining lease has been delivered to the Director.

CHAPTER 6

PROPRIETARY MINING LICENCE

Application for proprietary licence.

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

(2) No proprietary mining licence shall be granted in respect of any area within a prospecting or exploration area in respect of which a prospecting licence or exploration 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 Committee.

(4) Upon receipt of an application under subsection (1), the Minister shall refer the application to the Committee for its recommendation.

(5) In considering an application for a proprietary mining licence for the purpose of making its recommendation, the Committee shall verify that the application –

- (a) has complied with the requirements of this Enactment; and
- (b) is technically and financially qualified to develop and mine the area to which the application relates.

(6) The Committee shall, as soon as practicable after considering the application transmit to the Minister its report and recommendation whether the application should be –

- (a) approved, in whole or in part –
 - (i) confirming that the applicant has complied with the requirements of this Enactment; and
 - (ii) specifying the terms and conditions subject to which the licence is to be granted; or
- (b) refused.

(7) On receipt of the report and recommendation by the Committee under subsection (6), the Minister may, subject to subsection (9), approve or refuse the application whether or not the Committee recommends the approval of the application or the refusal thereof and its decision shall be final.

(8) The Minister shall notify –

- (a) the applicant;
- (b) the Committee; and
- (c) the Director,

in writing of its decision under subsection (7).

(9) The Minister shall, subject to this Enactment, grant the proprietary mining licence if –

- (a) the applicant is also the holder of a prospecting licence or exploration licence, as the case may be, covering such land; and
- (b) the Committee has recommended that the application be approved.

(10) If the application for a proprietary mining licence is approved the Director shall, as soon as practicable after being notified under paragraph (8)(c), and upon payment of the prescribed fee, register the instrument of proprietary mining licence in Form G as set out in Schedule I subject to such terms and conditions as may be specified therein or as may be prescribed.

(11) 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.

(12) Upon the registration of a proprietary mining licence in the register of proprietary mining licences –

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

(13) 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 so licensed to be mined.

(14) A proprietary mining licence shall not be transferable or charged or dealt with otherwise than by means of an 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.

Relevant provisions on mining lease authorising small scale operation to apply.

82. (1) The following provisions of this Enactment shall, with such modifications as may be necessary, apply to a proprietary mining licence:

- (a) section 64, but in no case shall the holder of a proprietary mining licence be required to submit a plan for rehabilitation or make payment to the Common Rehabilitation Fund;
- (b) section 66, 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;
- (c) sections 68, 70, 71, 72, 74 and 75.

(2) Where any provision specified in subsection (1) applies differently to a mining lease authorising a small scale operation than to a mining lease authorising a large scale operation, such provision shall apply to the proprietary mining licence in the same manner as it applies to a mining lease authorising a small scale operation.

Revocation of proprietary mining licence.

83. (1) The Minister may, after consultation with the Committee, revoke a proprietary mining licence 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 Enactment.

(2) For the purpose of subsection (1), the Minister shall serve or cause to be served on the holder of a proprietary mining licence written notice of his intention to revoke the licence and the grounds on which he proposes to take such action, and he 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 Minister 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 the Minister shall decide –

(a) whether to proceed with the proposed action;

(b) whether to take action under section 84; or

(c) whether to take no further action.

(5) The Minister shall give the holder of the proprietary mining licence written notice of his decision under subsection (4).

Imposition of fine, remedying of breach or contravention.

84. (1) If the Minister is satisfied, after consultation with the Committee, that there are grounds on which his power to revoke a licence is exercisable under section 83(4)(a) but the circumstances are not such as to justify revocation, the Minister may in his 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 Minister shall give the holder of the proprietary mining licence written notice of his decision under subsection (1).

(3) Upon service of the notice under section (2), the Minister shall endorse or cause to be endorsed the particulars of –

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

as the case may be, on the proprietary mining licence kept in the register referred to in section 115.

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

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

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

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

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

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

When revocation to take effect.

85. (1) The revocation of a proprietary mining licence shall take effect on the date the order of revocation is made under section 83, 84 or 98, 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 Minister.

Entry in register.

86. 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 120.

Surrender of proprietary licence.

87. (1) An application to surrender a proprietary mining licence shall be made to the Director in the prescribed form.

(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 Director 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 120.

PART V
ACCESS TO LAND

Access to reserved land or forest area for exploration.

88. (1) Where any land in respect of which a prospecting licence or exploration licence has been granted includes any reserved land or reserved forest area, the holder of the prospecting licence or exploration licence shall not carry out any exploration work, other than that conducted from aerial observation or by remote sensing methods, in respect of the reserved land or reserved forest area unless the exploration work is 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 exploration work shall be carried out then the holder of the prospecting licence or exploration licence shall not carry out any exploration work, 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 exploration work.

(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 or exploration licence shall not carry out any exploration work, 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 fossicking licence, dulang licence, individual mining licence, prospecting licence or exploration 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 exploration.

89. (1) Where any land in respect of which a prospecting licence or exploration licence has been granted includes any alienated land or occupied land, the holder of the prospecting licence or exploration licence shall not carry out any exploration work, 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 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 shall be appended to the licence.

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

(3) If the holder of the prospecting licence or exploration licence –

- (a) has failed to obtain the written permission mentioned in paragraph (1)(a) within a period of six months from the date the licence is issued; or
- (b) has obtained the written permission mentioned in paragraph (1)(a) but the written permission is subsequently withdrawn,

and the land in respect of which the prospecting licence or exploration 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 Collector in writing of such fact.

(4) The Collector 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 or exploration 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 or exploration licence may explore and the means by which the holder thereof may gain access to these parts of the land;
 - (d) the kind of exploration operations that may or may not be carried out in or on the land;
 - (e) the conditions to be complied with when exploring in or on the land;
 - (f) the measures which the holder of the prospecting licence or exploration licence needs to take in order to protect the environment while having access to the land and exploring 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 or exploration licence exploring in or on the land; or
 - (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 exploration operations;
 - (h) the amount of security, if any, to be deposited with the Collector under section 93 by the holder of the prospecting licence or exploration licence as payment for damages under section 92;
 - (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 Collector 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 Director 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 maybe brought against the holder of a prospecting licence or exploration 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 or exploration 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 or exploration licence has been denied access to the land under subsection (8), he may appeal in writing to the Collector whose decision shall be final.

