

COLONY OF NORTH BORNEO

I assent,

W. A. C. GOODE,
Governor.

11TH OCTOBER, 1960.

No. 20 of 1960

An Ordinance to make better provisions for prospecting and mining of minerals and for other matters connected therewith.

Date of commencement.

[1st January, 1961]

ENACTED by the Legislature of North Borneo as follows:-

Short title and commencement.

1. This Ordinance may be cited as the Mining Ordinance, 1960, and shall come into operation on the first day of January, 1961.

PART I PRELIMINARY

Interpretation.

2. In this Ordinance, unless the context otherwise requires –

“alienate”, “Director”, “land”, “owner” and “rent” have the meanings assigned to them by the Land Ordinance [Cap. 68.];

“Chief Inspector” means such person as the Minister may, by notice in the *Gazette*, appoint to be the Chief Inspector of Mines;

“lease” means a mining lease granted under section 14 and “lessee” means the holder of such a lease;

“licence” means a licence to prospect granted under section 6 and “licensee” means the holder of such a licence;

“mine” includes any place, excavation or working whereon, wherein or whereby any operation in connexion with prospecting or mining is carried on;

“minerals” means all minerals and mineral substances other than mineral oil as defined in subsection (4) of section 24 of the Land Ordinance, and may be precious metals, precious stones or non-precious minerals but does not include earth, gravel, stone, coral, shell, guano, sand, loam or clay, nor any bricks, lime, cement or other commodities manufactured from the materials aforesaid or such other mineral substances as the Minister may by notification in the *Gazette* declare not to be minerals for the purposes of this Ordinance;

“Minister” means the Minister for the time being responsible for matters relating to natural resources;

“prospecting permit” means a permit granted under subsection (2) of sections 4;

“State land” means any land which is not for the time being vested in any person or authority other than the State or reserved for a public purpose under any written law.

“timber” and “forest produce” have the meanings assigned to them by the Forests Ordinance [*Cap. 169*];

“to mine” means intentionally to win minerals and includes any operations necessary for the purpose;

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

Prospecting and mining restricted.

3. Save as provided in this Ordinance no person shall prospect or mine in, under or upon any lands or under any waters within the State.

PART II
PROSPECTING

General prospecting permits.

4. (1) The lessee, or any person holding the written consent of the lessee, of any land alienated otherwise than for mining purposes may at any time prospect such land for metals or minerals provided on week's notice of his intention to do so is given to the Director, and thereupon in respect of such land shall have the same rights as the holder of a permit under subsection (2) has in respect to State land.

(2) It shall be lawful for the Director with the approval of the Minister to grant permits in the form of the First Schedule to prospect State land for metals or minerals on payment of such fee as may be prescribed.

Conditions of permit.

5. (1) A prospecting permit shall not be transferable and unless otherwise provided therein shall expire on the 31st December of the year in which it is granted.

(2) A prospecting permit shall convey to the holder the right -

(a) to enter any State land and undertake and continue such work only as may, in the opinion of the Director, be reasonably necessary to enable him to test the mineral bearing qualities of the land;

(b) upon payment of such royalty or export duty (if any) as may be payable under the provisions of any written law, to remove from the land and dispose of all metals or minerals raised in the course of work as aforesaid.

(3) A prospecting permit shall convey to the holder no right -

- (a) to prospect lands other than State lands except with the consent in writing of the Director;
- (b) to prospect lands which are subject to a licence without consent the in writing of the Director which shall not be given in contravention of the conditions of such licence;
- (c) to obtain a licence or lease in respect of any land.

(4) When the holder of a prospecting permit duly empowered in that behalf prospects any land other than State land he shall be liable to make compensation to the lessee or lawful occupier thereof, and in the case of reserved land to the person having the control thereof, for any disturbance or damage caused by such prospecting operations; and such compensation shall, unless settled by mutual agreement between the parties concerned, be assessed by the Director.

Prospecting licences.

6. (1) It shall be lawful for the Director with the approval of the Minister to grant licences to prospect for metals or minerals subject to such terms, conditions and limitations and upon payment of such fee as may be prescribed.

(2) For the avoidance of doubt it is hereby declared that State land over which a licence has been issued does not thereby cease to be State land.

Application for licence and particulars to be given.

7. (1) Every application for a licence or permit shall be in writing addressed to the Director and shall contain the following particulars -
- (a) the position, approximate area and boundaries of the land in respect of which the application is made;
 - (b) the metals or minerals for which it is proposed to prospect;
 - (c) the extent of the area in respect of which the applicant desires the prior right to receive a lease.

