

CHAPTER 120.

RECONSTITUTION OF LAND TITLE REGISTERS.

To provide for the reconstitution of Registers of Title and Native Title Registers which have been lost or destroyed during the period of the Japanese occupation.

[17TH APRIL, 1947.]

(In force on the Mainland only)

Short title.

1. This Ordinance may be cited as the Reconstitution of Land Title Registers Ordinance.

Interpretation.

2. In this Ordinance unless the context otherwise requires –

the words “alienate,” “Collector,” “dealing,” “Native Title,” “owner,” and “Register of Titles” shall have the meanings assigned to them by the Land Ordinance;

“Commissioner” means the Commissioner of Lands appointed under the Land Ordinance and includes any Deputy Commissioner appointed by the Governor to exercise the powers of the Commissioner for all or any of the purposes of this Ordinance;

“extract” means the copy of the entry in the Native Title Register or the Field Register, as the case may be, issued in accordance with the provisions of section 67 or section 68 of the Land Ordinance [Cap. 68.] and includes a certified copy thereof issued in accordance with the provisions of section 120 of that Ordinance;

“issue document of title” means the counterpart of a Lease or Provisional Lease issued in accordance with the provisions of section 90 of the Land Ordinance [Cap. 68.] and includes a continuation title issued under section 92 of that Ordinance and

a certified copy thereof issued in accordance with the provisions of section 120 of that Ordinance;

“to register” means to enter in the Register of Titles or in the Native Title Register or in the Field Register, as the case may be;

“register document of title” means the counterpart of the issue document of title filed in the Register of Titles;

“title” means any Lease, Provisional Lease or Native Title.

Duties of Commissioner and Collectors.

3. (1) The Commissioner shall within one month of the commencement of this Ordinance prepare a list of all Registers of Title, Native Title Registers and Field Registers, which have been lost or destroyed and may from time to time revise such list.

(2) The Commissioner shall send copies of such part of such list as is applicable to his district to every Collector who shall forthwith post a copy thereof on the notice board outside the District Office and at such other place as he thinks fit.

(3) It shall be the duty of the Commissioner and of every Collector to use their utmost endeavours to cause notice of the effect of the provisions of this Ordinance to be given as soon as possible and in such manner as they think fit to all persons who, in their opinion, ought to have notice thereof.

Application for new titles when Register is lost.

4. (1) In any case, where a register document of title or a Native Title, as the case may be, has been lost or destroyed, but the issue document of title or the extract, as the case may be, has not been lost or destroyed the person claiming to be the owner of any land alienated under such lost or destroyed title or his executors or administrators or his duly appointed attorney shall within six months of the commencement of this Ordinance make an application to the Collector of the district in which such land is situated to be registered as the owner thereof.

(2) Every such application shall be accompanied by the issue document of title or the extract, as the case may be, and shall be supported by a statutory declaration substantially in the form of the First Schedule.

(3) If the issue document of title, or the extract, as the case may be, is not in the possession of the applicant he shall inform the Collector of the person in whose possession it is, and in any such case the Collector shall forthwith issue a notice substantially in the form of the Second Schedule to the person alleged to be in possession of such issue document of title or extract, as the case may be, requiring such person to produce the same. The Collector shall issue a receipt, substantially in the form of the Third Schedule for such issue document of title or extract, as the case may be, to the person who delivers the same to him.

(4) As soon as may be after the receipt of such application the Collector shall prepare a notice in the form of the Fourth Schedule, and shall post such notice on the notice board outside the District Office and shall forthwith serve a copy thereof on all persons who, from endorsement on the issue document of title or the extract, as the case may be, or for any other reason appear to the Collector to have any interest in the land, and on the occupiers of land adjoining the land to which such application relates.

(5) Any person who claims any interest in such land or who, for any reason, objects to the grant of such application, may lodge his objection at the office of the Collector.

(6) On the expiration of six weeks from the date upon which such notice has been posted in accordance with subsection 4 the Collector shall –

(a) in the case of a Native Title hold an enquiry, hear the objections, if any, to the grant of such application and make such order thereon as to him seems just; and

(b) in the case of any title other than a Native Title transmit to the Commissioner the application and documents referred to in subsection (2), the objections, if any, lodged in accordance with subsection (5) and any other documents or information which in the opinion of the Collector are relevant.

(7) As soon as may be after the receipt of the documents referred to in paragraph (b) of the preceding subsection the Commissioner shall hold an enquiry, hear the objections, if any, to the grant of such application and make such order thereon as to him seems just.