Mining beneath alienated land.

90. (1) Subject to this Enactment, a mining lease may be granted in respect of any land beneath alienated land.

(2) The provisions of section 63 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 Minister may, in granting a mining lease beneath any alienated land, in addition to the conditions specified in section 72, impose such other conditions as he 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 owner of any alienated land affected by any mining operations beneath such land shall have the right to make a claim for compensation under section 92.

Access to mining land beneath alienated land.

91. (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 Director under section 89,

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

(2) The provisions of section 89 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 VI
COMPENSATION

Compensation.

92. (1) The owner of any alienated land or occupied land –

- (a) in respect of which a prospecting licence or exploration 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 exploration or mining operations, as the case may be; and the holder of the prospecting licence or exploration licence or the lessee shall be liable to pay compensation in accordance with this Enactment 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 or exploration licence has been granted is entitled to compensation for any loss or damage suffered by the State Government resulting or arising from the exploration; and the holder of the prospecting licence or exploration licence shall be liable to pay compensation in accordance with this Enactment 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 easement; and
- (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 Collector 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 exploration licence or the lessee, as the case may be, and the owner of such land; or
- (b) between the holder of the prospecting licence or the exploration licence, as the case may be, 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 Collector to determine the amount of compensation payable in such form and manner as may be prescribed.

(7) The Collector 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 Collector under subsection (7) may, within thirty days of being notified of such decision, appeal to the High Court.

Deposit for payment of compensation.

93. (1) The Minister may require any person to whom –

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

to deposit from time to time with the State Government such amount of money as he may specify as a security for the payment of compensation which the person may be liable to pay under this Enactment.

(2) Any deposit paid under subsection (1) shall, on loss or damage being caused by the holder of the prospecting licence or exploration licence or the lessee, as the case may be, for any reason specified in section 92, be paid out by the Collector 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 Collector shall refund such amount, with no adjustment for interest on the amount deposited, to the holder of the prospecting licence or exploration licence or the lessee, as the case may be, as soon as practicable –

- (a) in the case of a prospecting licence or exploration 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 Collector 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 VII FINANCIAL OBLIGATIONS

Holding fees and rent.

94. (1) Subject to subsection (6) –

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

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

annually to the Director.

(2) The amount of holding 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 such holding fee or rent is payable.

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

(4) The State Government may revise –

- (a) the rate of holding fee payable in respect of the land which is subject to a prospecting licence;
- (b) subject to subsection (5), the rate of holding fee payable in respect of the land which is subject to an exploration licence; and
- (c) the rate of rent payable in respect of mining land,

and such rates shall be based on land area and be prescribed.

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

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

- (a) to the holder of a prospecting licence or exploration licence a total or partial waiver of the holding fee; and
- (b) to the lessee a total or partial waiver of the rent.

Royalty.

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

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

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

(2) Subject to Clause (3B) of Article 110 of the Federal Constitution and subsections (3) and (4), the Minister 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 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 year period.

(5) The Minister 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 Minister or any officer authorised in writing by him 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.

(8) The Minister may commute any royalty for a commutation fee by notification in the *Gazette* stating –

- (a) the class of mineral tenement and the mineral to which the notice relates; and
- (b) the amount of the commutation fee.

Market value.

96. For the purpose of section 95(3)(a), the market value of any mineral shall be determined by such method and in such manner as may be prescribed.

Property in minerals.

97. 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.

98. (1) Where any fee, rent or royalty payable under this Part is in arrears, the Director 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 Director on the document or instrument of 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 Director within the time specified therein, the notice shall thereupon cease to have effect and the Director 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 Director, he shall thereupon by order declare –

- (a) in the case of a prospecting licence or exploration licence, the licence revoked, and the provisions of sections 58 and 59 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 State Government, and the provisions of sections 78 and 79 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 85 and 86 shall have effect with respect thereto accordingly.

PART VIII PROVISIONS REGARDING WATER

Right to use water may subject to licence.

99. (1) Subject to subsection (2) and section 112, a holder of a mineral tenement is entitled to the enjoyment of water as may be found on 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 water course 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.

100. (1) An application for a water licence shall be made by the holder of a mineral tenement to the Minister in the prescribed form.

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

(3) The Minister shall notify –

- (a) the applicant;
- (b) the Committee; and
- (c) the Director,

in writing of his decision under subsection (2).

(4) A water licence shall, subject to this Enactment and to the terms and conditions specified in the licence, confer upon the holder thereof the rights –

- (a) to divert, store, make use of and discharge water existing on or directly adjacent to the land covered by the mineral tenement;
- (b) to divert, 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 Director shall, as soon as practicable after being notified under paragraph (3)(c), and upon payment of the prescribed fee, register the instrument of water licence and issue to the applicant a water licence in Form H as set out in Schedule I subject to such terms and conditions as may be specified therein or as may be prescribed.

(6) If the applicant fails to pay the prescribed fee within sixty days after being notified of its approval, such approval shall be deemed revoked.

(7) 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.

101. (1) An application for a water permit shall be made by the holder of a mineral tenement to the Director in the prescribed form.

(2) The Director may, after consultation with such other relevant authorities as he deems necessary and upon payment of the prescribed fee, approve the application and issue to the applicant a water permit in Form I as set out in Schedule I subject to such terms and conditions as may be specified therein or as may be prescribed.

(3) 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 Director and upon renewal thereof he –

(i) may impose such terms and conditions as he 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.

(4) A water permit shall authorise 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 Director may think fit.

(5) A water permit shall not authorise the holder thereof to construct any work –

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

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

Temporary suspension of water licence.

102. (1) The Minister 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 he 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 Enactment; or
- (b) conditions of severe drought require that the water be made available for other public purpose.

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

Temporary suspension of water permit.

103. (1) The Director 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 he 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 Enactment; or
- (b) conditions of severe drought require that the water be made available for other public purpose.

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

Revocation of water licence.

104. (1) The Minister may, after consultation with the Committee, revoke a water licence 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 Enactment.

(2) For the purpose of subsection (1), the Minister shall serve or cause to be served on the holder of a water licence written notice of his intention to revoke the licence and the grounds on which he proposes to take such action, and he 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 the Minister shall decide –

- (a) whether to proceed with the proposed action;
- (b) whether to take action under section 106; or
- (c) whether to take no further action.