(2) Priority of application shall give no claim or priority of claim to a licence or permit.

Conditions of licence.

8. (1) A licence shall be substantially in the form of the Second Schedule.

(2) A licence shall not be transferable except with the permission of the Yang di-Pertua Negara and shall be for such term, to be specified in the licence, as the Minister may think fit. Provided that a licence may be renewed for a further period on proof, to the satisfaction of the Minister, that the licensee has done a sufficient amount of prospecting work to entitle him to such renewal.

(3) A licence shall convey to the licensee the exclusive right to prospect for metals and minerals specified in the licence within the area described therein.

(4) A licence shall convey to the licensee the prior right during the term of such licence to select and receive a lease for a block of mining land, of an area stated in the licence, from any part of the land being State land described therein on proof, to the satisfaction of the Minister that the licensee has done a sufficient amount of prospecting work, to entitle him to such lease:

Provided that –

(a) such area is available at the date of application for such lease and is not otherwise the subject of a licence;

(b) that such right shall be exercised within three months from the date of expiry of the original licence or of any renewal thereof under subsection (2)

(5) A licence shall convey to the licensee the right -

(a) to undertake and continue such work only as may in the opinion of the Chief Inspector, be reasonably necessary to enable him to test the mineral bearing qualities of the lands in respect of metals or minerals specified in the licence;

- (b) to remove from the land and dispose of all metals or minerals specified in the licence raised in the course of work as aforesaid.
- (6) A licence shall convey to the licensee no right -
 - (a) to prospect lands other than State lands except with the consent in writing of the Director;
 - (b) to enter upon any land which shall at the date of such licence be subject to, or the subject of an application for, a mining lease.
- (7)
 - (a) the licensee shall, as and when so required by the Director, clear and demarcate on the ground the boundaries of the licence area, except where in the opinion of the Director suitable natural boundaries of the licence render this unnecessary, and plot such boundaries on a map on a scale 1:12,500 and deliver such map and field notes on which it is based to the Director;
 - (b) any dispute or difference between the Director and the licensee arising out of the demarcation and plotting of the boundaries under this section shall be referred to the Minister whose decision shall be final;
 - (c) the boundaries cleared and demarcated in accordance with the provisions of this section shall be maintained throughout the period of the licence by the licensee to the satisfaction of the Director.
- (8) Where the holder of a licence duly empowered in that behalf prospects any land other than State land he shall be liable to make compensation to the lessee or lawful occupier thereof, and in the case of reserved land to the person having the control thereof, for any disturbance or damage caused by such prospecting operations; and such compensation shall, unless settled by mutual agreement between the parties concerned, be assessed by the Director.
- (9) A licence may impose upon the licensee an obligation to carry out a minimum amount of work thereunder and may require such form and amount of surety as may be considered necessary to ensure that such obligation is fulfilled.

Reservation of right to alienate land for purposes other than mining.

9. Nothing in this Part shall limit the alienation under the provisions of the Land Ordinance [Cap. 68.] of State land for any purposes or the granting under the provisions of the Forests Ordinance [Cap. 169.] of licences to cut, take or remove timber and forest produce from any land notwithstanding that the land so alienated or affected may be, at the date of alienation, within the area described in any prospecting licence.

Preservation of timber.

10. A prospecting permit or licence shall convey to the holder or licensee the right to destroy, cut or take from State land such timber and forest produce as may, in the opinion of the Conservator of Forests, be necessary for the proper pursuit of prospecting operations, including the construction of temporary housing, but no right to remove any such timber or forest produce from the licence area.

Preservation of water-courses and public works.

11. A prospecting permit or licence shall convey to the holder or licensee no right to interfere with the flow or with the banks of any river, creek, stream, water-course or the sea shore or to undertake any work within five chains of any public railway, road, canal, navigable river, reservoir, irrigation work, aqueduct, building, garden or burial ground without the consent in writing of the Director and in accordance with such terms and conditions as the Director may impose.

Production of permits and licences, inspection, etc.

12. (1) Every holder of a prospecting permit and every licensee shall produce his permit or licence at all reasonable time when required to do so by the Director or by any person duty authorised by him in that behalf.

(2) Every licensee, holder of a prospecting permit or person prospecting under the provisions of subsection (1) of section 4 shall permit the Chief Inspector or any person duly authorized by him, at all reasonable times, to inspect any prospecting operations, and shall, at his own cost and expense -

- (a) render, at such times and in such form as the Chief Inspector may specify, such documents and information relating to the prospecting operations as the Chief Inspector may require;
- (b) within one month of the expiration of his licence or permit, or the completion of such prospecting, as the case may be, render to the Chief Inspector a full, true, particulars and just account of the results of his prospecting operations.

