

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Minerals and Energy at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining Act.

Being an Act relating to mining and for related purposes.

1. Compliance with Constitutional requirements.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the Constitution, namely—

- (a) Section 44 (*freedom from arbitrary search and entry*); and
- (b) Section 49 (*right to privacy*); and
- (c) Section 51 (*right to freedom of information*),

is a law that is made for that purpose, taking into account the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled—

- (d) national sovereignty and self reliance; and
- (e) natural resources and environment,

for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Government*, it is declared that this Act relates to a matter of national interest.

2. Interpretation.

(1) In this Act, unless the contrary intention appears—

“agent” means a person acting on behalf of the owner or occupier and includes a person having the care or direction of a mine or of any part of, or any works connected with a mine;

“alluvial ground” means ground containing gold or other minerals found in detritus resulting from the disintegration of older deposits whose constituents have been brought into their present position by mechanical agencies;

“the Board” means the Mining Advisory Board established by Section 8;

“business area” means a portion of Government land occupied by the holder of a business licence;

“business licence” means a business licence issued under the provisions of the 1928 Act;

“claim” means—

(a) the portion of Government land lawfully taken possession of by any person who is entitled to occupy it for the purpose of mining; or

(b) any number of such portions lawfully amalgamated by the holders, but does not include land comprised in a mining lease;

“the commencement date” means 8 June 1978, being the date on which *Mining Act (Amalgamated)* 1977 came into force;

“the Director” means the Director appointed under Section 6;

"dredging or sluicing lease" means a dredging or sluicing lease granted under the 1922 Act;

"drive" means a passage in a mine in any direction or in any angle, other than a shaft, but may, where the context so indicates, include an extension or continuation of a shaft;

"earth" means any rock, stone, quartz, clay, sand, soil or mineral;

"gold" includes—

- (a) platinum, osmium, iridium and any metal belonging to the platinum group of metals; and
- (b) gold or any earth or substance containing or having mixed in its substance, or set apart for the purpose of extracting, any gold, platinum, osmium, iridium or metal belonging to the platinum group of metals;

"gold-field" means any portion of Government land proclaimed or constituted a gold-field;

"gold-mining lease" means a lease for the purpose of mining for gold or for purposes connected with such mining;

"Government land" means land other than—

- (a) customary land that is not leased by the owners to the State; and
- (b) land held by a person other than the State for an estate greater than a term of years; and
- (c) land which is the subject of an existing State lease under the *Land Act*, and includes land reserved, or deemed to have been reserved, from lease under Section 25 of the *Land Act*, whether or not that land has been placed, or is deemed to have been placed, under the control of trustees under Section 26 of that Act;

"improvements" means—

- (a) any building or structure; and
- (b) any yard, fence, wall or other erection, construction or appliance affixed to or forming part of the land—
 - (i) for the working or management of the land or of stock depastured on the land; or
 - (ii) for maintaining or increasing the natural capacity of the land to produce; or
 - (iii) to give shelter and enjoyment to humans and animals; and
- (c) any planted crop or trees, whether planted for commercial or domestic purposes,

and includes—

- (d) any well, bore, reservoir, spring, dam or other artificial water course or watering place; and
- (e) any road, track, footpath, railway, tramway, culvert, bridge or crossing; and
- (f) the site of any sports ground, recreation area, sing sing ground, village or community meeting place, burial place or sacred ground;

"insolvency" includes liquidation by arrangement;

"inspector" means an inspector under the *Mining (Safety) Act*;

"lease for mining purposes" means a lease granted under Division VII.5;

"machinery" means steam or other engines, boilers, furnaces, stampers, rollers, winding and pumping gear, chains, trucks, tramways, tackle, blocks, ropes, tools and all appliances used in or about a mine, or about any works used for the treatment of metals or minerals;

"mine" means any place, pit, shaft, drive, level or other excavation, drift, gutter, vein, lode or reef in or by which any operation for or in connexion with mining purposes is or is proposed to be carried on;