(4) The Minister shall give the holder of the water licence written notice of his decision under subsection (3).

Revocation of water permit.

105. (1) The Director may revoke a water permit if he 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 Enactment.

(2) The decision of the Director under subsection (1) shall be final.

Imposition of fine, remedying of breach or contravention.

106. (1) If the Minister is satisfied, after consultation with the Committee, that there are grounds on which his power to revoke the water licence is exercisable under section 104(3)(a) but the circumstances are not such as to justify revocation, the Minister may in his 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 Minister shall give the holder of the water licence written notice of his decision under subsection (1).

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

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

as the case may be, on the water licence kept in the register referred to in section 115.

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

(5) If the order made under paragraph (1)(a) is not complied with, the Minister shall make an order declaring the water licence revoked.

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

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

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

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

Surrender of water licence and water permit.

107. Where a water licence or water permit has been revoked under this Part, the holder of the licence or permit, as the case maybe, shall forthwith surrender the licence or permit to the Director respectively.

Revocation or termination to be recorded.

108. As soon as practicable after the revocation or termination of a water licence, the Director shall record or cause to be recorded an entry of such revocation or termination in the register wherein the licence is recorded as provided for under section 120.

Record of water licence on titles affected.

109. Where any alienated land is affected by a water licence issued under this Part, the Director having custody of the register wherein the title to the land is recorded shall –

- (a) before the delivery of such licence –
 - (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.

110. (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 Director, as the case may be, informing the owner or the Director of such intent and of the owner's or the State Government'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 Government, 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 Government in respect of any compensation, such compensation shall be determined by the Director in such manner as may be prescribed.

(4) Any person who is aggrieved by any decision made under subsection (3) may, within thirty days of being notified of such decision, appeal to the High Court.

(5) 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.

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

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

(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 Minister whose decision shall be final.

Alteration or interference with river banks.

111. (1) No person shall, in the enjoyment of a mineral tenement, alter or interfere with, or cause to 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 of the Director under subsection (3).

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

(3) Upon receipt of an application under subsection (2), the Director 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) An application for written permission to alter or interfere with the banks of any stream or watercourse not exceeding five metres in width between the banks shall be made by the holder of a mineral tenement to the Director in the prescribed form.

(5) Upon receipt of an application under subsection (4), the Director may, after consultation with such other relevant authority as he deems necessary, give written

permission to the holder of a mineral tenement to alter or interfere with the banks of any stream or watercourse not exceeding five metres in width between the banks.

(6) The Director 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 specified in the order.

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

112. (1) The Director 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 Director, 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 are being or may be commenced or carried on upon the land affected by the mineral tenement.

(2) Where any land which is 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 Minister whose decision shall be final.

Maintenance of water standard.

113. (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 maybe prescribed by this Enactment or the Environmental Quality Act 1974 [Act 127.] or any State law.

(2) The Director 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 complaint, at any time order any person who fails to comply with the requirement of subsection (1) to –

- (a) undertake the necessary measures to ensure that water quality standards are complied with; or
- (b) suspend mining operations until such measures are taken to comply with water quality standards.

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

Provisions of this Part to prevail.

114. The provisions of this Part shall have effect notwithstanding anything contained in any other written law regarding water.

PART IX
RECORDING AND REGISTRATION

Registers of mineral tenements, water licences, etc.

115. The Director shall, for the purposes of this Enactment, open a series of books to be known as -

- (a) the register of fossicking licences;
- (b) the register of dulang licences;
- (c) the register of individual mining licences;
- (d) the register of prospecting licences;

- (e) the register of exploration licences;
- (f) the register of mining leases;
- (g) the register of proprietary mining licences;
- (h) the register of water licences; and
- (i) the register of water permits.

Preparation of licence, lease and permit.

116. (1) Any licence, lease or permit granted under this Enactment shall be prepared in duplicate, one copy to be delivered by the Director to the holder of licence or permit or the lessee, as the case may be, and the other to be retained by the Director to be bound up in the appropriate registers referred to in section 115 and serially numbered therein.

(2) The Director shall not cause any fossicking licence, dulang licence, individual mining licence, prospecting licence, exploration licence, proprietary mining licence, water licence, water permit or mining lease to be prepared, unless –

- (a) in the case of a fossicking licence, dulang licence, individual mining licence, proprietary mining licence, water licence or water permit, the prescribed fees have been paid;
- (b) in the case of a prospecting licence or exploration licence, the prescribed fees and the first year's holding fee have been paid; and
- (c) in the case of a mining lease –
 - (i) the prescribed fees and the first year's rent have been paid; and
 - (ii) the land which is to be the subject of the lease has been surveyed and the survey fees, if the survey was carried out by a Surveyor, and the fee for mining lease plan have been paid.

Description of area to be attached.

117. A description of the area which is the subject of a licence or lease granted under this Enactment shall be attached to both copies of the respective licence or lease referred to in section 116 and shall –

- (a) in the case of a fossicking licence, dulang licence, individual mining licence, prospecting licence, exploration licence, proprietary mining licence, water licence and water permit, be in such form and manner as may be prescribed; or
- (b) in the case of a mining lease, consist of a plan of the land prepared under the Land and Mining Plans and Document (Photographic Copies) Act 1950 [Act 233].

When licence permit or lease to have effect.

118. (1) The granting of a fossicking licence, dulang licence, individual mining licence, prospecting licence, exploration licence, proprietary mining licence, water licence and water permit under this Enactment shall take effect upon the issuance of such licence or permit.

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

Manner of issuing and permit and registration of lease.

119. (1) The issuance of a fossicking licence, dulang licence or individual mining licence or water permit shall consist of its authentication under the hand and seal of the Director or under the hand and seal of any person to whom the Director has delegated the power to grant such licence.

(2) The issuance of a prospecting licence, exploration licence, proprietary mining licence or water licence and the registration of a mining lease shall consist of its authentication under the hand and seal of the Director.

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

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

120. (1) The Director 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 or permit issued, or any lease registered, under this Enactment.

(2) No such renewals, extensions, transfers, surrenders, revocations, forfeitures, variations 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.