(3) Any documents or information rendered under paragraph (a) of subsection (2) shall, during the term of the licence or permit, or continuation of prospecting under subsection (1) of section 4, as the case may be, be treated as confidential by the Chief Inspector save in so far as the person by whom, or on whose behalf, the same are rendered may permit, which permission shall not be unreasonably withheld:

Provided that the Chief Inspector shall, without such permission, be entitled at any time to make use of any information so received for the purpose of preparing and publishing aggregated returns and general reports or for the purpose of arbitration or litigation between the Government and the licensee.

Cancellation of permits and licences.

13. Every prospecting permit or licence shall be liable to be cancelled by the Director upon proof of the breach of any of the conditions thereof or of any of the provisions of this Ordinance.

PART III MINING

Mining Leases.

14. Subject to the provisions of this Ordinance the Minister with the approval of the Cabinet may alienate State land for mining purposes for such period and on payment of such premia, royalty, rent and on such other conditions as may be specified in the lease.

Application for mining lease.

15. Every application for a lease of land for mining purposes shall be made to the Director in the form for applications for land prescribed by the Land Ordinance [Cap. 68.], and shall be dealt with as prescribed in such Ordinance.

Land laws to apply generally.

16. Every lease of land for mining purposes shall be subject to the provisions of the Land Ordinance [Cap. 68.] except where the same are inconsistent with the provisions of this Ordinance or with the terms of the lease.

Implied rights of lessee.

17. Every lease shall vest in the lessee thereof in the absence of any express provision to the contrary the following rights -

- (a) the right to work such metals and minerals as are specified in the lease and are found upon or beneath the land, and, subject to the provisions of paragraph (c), to remove, dispose of, dress, and treat the same during such term as may be mentioned in the lease;
- (b) the right to use such portion of the land as may be required for the purpose of erecting houses, labourers' quarters, sheds or other building or of growing such plants and vegetables as may in the opinion of the Chief Inspector be reasonable for the purposes of the mine or for the use of the labourers;
- (c) subject to the provisions of paragraph (a) of subsection (1) of section 30 of the Land Ordinance [Cap. 68.] the right to all timber and other forest produce upon the land but no right, unless authorised under any other written law, to remove beyond the boundaries of the said land for any purpose (excepting only for the extraction therefrom of any metal or mineral ore) any timber or other forest produce or any earth, gravel, stone, coral, shell, guano, sand, loam or clay or any bricks, lime or other commodities manufactured from the material aforesaid.

Implied conditions on part of lessee.

18. There shall be implied in every lease in the absence of any express provision to the contrary the following covenants and conditions on the part of the lessee -

- (a) that the lessee will duly pay the rent and any royalty that may become due to the Government at such time and place in such manner as may be specified in the lease, and to such persons as may from time to time be authorised to receive the same;
- (b) that the lessee will clear, demarcate and maintain on the ground the boundaries of the mining lease and will plot such boundaries on a map on a scale of 1:12,500 and deliver such map and field notes on which it is based to the Director;
- (c) the mining operations shall be commenced upon the land within a period of six months from the date of issue of the lease;
- (d) that thereafter the lessee shall not at any time during the term of the lease fail for a period of more than six consecutive months substantially and efficiently to carry on mining operations on the land;
- (e) that if at any time there shall be discovered on any portion of the land which is in process of being worked for alluvial deposits any mineral in the form of lodes, beds, pockets, stock-works or similar formations and the lessee be required in writing by the Minister to work the same, he shall commence to do so in a proper and workmanlike manner within twelve months from the date of receipt of such requisition and in default of so doing he shall be bound to surrender to the State, if so required, such portion of the land as the Minister may direct:

Provided that he shall receive reasonable compensation in respect of such loss or damage, if any, as may have been sustained by him in consequence of such surrender, but so that such compensation shall not include any sum on account of the value of any mineral deposit which he has so failed to work as aforesaid, and such compensation shall be

assessed in the manner provided by the Land Acquisition Ordinance [Cap. 69.], for the assessment of compensation for land acquired for public purposes;