Power to make entry in Native Title Registers.

5. Where an order is made under paragraph (a) of subsection (6) of section 4 the Collector shall, after the time for filing an appeal has expired, and subject to the provisions of section 13 –

- (a) cancel the extract (but not so as to obliterate it) and file such cancelled extract in the record of enquiry; and
- (b) make an entry in the Native Title Register exactly in accordance with the terms and conditions contained in such cancelled extract and issue to the person in whose favour such order is made an extract of such entry:

Provided that where the extract was produced to the Collector, either voluntarily or in pursuance of a notice issued under subsection (3) of section 4 by a person other than the applicant and a receipt was issued to such person in accordance with the provisions of such subsection the Collector may on production of such receipt by such person deliver the new extract to him.

Power to make entry in Register of Titles.

6. Where an order is made under subsection (7) of section 4 the Commissioner shall, after the time prescribed for filing an appeal has expired, and subject to the provisions of section 13 –

- (a) cancel the issue document of title (but not so as to obliterate it) and file such cancelled issue document of title in the record of enquiry; and
- (b) shall issue to the person in whose favour such order is made a title of the same character and upon the same terms and subject to the same conditions as those contained in such cancelled issue document of title:

Provided that where the issue document of title was produced to the Collector either voluntarily or in pursuance of a notice issued under subsection (3) of section 4 by a person other than the applicant and a receipt was issued to such person in accordance with the provisions of such subsection, the Commissioner may on production of such receipt by such person deliver the new issue document of title to him.

Validity of titles issued under sections 5 and 6.

7. Any title registered in accordance with the provisions of section 5 or section 6 shall be deemed to be a new title for the purposes of section 10.

Application for new titles when register and issue documents of titles are lost.

8. (1) In any case where both the register document of title and the issue document of title or the Native Title and the extract, as the case may be, have been lost or destroyed the person claiming to be the owner of any land alienated under such lost or destroyed title or his executors or administrators or duly appointed attorney shall within six months of the commencement of this Ordinance make an application to the Collector of the district in which such land is situated for a new title to such land.

(2) Every such application shall be supported by a statutory declaration in the form of the Fifth Schedule.

(3) As soon as may be after the receipt of such application the Collector shall prepare a notice in the form of the Sixth Schedule and shall post such notice on the notice board outside the District Office and shall forthwith serve a copy thereof on the occupiers of land adjoining the land to which such application relates, and on all persons who appear to the Collector to have any interest in the land, and may if he considers it necessary cause a copy of such notice to be published in the *Gazette* and in any newspaper circulating in the Mainland.

(4) Any person who claims any interest in such land or who for any reason objects to the grant of such application may lodge his objections at the office of the Collector.

(5) On the expiration of three months from the date upon which such notice has been posted in accordance with subsection (3) the Collector shall –

- (a) in the case of a Native Title hold an enquiry, hear the objections, if any, to the grant of such application and make such order thereon as to him seems just; and
- (b) in the case of any title other than a Native Title, transmit to the Commissioner the application and documents referred to in subsection (2), the objections, if any, lodged in accordance with

subsection (4), and any other documents or information which in the opinion of the Collector are relevant.

(6) As soon as may be after the receipt of the documents referred to in paragraph (b) of the preceding subsection the Commissioner shall hold an enquiry, hear the objections if any, to the grant of such application and make such order thereon as to him seems just.

Power to issue new titles.

9. Where an order is made under paragraph (a) of subsection (5) or under subsection (6) of the preceding section the Commissioner, or in the case of a Native Title, the Collector shall after the time prescribed for filing an appeal has expired, and subject to the provisions of section 13, issue to the person in whose favour such order is made a new title of the same character and upon the same terms and subject to the same conditions as those upon and subject to which the original title was granted:

Provided that before issuing any such new title the Commissioner or the Collector, as the case may be, may direct that the land be re-surveyed or re-demarcated:

Provided further that if such a direction is given the Commissioner or the Collector, as the case may be, pending such re-survey or such re-demarcation, issue to the person in whose favour such order is made a provisional lease or make an entry in the Field Register and issue a copy thereof such person upon the same terms and subject to the same conditions as those upon and subject to which the original title was granted.

Validity of new titles.

10. (1) A new title issued in accordance with the provisions of this Ordinance shall be available for all purposes and uses for which the lost or destroyed original title would have been available and as valid to all intents as such original title.