121. The officer issuing a licence or permit or registering a mining lease under section 119 shall require an acknowledgment of the receipt of the copy of the licence, permit or lease, as the case may be, from the person accepting such licence, lease or permit in such form as may be prescribed.

Registered mining lease to be conclusive evidence.

122. Every mining lease duly registered under this Part shall, subject to the provisions of this Enactment, be conclusive evidence –

- (a) that the lease of the land described therein is vested in the person or body for the time being registered as the lessee; 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 Enactment to be specified in that document.

Lease shall indefeasible.

123. The granting of a mining lease under this Enactment over State land to any person shall confer on the person a lease of the land which shall be indefeasible.

Saving in respect of mining lease.

124. Every mining lease subsisting at the commencement of this Enactment shall continue to be in force under the Mining Ordinance 1960 [*Ord. No. 20 of 1960.*] under which it was issued until the expiration thereof.

Inspection of registers.

125. Any person shall, upon payment of the prescribed fee, be permitted to inspect any register referred to in section 115 during such hours and on such days appointed by the Director.

PART X
REHABILITATION

Rehabilitation plan for mining lease authorising large scale operation.

126. (1) Every lessee of a mining lease authorising a large scale operation shall submit to the Director -

- (a) a mine rehabilitation plan; and
- (b) upon application for a renewal of such lease, a modified mine rehabilitation plan,

for approval by the Committee.

(2) The mine rehabilitation plan shall provide for specific rehabilitation actions, inspections, annual reports, estimated total cost for rehabilitation, cost estimates for each specific rehabilitation action and a detailed timetable for the orderly and efficient rehabilitation of the mining land.

(3) The Committee shall, within a reasonable time from the submission of the mine rehabilitation plan under subsection (1), approve or reject such plan, and shall notify the lessee of its decision.

(4) Any lessee whose mine rehabilitation plan has been rejected under subsection (3) –

- (a) may submit such number of mine rehabilitation plans as may be necessary in order to obtain the approval of the Committee; or
- (b) may appeal against the rejection, within sixty days of notification of the decision under subsection (3), to the Minister whose decision thereon shall be final.

(5) Where the lessee intends to modify a mine rehabilitation plan approved under this section, the lessee shall submit the proposed modified rehabilitation plan to the Committee for approval.

(6) Where any mining lease authorising a large scale operation is renewed, no mining shall proceed until a modified mine rehabilitation plan has been approved under this section.

(7) Where a mining lease authorising a small scale operation is altered to authorise a large scale operation under section 63(11), no large scale operation shall commence on the land until a mine rehabilitation plan has been approved under this section.

Mine Rehabilitation Fund.

127. (1) There shall be established a Mine Rehabilitation Fund for the purpose of rehabilitation of mining lands which are subject to mining leases authorising large scale operations.

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

(3) The lessee shall pay into the Fund –

(a) where the term of the mining lease authorising a large scale operation exceeds ten years –

(i) an initial amount of ten per cent of the estimated total cost for rehabilitation specified in the mine rehabilitation plan before the commencement of development work but not later than one year from issuance of the lease:

Provided that where a mining lease authorising a small scale operation is altered to authorise a large scale operation, the initial amount shall be paid before the commencement of the large scale operation; and

(ii) annual payments, nine months thereafter, of one tenth of the estimated total cost for rehabilitation specified in the rehabilitation plan; or

(b) where the term of the mining lease authorising a large scale operation is less than ten years –

(i) an initial amount equal to the estimated total cost for rehabilitation specified in the rehabilitation plan divided by the term of the lease before the commencement of development work but not later than one year from issuance of the lease:

Provided that where a mining lease authorising a small scale operation is altered to authorise a large scale operation, the initial amount shall be paid before the commencement of the large scale operation; and

(ii) annual payments, each year thereafter, equal to the estimated total cost for rehabilitation specified in the rehabilitation plan divided by the term of the lease.

(4) Where at any time after the issuance of the mining lease the Committee determines that the estimated total cost to implement the approved mine rehabilitation plan is excessive or insufficient, it may –

(a) refund any excess amount to the lessee; or

(b) require the lessee to deposit an additional amount as it may specify,

as the case may be.

(5) Where the mining lease is renewed, the lessee shall pay into the Fund such annual amounts as may be specified in the modified mine rehabilitation plan.

(6) The Committee may specify the manner of collection of payments under subsection (3).

(7) The Legislative Assembly may appropriate such sum as it deems necessary to be deposited into the Fund which sum shall be subtracted from the estimated total cost for rehabilitation payable by the lessee under subsection (3).

(8) Any sum deposited into the Fund under section 131 shall be subtracted from the estimated total cost for rehabilitation payable by the lessee under subsection (3).

(9) Any money paid into the Fund shall be deposited in any bank duly licensed under the Banking and Financial Institutions Act 1989 [Act 372].

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

(11) The Committee 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.

(12) The lessee shall implement and perform the obligations described in the mine rehabilitation plan during the term of the mining lease.

(13) Where the mine rehabilitation plan has been fully implemented and completed to the satisfaction of the Committee, any sum remaining in the Fund shall be refunded to the lessee.

(14) In this section, "Fund" means the Mine Rehabilitation Fund established under subsection (1).

Non-payment into the Mine Rehabilitation Fund.

128. (1) Where the lessee fails to pay the sum payable into the Mine Rehabilitation Fund under section 127(3) within the time prescribed, the Committee 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 paragraph (1)(a) is paid to the Committee within the time specified therein -

- (a) the notice shall thereupon cease to have effect; and
- (b) the note endorsed pursuant to paragraph (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 paragraph (1)(a) has not been paid to the Committee, the Committee shall notify the Minister of such default, and upon receipt of such notification, the Minister shall by order declare the mining land in respect of which the mining lease has been granted forfeited to the State Government and the provisions of sections 78 and 79 shall apply.

Common Rehabilitation Fund.

129. (1) There shall be established a Common Rehabilitation Fund for the purpose of rehabilitation of mining lands which are subject to mining leases authorising small scale operations.

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

(3) There shall be paid into the Fund –

- (a) such sum as may be annually appropriated by the Legislative Assembly for the purposes of the Fund;
- (b) any loan or grant given to the State Government by the Federal Government for the purposes of the Fund; and
- (c) the rehabilitation fee payable under subsection (4).