- (f) that the lessee will carry on all his mining operations in an orderly, skilful and workmanlike manner and in particular but without prejudice to the generality of the foregoing, so that the mine will not cause danger or damage to persons employed in or about the mine or the owners or occupiers of other lands;
- (g) that the lessee will not use or permit to be used any portion of the land for any purposes other than those mentioned in section 17 without the written authority of the Director;
- (h) that the lessee shall cause to be kept true and sufficient books of account of the mining and other business carried on upon the land, and of the disposal of the metals and minerals obtained and will, if so required, produce or cause to be produced such books for the inspection of the Chief Inspector or of any person duly authorised by him that behalf;
- (i) that the lessee shall allow over the land such access to adjoining land as shall not in the opinion of the Chief Inspector unduly interfere with his rights under the lease;
- (j) that all Government officers duly authorised in that behalf shall at all reasonable times have free access to the land and to all workings and building in or upon the same and to any treatment plant used in connection with mining, and that all such officers be permitted to make examination by boring, taking samples or otherwise and shall receive from the lessee all reasonable facilities for making such examinations;
- (k) that the lessee will forthwith report to the Director the discovery of any mineral oil (as defined in subsection (4) of section 24 of the Land Ordinance [Cap. 68.]) or of any mineral of economic value other than that for which the lease was granted.

- (l) that the lessee will render to the Chief Inspector as and when required such documents and information relating to the mining operations as the Chief Inspector may require:

Provided that the provisions of subsection (3) of section 12 shall, *mutatis mutandis* apply to all such documents and information.

No transfer of lease without consent.

19. A lessee shall not transfer or assign his lease or any part thereof without the consent of the Minister signified by endorsement thereon.

Power to Chief Inspector to close mine.

20. (1) If at any time it is shown to the satisfaction of the Chief Inspector that a mine is in such condition as to render mining dangerous to the safety or health of persons employed in or about such mine, the Chief Inspector may order either that such mine shall be closed, and a notice to that effect be published in the *Gazette*, or that such work be executed as will enable mining to be carried out with due regard to the safety or health of persons in or about such mine.

(2) Any person who fails to comply with any order made under this section shall be guilty of an offence and shall be liable to a fine of ten thousand dollars and imprisonment for one year and in addition shall be liable to a further fine of two thousand dollars for every day during which the default continues.

Liability to forfeiture.

21. Breach of any of the covenants and conditions described in section 18 shall render the lease liable to forfeiture, but no such forfeiture shall be enforced unless the lessee shall have failed to remedy any such breach within three months of the receipt of a notice in writing from the Director calling upon him to do so.

Receipt of rent not to prevent forfeiture.

22. In any case in which a lease has become liable to forfeiture such forfeiture may be enforced notwithstanding the fact that rent may have been received in respect of the said lease, but, if the forfeiture is enforced, any rent received in respect of the year in which the forfeiture is enforced shall be repaid to the lessee.

Control of water.

23. (1) The entire property in and control of all rivers, creeks, streams, water-courses and the sea shore below high water mark is reserved to the State and no person shall in the course of mining operations interfere with the bank of any river, creek, stream, water-course or sea shore or divert, contaminate or diminish or otherwise interfere with the flow of any river, creeks, stream, water-course or sea shore without the consent in writing of the Director and upon such terms and conditions as the Director may impose.

(2) Nothing in this section shall be deemed to derogate from the provisions of the Water Supply Ordinance 1961, or shall be read as authorising the Director to give any consent or impose any terms or conditions in contravention of any of the provisions of such Ordinance.

Resumption of alienated land.

24. Notwithstanding the provisions of subsection (1) of section 24 of the Land Ordinance [Cap. 68.], as to compensation to the lessee for surface damage, all lands alienated otherwise than for mining purposes before or after the commencement of this Ordinance may be resumed for mining purpose as if such purposes were a public purpose within the provisions of the Land Acquisition Ordinance [Cap. 69.].

PART IV
GENERAL PROVISIONS

Appeals.

25. Any person aggrieved by any Order or decision of the Director or of the Chief Inspector may, within twenty-eight days of such order or decision being communicated to him, appeal therefrom to the Minister whose decision shall be final.

Force Majeure.

25 A. (1) Failure on the part of a licensee or lessee to fulfil any of the terms and conditions of his licence or lease shall not give the Government any claim against him or be deemed to be a breach of the licence or lease in so far only as such failure arises from force majeure, and if through force majeure such fulfilment is delayed the period of such delay shall be added to the period fixed by the licence or lease.

(2) For the purpose of this section, "force majeure" includes act of God, war, insurrection, riot, civil commotion, storm, tidal wave, flood, lightning, explosion, fire, earthquake, and any other happening which a licensee or lessee could not reasonably prevent or control.

Radio-active minerals.