(2) A copy of any memorial relating to any unsatisfied charges, existing sub-leases, caveats or orders, which were endorsed on any title replaced by any title under this Ordinance shall be endorsed on the replacing title.

Validity of Provisional Leases and entries in Field Registers.

11. (1) A provisional lease or an entry in the Field Register issued or made in accordance with the provisions of the second proviso to section 9 shall be deemed to have been issued or made under the provisions of section 49 or section 68 respectively of the Land Ordinance [Cap. 68].

(2) When any such provisional lease or entry in the Field Register has been cancelled, and a lease or entry in the Native Title Register has been issued or made in lieu thereof in accordance with the provisions of section 49 or section 68 of the Land Ordinance [Cap. 68.], the lease or entry in the Native Title Register issued or made in lieu of such provisional lease or entry in the Field Register shall be deemed to be a new title for the purposes of section 10 of this Ordinance.

Appeals.

12. (1) Any person aggrieved by any decision of the Collector or Commissioner under this Ordinance may appeal in the manner prescribed by section 41 of the Land Ordinance [Cap. 68.], and the provisions of that section shall apply to any such appeal.

(2) In any such appeal the Commissioner or the High Court, as the case may be, shall make such order as to him or it seems just, and shall certify such order to the Commissioner or to the Collector, as the case may be.

Power to give effect to orders made on appeal.

13. (1) On receipt of any such order, as is referred to in the preceding section the Commissioner or the Collector, as the case may be, shall file such order in the record of enquiry.

(2) Where an appeal is not dismissed, and the decision of the Collector or Commissioner, as the case may be is revised or varied the Collector or Commissioner, as the case may be, shall, as soon as may be after the receipt of any such order, take such steps as are necessary to give effect thereto and for this purpose shall have power to rectify the Register of Titles or the native Title Register, as the case may be, and to make such alterations as are necessary to the documents of title and to the extracts.

Power to enforce attendance of witnesses.

14. In every enquiry or appeal held under this Ordinance the Commissioner and the Collector shall have the powers conferred upon the Commissioner and the Collector respectively by section 44 of the Land Ordinance [Cap. 68].

Coercion or duress.

15. (1) If in any enquiry held under section 4 or section 8, it is alleged by any interested party that any dealing was the result of coercion or duress as defined in section 12 of the Titles to Land (Occupation Period) Ordinance, 1949 [Ord. No. 3 of 1949.], the Commissioner or Collector, as the case may be, shall forthwith adjourn the enquiry and direct the party so alleging to make an application to the Court in accordance with the provisions of section 12 of the said Ordinance.

(2) The Court by which such application is heard shall send a certified copy of its judgment to the Collector who shall proceed with the enquiry giving effect to such judgment.

(3) If the person so alleging does not make an application within one month of the date upon which he was so directed, the Collector shall proceed with the enquiry as if no such allegation had been made.

Power to accept applications out of time.

16. Notwithstanding the provisions of subsection (1) of section 4, and of subsection (1) of section 8 a Collector may, in his discretion accept an application after the expiration of six months from the commencement of this Ordinance if it is shown to his satisfaction that for any good and sufficient reason the applicant was prevented from making or unable to make the application within six months of the commencement of this Ordinance.

Protection of persons acting in execution of duty.

17. (1) No action shall be brought against any person for anything done or *bona fide* intended to be done in the exercise or supposed exercise of the powers given by this Ordinance, or by any rules made thereunder;

(a) without giving to such person one month's previous notice in writing of the intended action, and of the cause thereof;

(b) after the expiration of three months from the date of the accrual of the cause of action.

(2) In every action so brought it shall be expressly alleged that the defendant acted maliciously or negligently and without reasonable or probable cause, and if at the trial the plaintiff shall fail to prove such allegation, judgment shall be given for the defendant.

(3) Though judgment shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Court before which the action is tried shall certify approbation of the action.

Power to make rules.

18. (1) The Governor may make rules for more effectually carrying out the provisions of this Ordinance and for prescribing fees in respect of any application or re-survey made under the provisions of this Ordinance.

Remission of fees, etc.

(2) Notwithstanding anything to the contrary contained in any written law the Governor may exempt any class of documents required to be signed, attested, registered or filed in pursuance of the provisions of this Ordinance from any stamp duty, fee or other dues or charges to which it would have been liable but for the provisions of this subsection, and may, if he thinks fit, delegate to the Commissioner similar power to exempt in any particular case.

Penalty.