(4) For the purposes of the Fund, every holder of a mining lease authorising a small scale operation shall pay into the Fund –

- (a) an annual fee at the rate of one percent of the gross sales value of all minerals won during a calendar year from the mining land that is subject to the lease; or
- (b) a prescribed annual fee,

whichever is greater.

(5) Subsection (4) shall not apply to any lessee who is permitted to alter mining operation from a large scale operation to a small scale operation.

(6) Any money paid into the Fund and any sum accruing therefrom –

(a) shall be deposited in any bank duly licensed under the Banking and Financial Institutions Act 1989 [Act 372.]; or

(b) may be invested in accordance with the provisions of the Trustee Act 1949 [Act 208.].

(7) The Fund shall be used for the following purposes:

(a) the preparation by the Committee of rehabilitation plans for -

(i) any land, other than alienated land, affected by mining before this Enactment comes into force; and

(ii) any State land or reserved land affected by mining after this Enactment comes into force; and

(b) the implementation of any plan referred to in paragraph (a) that is approved by the Committee.

(8) The Committee 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;

(c) cause its accounts to be audited annually by the Auditor-General; and

(d) as soon as the accounts of the Fund have been audited, but not later than six months after the end of the financial year, cause a copy of the audited statement of accounts to be transmitted to the Minister together with a copy of any observations made by the Auditor-General on the statement of the accounts.

(9) A copy of the statement and observations transmitted to the Minister under paragraph (8)(d) shall be laid before the Legislative Assembly as soon as practicable after its transmission.

(10) The Committee shall keep a record of the mining leases authorising small scale operations which are not in compliance with the provisions of subsection (4) and annually provide copies of such record to the Minister and the Director.

(11) The fee payable under subsection (4) shall be payable in such manner as may be prescribed.

(12) In this section, "Fund" means the Common Rehabilitation Fund established under subsection (1).

Non-payment into the Common Rehabilitation Fund.

130. (1) Where the lessee fails to pay the sum payable into the Common Rehabilitation Fund under section 129(4) within the time prescribed, the Committee 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 paragraph (1)(a) is paid to the Committee within the time specified therein –

- (a) the notice shall thereupon cease to have effect; and
- (b) the note endorsed pursuant to paragraph (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 paragraph (1)(a) has not been paid to the Committee, the Committee shall notify the Minister of such default, and upon receipt of such notification, the Minister shall by order declare the mining land in respect of which the mining lease

has been granted forfeited to the State Government and the provisions of sections 78 and 79 shall apply.

Rehabilitation requirements when altering mining lease authorising small scale operation to mining lease authorising large scale operation.

131. Where a mining lease authorising small scale operation is altered to a mining lease authorising large scale operation under section 63(11) -

- (a) the provisions of sections 126 and 127 shall apply after the authorisation to conduct a large scale operation is granted;
- (b) the lessee shall have no further obligations under section 129; and
- (c) the Committee may transfer to the Mine Rehabilitation Fund established under section 127 such sum as the lessee has paid into the Common Rehabilitation Fund under section 129.

Rehabilitation requirements when altering mining lease authorising large scale operation to mining lease authorising small scale operation.

132. Where a mining lease authorising a large scale operation is altered to a mining lease authorising a small scale operation under section 63(10) –

- (a) the lessee shall submit a modified rehabilitation plan for approval by the Committee; and
- (b) the lessee shall continue his obligations under section 127 in accordance with the modified rehabilitation plan.

PART XI

ENFORCEMENT, INVESTIGATION, EVIDENCE,
OFFENCES AND PENALTIES

CHAPTER 1

ENFORCEMENT AND INVESTIGATION

Enforcement by authorised officer.

133. An authorised officer may for the purpose of enforcing this Enactment –

- (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 Enactment;
- (b) visit, enter, inspect and examine with or without previous notice any fossicking, panning, exploration 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 fossicking, panning, exploration 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 Enactment;
- (d) take measures to ensure the use of proper precautions in all fossicking, panning, exploration, 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 fossicking, panning, exploration, mining, storage or mineral processing is undertaken to reveal his identity and purpose, and to give such information as is required by this Enactment 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 fossicking, panning, exploration or storage facility area or mine or mineral processing plant.

Power of investigation.

134. (1) Any authorised officer shall have the power to investigate the commission of any offence under this Enactment.

(2) Every person required by an authorised 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.

135. (1) An authorised officer making an investigation under this Enactment may by order in writing require the attendance before him of any person who appears to the authorised 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 required, the authorised 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.

136. (1) An authorised officer making an investigation under this Enactment 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 questions relating to the case put to him by the authorised 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 authorised 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 the 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 authorised 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, seizure and investigation.

137. (1) An authorised officer may without warrant -

- (a) arrest any person found committing or attempting to commit or abetting the commission of an offence under this Enactment; 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 authorised officer making an arrest under paragraph (1)(a) shall without unnecessary delay make 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.

138. (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 Enactment is being committed or has been committed, the Magistrate may issue a warrant authorising any authorised 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 authorised 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 authorised 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 authorised 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 his custody.

Search without warrant.

139. If it appears to an authorised 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

Enactment 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 138 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 138 in as full and ample a manner as if he was authorised to do so by a warrant under that section.

Temporary return of seized item.

140. Where any thing has been seized under this Enactment, 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.

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

(2) An order for the forfeiture or for the release of anything seized in exercise of any power conferred under this Enactment 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 Enactment 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 Enactment, 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

authorised in writing give written notice to the authorised 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 authorised officer shall refer the claim to the Director who –

- (a) may order that such thing be released; or
- (b) may direct the authorised officer to refer the matter to a Magistrate for decision.

(6) The Magistrate to whom a matter is referred under paragraph (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 Enactment 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 direction 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 Enactment 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.

142. Where any thing seized under this Enactment is held in the custody of the State Government pending completion of any proceedings in respect of an offence under this Enactment, 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 State Government by such person and shall be recoverable accordingly.

No costs or damages arising from seizure to be recoverable.

143. 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 Enactment, 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.

144. (1) If any authorised officer has reasonable suspicion that any conveyance is carrying any thing in respect of which an offence under this Enactment 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 authorised officer –

- (a) stop the conveyance and allow the authorised 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 authorised officer considers necessary to make.

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

CHAPTER 2
EVIDENCE

Presumption that minerals belong to the State Government.