26. Any person, whether the holder of a prospecting permit, licence or lease or not, shall within one month from the discovery of any radio-active mineral, being a substance specified in the Third Schedule, report such discovery to the Chief Inspector, and shall therewith and at the end of every month thereafter during which any further discovery or any working of any radio-active mineral shall have taken place make a further report to the Chief Inspector and shall, upon notice being served upon him signed by the Director, provide all such detailed information in his possession as the Director may require in addition to such other information as may be required under any other provisions of this Ordinance.

Offences and penalties.

27. (1) Any person found to be prospecting or carrying on mining operations upon any land, or doing any act with the view to prospecting or carrying on mining operations upon the same, without having received lawful authority to prospect the same or to carry on such mining operations thereon under any of the provisions of this Ordinance, or in breach of any of the conditions of such authority, shall be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars and one hundred dollars for every day during which the offence continues and all machinery, tools, plant, buildings or other property, together with any ore or other product which may be found upon, or proved to have been obtained from, the said land shall be liable to forfeiture.

(2) Any person in breach of or contravening any provision of this Ordinance for which no specific penalty is provided shall be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars.

Power to make regulations.

28. (1) The Minister may make regulations to provide for -
- (a) the regulation of mining operations and regulating the quarrying of earth, gravel, stone, coral, shell, guano, sand, loam and clay and the adoption in or about mines or quarries of any precautions necessary for the prevention of accidents;
 - (b) the prohibition of the employment of specified classes of persons in underground working;
 - (c) the furnishing by owners or managers of mines of statistical returns and the keeping and production by them of books and plans;
 - (d) the appointment of officers to carry out the duties assigned to the Chief Inspector or Director and the appointment of Inspectors and the assignment to them of duties and powers;
 - (e) the service of notices;
 - (f) the fixing of premia, rents, royalties and fees for the purposes of this Ordinance;
 - (g) any other matters required to be prescribed or as to which subsidiary may be necessary for giving effect to the provisions of this Ordinance.
- (2) Any regulations under this section may provide that a breach or contravention of any regulation shall constitute an offence and may provide penalties by way of fine for such offence and such regulation may also impose different fines in case of successive or continuous contraventions but no such penalty shall for any one offence exceed one thousand dollars and in the case of a continuing offence no penalty shall exceed a fine of one hundred dollars for every day during which such offence continued.
- (3) The Minister may, by order, add to, vary or revoke any of the Schedules to this Ordinance.

Amendment of section 24 of the Land Ordinance.

29. Section 24 of the Land Ordinance [*Cap. 68.*] is amended by deleting subsection (2) thereof and substituting therefore the following subsection -

“(2) It shall be lawful, and shall be deemed always to have been lawful, for the Governor to grant licences under this Ordinance to other to search for, win, carry away and dispose of mineral oils and to grant leases of the same, together with the right to enter upon and occupy any lands for the purpose of operations under any such licences or leases, and all such other rights incidental or supplementary thereto as to him may seem proper.”

Repeal.

30. The Mining Ordinance [*Cap. 79.*], including subsidiary legislation made thereunder, is repealed.

FIRST SCHEDULE
THE MINING ORDINANCE
PROSPECTING PERMIT
(Section 4)

This permit authorises of
to prospect for on State
land.

This permit expires on the 31st December, 19.....

Date this day of, 19.....

Fee paid \$

..... Director

SECOND SCHEDULE
THE MINING ORDINANCE
PROSPECTING LICENCE
(Section 8)

This licence authorises of

- (a) to prospect for the following metals or minerals, namely :-
for the period of commencing from the
..... day of, 19..... within the area
hereunder described, subject to the conditions and limitations contained in the
Mining Ordinance and to the following special conditions :-

(b) subject to the provisions of section 8 to select and receive a lease for
..... acres of State land within the area hereunder described
on proof to the satisfaction of the Minister that the licensee has done a sufficient
amount of prospecting work to entitle him to such lease.

This licence is liable to cancellation by the Director if the licensee shall cease altogether to
work the area hereunder describe for a period of

Description of prospecting area Position

Approximate area

Boundaries N.

S.

E.

W.

Dated this day of, 19.....

Fee paid \$.....

..... Director

THIRD SCHEDULE
(Section 26)

Minerals which contain by weight at least 0.05 per cent of uranium or thorium or any combination thereof including but not limited to –

- (a) monazite sand or other ores containing thorium;
- (b) carnotite, pitchblende or other ores containing uranium.

Passed this 28th day of September, 1960.

R. A. LIND,
Clerk of Legislative Council.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the Legislative Council and found by me to be a true and correct copy of the said Bill.

R. A. LIND,
Clerk of Legislative Council.