19. Any person who wilfully neglects to comply with the requirements of any notice duly served upon him by a Collector in accordance with the provisions of this Ordinance, and any person who contravenes the provisions of this Ordinance shall be guilty of an offence and shall on conviction be liable to a fine of five hundred dollars, or in default, to simple imprisonment for six months.

Applications under sections 4 or 8 during the period of enemy occupation.

20. (1) Notwithstanding anything contained in this Ordinance, when any application under section 4 or section 8 is for a title to replace a title issued between the 24th day of

December, 1941 and the 17th day of October, 1945, the Collector shall transmit to the Commissioner such application and the documents relating thereto.

(2) On receipt of such application and documents the Commissioner shall hold an enquiry, hear the objections, if any, to the grant of such application and, if he is satisfied that the alienation of the land was in accordance with pre-occupation law, issue a new title of the same character and upon the same terms and subject to the same conditions as those upon and subject to which the original title was granted, and may if the alienation was not in accordance with pre-occupation law refuse to issue a title or issue a title upon such terms and subject to such conditions as he considers reasonable.

(3) In this section "pre-occupation law" means the law as it existed on the 23rd day of December, 1941.

FIRST SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 4 (2).)
STATUTORY DECLARATION.

I/We being the owner(s), executor(s), administrator(s), attorney of the owner(s) of the land held under the following title(s) do solemnly and sincerely declare that the land alienated under the aforesaid title(s) is the property of (the said) that the only persons having any interest therein are and I/We make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Ordinance.

Subscribed and solemnly declared by the above-named at in the Colony of this day of, 19

Before me

.....Magistrate.

SECOND SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 4 (3).)

NOTICE TO PRODUCE ISSUE DOCUMENT OF TITLE/EXTRACT*

To

In pursuance of the powers conferred upon me by section 4 of the Reconstitution of Land Title Registers Ordinance, I hereby give you notice to produce to me within ten days from the date hereof the issue document of title/ extract* specified hereunder† :

And take notice that if you fail to comply with the terms of this notice you render yourself liable to a fine of five hundred dollars or in default to simple imprisonment for six months.

Dated this day of19

..... Collector of Land Revenue.

* Strike out whichever is inapplicable.

Here set out the particulars of the issue document of title/extract.

THIRD SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 4 (3).)
RECEIPT FOR ISSUE DOCUMENT OF TITLE/EXTRACT*

Received from the
issue document of title/extract* specified hereunder.†

Dated this day of 19

..... Collector of Land Revenue.

* Strike out whichever is inapplicable.

Here set out the particulars of the issue document of title/extract.

FOURTH SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 4 (4).)
NOTICE.

Whereas

..... who
claims to be the owner of the land held under the following title, viz :

And Whereas the Register of Title/Native Title* has been lost or destroyed.

And Whereas the said has applied to the
Collector of Land Revenue, to be registered as the owner of such land, NOTICE is
hereby given that any person claiming any interest in the said land or objecting to the
applicant being registered as the owner of such land is required to notify the Collector
of his interest or lodge his objections within six weeks from the date hereof.

Dated this day of19

..... Collector of Land Revenue.

* Strike out whichever is inapplicable.

FIFTH SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 8 (2).)
STATUTORY DECLARATION.

I/We being
the owner(s), executor(s), administrator(s), attorney of the owner(s) of*

do solemnly and sincerely declare that such land is the property of (the said)
..... that the only other persons having any
interest therein are and I/We make this solemn
declaration conscientiously believing the same to be true and by virtue of the
provisions of the Statutory Declarations Ordinance.

Subscribed and solemnly declared by the above-named
..... at
in the Colony of this day of, 19
.....

Before me,

..... Magistrate.

* Here the applicant should set out all the particulars and information which he can
give with regard to the title, boundaries, etc. of such land.

SIXTH SCHEDULE.
COLONY OF NORTH BORNEO
THE RECONSTITUTION OF LAND TITLE REGISTERS
ORDINANCE.
(SECTION 8 (3).)
NOTICE

Whereas

..... claim(s)
to be the owner of*

And Whereas the register and the issue document of Title/Native Title and the extract† have been lost or destroyed.

And Whereas the said has applied to the Collector of Land Revenue for a new title to such land,

Notice is hereby given that any person claiming any interest in the said land or objecting to the issue of a new title to the applicant is required to notify the Collector of his interest or lodge his objections within three months from the date hereof.

Dated this day of 19

..... Collector of Land Revenue.

* Here the applicant should set out all the particulars and information which he can give with regard to the title, boundaries, etc. of such land.

† Strike out whichever is inapplicable.