145. Where in any proceedings taken under this Enactment or in consequence of anything done under this Enactment a question arises as to whether any mineral or mineral product is the property of the State Government, such mineral or mineral product

shall be deemed to be the property of the State Government unless the contrary is proved.

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

146. In any proceedings under this Enactment a certificate signed by the Director or the Superintendent of Mines 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 cost, without proof of the signature of the Director or the Superintendent of Mines to such certificate.

Sample.

147. Any authorised 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.

148. (1) In any prosecution under this Enactment, 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 Geological Survey or the State Government; or
- (b) a person engaged in chemical or physical analytical work relating to minerals and employed by a laboratory recognised by the Department of Geological Survey.

(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.

149. (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 contains 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 Enactment 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.

CHAPTER 3 OFFENCES AND PENALTIES

Various offences.

150. Any person who contravenes or fails to comply with the provisions of section 42(1)(a), section 54(1), section 72 (1)(a), (b), (c), or (k), section 73(2), 88, 89, 91, 93 or 111 of this Enactment shall be guilty of an offence.

Penalty for failure to submit notice.

151. Any person who fails to submit any notice under section 53(1) or 74 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 large scale mining without obtaining approval of required plans.

152. Any person who contravenes section 64 or section 126(6) or (7) 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.

153. Any person who wins minerals by fossicking, panning, exploration or mining without a licence or lease issued or granted under this Enactment shall be guilty of an offence and shall, on conviction, in addition to any other fine or term of imprisonment imposed under this Chapter, be ordered to pay to the State Government –

- (a) a sum not exceeding five times the royalty payable in respect of any mineral unlawfully taken; and
- (b) a sum not exceeding three times the value of such mineral,

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

Penalty for fossicking without licence.

154. Subject to this Enactment, any person who fossicks without a valid licence issued under this Enactment 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.

Unlawful sale of mineral obtained under fossicking licence.

155. Any person who –

- (a) utilises any mineral for a commercial or industrial purpose; or
- (b) sells any mineral,

obtained under a fossicking licence 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 panning (dulang washing) without licence.

156. Any person who conducts panning (dulang washing) without a valid licence issued under this Enactment 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 exploration without licence.

157. (1) Any person who conducts any exploration -

- (a) without a valid prospecting licence or exploration licence issued under this Enactment; or
- (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 authorisation under an access order as provided under section 88 or 89,

shall be guilty of an offence.

- (2) For the purpose of subsection (1), "exploration" shall not include fossicking.

Penalty for mining without licence or lease.

158. Any person who conducts mining without a valid licence or issued under this Enactment 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.

159. Any holder of a mineral tenement who breaches or fails to comply with any term and condition 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.

160. Except as otherwise authorised 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 materials, obtained from or on the mining land,

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, and be ordered to pay to the State Government 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.

Penalty for failure to pay into the Mine or Common Rehabilitation Fund.

161. Any lessee who fails to pay the amount or fee required under this Enactment into -

- (a) the Mine Rehabilitation Fund; or
- (b) the Common Rehabilitation Fund,

as the case may be, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twice any amount outstanding or to imprisonment for a term not exceeding six months or to both.

Tampering with, removing, damaging or destroying any thing seized.

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

Disappearance or destruction of any thing seized.

163. Any person who causes the disappearance or destruction of any thing to be seized under this Enactment 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.

164. Any person who fails to comply with any lawful order or direction issued or given by any authorised officer in the execution of his functions under this Enactment 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.

Offences with respect to information.

165. (1) Any person who -

- (a) submits false information in any application, report or other document under this Enactment;
- (b) furnishes or causes to be furnished to any authorised officer any false particular, information or statement in respect of any matter which such officer requires to be given under this Enactment;
- (c) refuses to answer or gives a false answer to any question put to him by any authorised officer for the purpose of obtaining any particular, information or statement required to be given under this Enactment;

- (d) counterfeits, falsifies or uses when counterfeited or falsified any document required by this Enactment or any instrument used in the transaction of any business or matter under this Enactment;
- (e) alters any document or instrument or counterfeits the seal, signature, initials or other marks of or used by any authorised officer for the verification of any such document or instrument or any other purpose in the conduct of any business or matter under this Enactment;
- (f) deceives any authorised 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 Enactment 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 Enactment;
- (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 Enactment; or
- (i) fails or refuses to produce any document as may be required by any authorised 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 a 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 authorised officer.

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

Use of confidential information.

167. Any person who uses any confidential information in contravention of section 177 or 178 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 two years or to both.

Abuse of power.

168. Any person who, in purported exercise of the powers under this Enactment, 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.

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

Offences committed by body corporate.

170. Where a person charged with an offence under this Enactment 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.

171. Any person who would have been liable to any penalty under this Enactment for anything, 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.

172. Any person who commits an offence under this Enactment shall, in the case of a continuing offence, be liable, in addition to any fine provided under this Enactment, 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.

173. Any person who is guilty of an offence under this Enactment 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.

174. (1) The Director may compound any offence committed by any person under this Enactment, 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 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) An 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 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 the Deputy Director personally.

CHAPTER 4 GENERAL

Conduct of prosecution.

175. Any person authorised in writing by the Public Prosecutor may conduct the prosecution for any offence under this Enactment.

Recovery of money due to the State Government.

176. Any money payable to the State Government under this Enactment may be recovered by the State Government by civil proceedings as a debt due to the State Government.

PART XII MISCELLANEOUS

Prohibition against disclosure of information.

177. (1) Subject to subsection (4), no information contained in any report submitted to meet the requirements as may be prescribed regarding any prospecting licence or exploration licence to any authorised officer shall be disclosed by the authorised 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 or exploration 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 authorised officer shall be disclosed by the authorised 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 authorised officer shall be kept confidential by the authorised 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 Enactment;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Enactment;
- (d) to any consultant to the State Government or to any officer authorised in writing by the Secretary of Natural Resources to receive the information; or
- (e) for or in connection with the preparation by the State Government or Federal Government of statistics in respect of exploration or mining operations.

(5) In this section, "date of termination" means –

- (a) in relation to a prospecting licence, exploration 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.

178. Any authorised officer responsible for the administration of this Enactment 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; and
- (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.

179. (1) Every authorised officer empowered to act under this Enactment shall, on request, declare his office and produce to the person against whom the authorised officer is acting or from whom the authorised 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 authorised officer acting under this Enactment if the authorised officer refuses to declare his office and produce his authority card on demand being made by such person.

Protection of officers.

180. No authorised officer responsible for the administration of this Enactment shall incur personal liability for any loss or damage caused by any act or omission by him in carrying out the duties under this Enactment unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

Boundary survey to solve dispute.

181. (1) In the event of a dispute regarding boundary between the holder of a prospecting licence or an exploration licence and the owner of the land adjacent to or within the prospecting or exploration area in respect of which the licence has been granted, either party may apply to the Director 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 Director shall determine.

Service of notice.

182. (1) Any notice required to be given or served under this or Enactment 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 authorised 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 Enactment 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 Enactment.

183. This Enactment 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 Geological Survey and the Department of Mines to ascertain the non-existence of economic minerals within an area before releasing the said area for purposes other than mining.

State Government or its agent may conduct exploration.

184. (1) The State Government or its agent authorised by it in writing may conduct exploration for minerals on any land within the State.

(2) Where –

- (a) an employee of the State Government; or
- (b) an agent authorised under subsection (1),

conducts exploration for minerals on any land other than State land, he shall be liable to pay compensation –

- (i) in the case of alienated or occupied land, to the owner thereof; and
- (ii) in the case of reserved land or reserved forest area, to the officer for the time being having the control thereof,

for any loss, damage or disturbance caused by such exploration.

(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 authorised under subsection (1) to conduct exploration for minerals may be granted a mining lease on any land which such agent has explored on behalf of the State Government.

Removal of dredging machine from one block of mining land to another.

185. (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 Director 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 Director, after holding an inquiry, to issue to such person a licence in Form J as set out in Schedule I, 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 Director –

- (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 anything 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 Director not later than six months after such loss or damage shall have been sustained, and the Director shall after such inquiry as he 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 Director on the amount of compensation shall be final.

(5) A licence issued under subsection (1) shall be revoked by the Director 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.

- 186.** (1) Every inquiry held under any of the provisions of this Enactment –
- (a) shall be conducted in accordance with the provisions of this section;
 - (b) shall be held at such place and time as the Director may direct; and
 - (c) shall be open to the public unless the Director shall, for special reasons to be recorded by him, order otherwise.
- (2) Before holding any inquiry, the Director –
- (a) shall give notice of inquiry in such manner as he may consider appropriate in the circumstances of the case; and
 - (b) shall serve on any person or body who is to his 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.
- (3) The Director may, if he 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.
- (4) Any person or body claiming to be interested in the subject matter of the proposed inquiry may, by registered letter addressed to the Director, 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.

(5) Notice of any cancellation, postponement, change of venue or adjournment mentioned in subsection (4) shall be given by the Director to every person or body on whom notice of the inquiry has been given or served under subsection (2), and in such other manner as it may consider appropriate in the circumstances of the case.

(6) In conducting the inquiry, the Director shall have the following powers:

- (a) to procure and receive all evidence, written or oral, and to examine any person as witness, as the Director 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.

(7) Where the Director is satisfied that a person who, under subsection (6) -

- (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,

he 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.

(8) 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.

(9) Where a certificate is given under subsection (7), 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 Director holding such inquiry to be held at a time and place specified in the order.

Power to demolish buildings or structures.

187. If it appears to any authorised officer that there is reasonable cause to believe that any building or structure has been erected without authorisation under this Enactment for the purposes of exploring 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 State Government.

PART XIII
REGULATIONS

Regulations.

188. (1) The Minister may make regulations in respect of any matter which may be prescribed under this Enactment.

(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 Enactment and the manner for collecting and disbursing such fees, rents and royalties;
- (b) prescribe the offences under this Enactment which may be compounded and the method and procedure for compounding such offences;
- (c) allow remission, rebate or deferment of payment of rents and remission of fees;
- (d) prescribe the powers and duties of officers appointed under this Enactment;
- (e) alter, add to or rescind any of the Forms contained in Schedule I and prescribe additional Forms;

- (f) prescribe the submission of statistical returns and the keeping and production of books and plans by owner of any mine;
- (g) prescribe the contents of any feasibility study, rehabilitation plan, survey, plan, report or any other assessment as may be necessary for the purposes of this Enactment;
- (h) prescribe the activities which are not allowed within a mineral reserve;
- (i) prescribe the terms and conditions of a mineral tenement granted over any State land, alienated land, occupied land, reserved land or reserved forest area;
- (j) prescribe the procedure and requirements for competitive bidding for mineral tenements;
- (k) 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
- (l) provide for any other matter generally to give effect to the provisions of this Enactment.

PART XIV

REPEAL, SAVING AND TRANSITIONAL PROVISIONS

Repeal, saving and transitional provisions.

189. (1) The provisions of the Mining Ordinance 1960 [*En. No. 20 of 1960.*] are hereby repealed.

(2) Notwithstanding subsection (1), all subsidiary legislation made under or in accordance with the repealed Ordinance shall, in so far as they are not inconsistent with this Enactment, continue in force until amended, revoked or replaced by this Enactment.

(3) The Minister 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 Enactment –

- (i) which has been rendered obsolete or unnecessary by any provision of this Enactment;
 - (ii) for the purpose of bringing the provisions thereof into accord with the provisions of this Enactment; or
 - (iii) for supplementing the aforesaid provisions referred to in subparagraph (ii) in any respect;
- (b) make such provisions as it may consider necessary or expedient for the purpose of removing any difficulties occasioned by the coming into force of this Enactment,

and any such order may be made so as to have effect as from the commencement of this Enactment.

(4) Subject to section 124, nothing in this Enactment 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 Enactment.

(5) Any person who, immediately before the commencement of this Enactment, was holding any office to which appointment may be made under this Enactment shall continue in that office and be deemed for the purposes of this Enactment to have been so appointed.

SCHEDULE I

FORM A

Mineral Enactment 1999

(Section 21(5))

FOSSICKING LICENCE

Licence No. :	F	_____
Date of Issue:		_____
Date of expiry:		_____
Date of cancellation:		_____
Name of holder of licence:		_____
N.R.I.C. No. :		_____
Address of holder of licence:		_____ _____
Description of area: (See attached map)		
District: _____		Sub-district: _____
Map Sheet No. _____		
Block designation:		_____
(RSO) units/quarter units:		_____

This licence authorises the holder thereof to fossick 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 Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM B

Mineral Enactment 1999

(Section 28(5))

DULANG LICENCE

Licence No. :	D	_____
Date of issue:		_____
Date of expiry:		_____
Date of cancellation:		_____
Name of holder of licence:		_____
N.R.I.C. No. :		_____
Address of holder of licence:	_____	

Description of area: (See attached map)		
District:	_____	Sub-district: _____
Map Sheet No:	_____	
Mineral to pan:	_____	

This licence authorises the holder thereof to pan for the aforesaid 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 Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM C

Mineral Enactment 1999

(Section 35(4))

INDIVIDUAL MINING LICENCE

Licence No. :	IML	_____
Date of issue:		_____
Date of expiry:		_____
Date of cancellation:		_____
Name of holder of licence:		_____
N.R.I.C. No. :		_____
Address of holder of licence:		_____ _____
Description of area: (See attached map)		
District:	_____	Sub-district: _____
Map Sheet No:	_____	
Gazette Notification No:		_____

This licence authorises the holder thereof to mine any mineral deposit other than oil shales or mineral oils 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 Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM D

Mineral Enactment 1999

(Section 41(7) (a))

PROSPECTING LICENCE

Licence No. :	PL	_____
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:		_____ _____
Description of area: (See attached map)		
District:	_____	Sub-district: _____
Map Sheet No:	_____	
Block designation:	_____	
(RSO units/quarter units):	_____	_____
Initial area :	_____	hectares

This licence authorises the holder thereof to prospect 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 Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM E

Mineral Enactment 1999

(Section 41(7) (b))

EXPLORATION LICENCE

Licence No. :	EL	_____
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:		_____ _____
Description of area: (See attached map)		
District:	_____	Sub-district: _____
Map Sheet No:	_____	
Block designation:	_____	
(RSO units/quarter units):	_____ _____	
Initial area :	_____	hectares

This licence authorises the holder thereof to explore 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 Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No.:

(L.S.) _____

Director of Lands and Surveys

FORM F

Mineral Enactment 1999

(Section 63 (12))

MINING LEASE

File reference:	_____
Lease/Registration No.: ML:	_____
Lot No. :	_____
Area:	_____
Town/Village/Mukim:	_____
District:	_____
Date of registration:	_____
Term of lease:	_____
Date of expiry:	_____
Annual rent:	_____
Name of lessee:	_____
N.R.I.C. No. (if applicable) :	_____
Address of lessee :	_____

In consideration of the due payment of the annual rent of RM, the land mentioned above which, for purpose of identification, is shown in the attached plan, is held for the above term by the lessee named in the record of proprietorship overleaf for the mining of minerals subject to the terms and conditions contained in the Mineral Enactment 1999 and any other laws relating to mining and to the conditions attached herewith.

Dated

(L.S.) _____

Director of Lands and Surveys

Heading to be printed on all subsequent leaves of this Form

RECORD OF PROPRIETORSHIP OF DEALING
AND OF OTHER MATTERS AFFECTING TITLE

FORM G

Mineral Enactment 1999

(Section 81 (10))

PROPRIETARY MINING LICENCE

File reference:	_____
Proprietary Mining Lease/Registration No.: PML:	_____
Lot/L.O. No. :	_____
Current title No. :	_____
Area:	_____
Town/Village/Mukim:	_____
District:	_____
Date of registration:	_____
Term of lease:	_____
Date of expiry:	_____
Annual rent:	_____
Name of holder of licence:	_____
N.R.I.C. No. (if applicable) :	_____
Address of holder of licence:	_____

In consideration of the due payment of the annual rent of RM, the land mentioned above which, for purpose of identification, is shown in the attached plan, is held for the above term by the holder of the licence named in the record of proprietorship overleaf for the mining of minerals subject to the terms and conditions contained in the Mineral Enactment 1999 and any other laws relating to mining and to the conditions attached herewith.

Dated

(L.S.) _____

Director of Lands and Surveys

FORM H

Mineral Enactment 1999

(Section 100(5))

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 operating company:	_____
Name of river/stream:	_____
Mining lease/proprietary mining licence:	_____
District:	_____

Subject to existing rights in respect of water from the river/stream named above, the Director hereby grants to the holder of the licence named above the right to divert and take and use water from the said river/stream if and when available for the purpose of mining operation subject to the terms and conditions contained in the Mineral Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM I

Mineral Enactment 1999

(Section 101(2))

WATER PERMIT

Licence 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 operating company:		_____
Name of river/stream:		_____
Mining lease/proprietary mining licence:		_____
Mukim and District:		_____

Permission is hereby given to the holder of permit named above to take water from the river/stream named above for the purpose of mining operation subject to the terms and conditions contained in the Mining Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

FORM J

Mineral Enactment 1999

(Section 185(1))

LICENCE TO REMOVE DREDGING MACHINE

No. Licence No.:	RDL	_____
Name of holder of licence:	_____	
District :	_____	
Particulars of Dredging Machine :	_____	
Mining lease to be abandoned/vacated :	_____	
Mining lease to be worked:	_____	
Intervening land(s) :	_____	
Period of licence :	from	_____ to _____

This licence authorises the holder thereof to remove the above dredging machine through the intervening land(s) subject to the terms and conditions contained in the Mining Enactment 1999 and to the conditions attached herewith.

Dated

Fee paid: RM Receipt No. :

(L.S.) _____

Director of Lands and Surveys

SCHEDULE II
(Section 18)

PROVISIONS OF LAND ORDINANCE (Cap. 68)

1. Section 30(1)(g)
2. Section 38
3. Section 41
4. Section 54
5. Section 70(2)
6. Section 88
7. Section 92
8. Section 97
9. Section 100
10. Section 101
11. Section 104
12. Section 106
13. Sections 107 and 107A
14. Section 108
15. Section 109
16. Section 110
17. Section 111
18. Section 112
19. Section 114
20. Section 116
21. Section 122
22. Section 123
23. Section 124
24. Part VIII.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 3rd day of August 1999.

DATUK FRANCIS T.N. YAP,
Deputy Speaker,
State Legislative Assembly.

Sabah LawNet