"mineral" includes—

(a) silver, copper, tin, metals, ores; and

(b) substances containing metals, gems, precious stones, coal, shale, mineral oils and valuable earths and substances,

but does not include petroleum as defined in Section 2 of the *Petroleum Act*;

"mineral field" means any portion of Government land proclaimed or constituted a mineral field under this Act;

"mineral lease" means a lease (including a dredging or sluicing lease) for the purpose of mining for any mineral other than gold, or for purposes connected with such mining;

"mining" means mining or quarrying;

"mining lease" means a gold-mining lease, mineral lease or special mining lease;

"mining manager" or "manager" means the person who has the management of the mining operations carried on in or about a mine;

"mining purposes" means the purposes of—

(a) searching for or obtaining gold or any other mineral from earth by any mode or method of mining; and

(b) stacking or otherwise storing any earth or ore containing gold or any mineral,

and includes—

(c) cutting and constructing any tunnel, water-race, drain, dam or reservoir; or

(d) constructing any railway or tramway; or

(e) laying any pipes for the purpose of mining; or

(f) erecting buildings and machinery to be used for any process in connexion with the extracting of gold or minerals; or

(g) pumping or raising water to or from land mined or worked or intended to be worked for the extraction of gold or minerals; or

(h) treatment of tailings on abandoned land,

and any other work that is declared under Subsection (2) to be a mining purpose;

"mining tenement" means any land—

- (a) held under a mining lease or lease for mining purposes or application for a lease; or
- (b) any claim or any area, water-race, drain, dam, reservoir, stack or accumulation of earth containing gold or any other mineral; or
- (c) any easement or right in respect of land taken up, held, occupied, used or enjoyed under or by virtue of a miner's right or business licence;

"the 1922 Act" means the *Mining Act* 1922 of the former Territory of New Guinea;

"the 1928 Act" means the *Mining Act* 1928 of the former Territory of New Guinea;

"the owner" means—

- (a) the holder of a mining tenement or a sub-lease of a tenement; or
- (b) a person in possession of such tenement with the consent of the holder;

"plan" means an original plan or section and includes a correct copy or tracing of an original plan or section;

"private land" means land other than Government land;

"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 authority" means a prospecting authority granted under Part VI.;

"the regulations" includes the forms for the time being in force under this Act;

"Registrar" means a Registrar appointed under Section 133;

"the repealed Act" means—

- (a) in relation to that part of the country formerly known as the Territory of Papua—the *Mining Act* 1937; and
- (b) in relation to that part of the country formerly known as the Territory of New Guinea—the *Mining Act* 1928;

"reserve" means a street or road or any lands that—

- (a) are for the time being set apart as a reserve for public purposes; or
- (b) are held by any corporation or person on trust for public purposes; or
- (c) are for the time being exempted from occupation for mining purposes under this Act or otherwise;

"residence area" means a portion of Government land and such portion of the surface of gold-mining leases and mineral leases as is reserved for residence purposes and occupied for the purposes of residence by the holder of a miner's right;

"shaft" means a downward excavation perpendicular or at any angle sunk from the surface designed for—

- (a) the working and removal of underground metalliferous ores, minerals or metals; or
- (b) the removal of water, or

(c) ventilation; or

(d) a travelling road for the use of such human beings or animals as are employed in the working of mines;

"Special Area" means an area declared to be a Special Area under the 1928 Act;

"special mining lease" means a lease granted under Division VII.4;

"stock" means any bull, cow, ox, heifer, steer, calf, horse, mare, gelding, colt, filly, ass, mule, sheep, goat, camel or swine;

"surveyor" means a surveyor registered under the *Survey Act*;

"this Act" includes the regulations;

"to mine" means to disturb, remove, cart, carry, wash, sift, smelt, refine, crush or otherwise deal with any earth by any mode or method for the purpose of obtaining gold or any other mineral from it;

"tribute agreement" means an agreement made by the owner of a mining tenement with any other person to work the mining tenement on terms providing that the owner shall pay to or receive from that person a portion or percentage of the gold or other minerals won or of the proceeds of their sale;

"tributer" means a person who makes a tribute agreement with the owner of a mining tenement;

"unauthorized person" means a person not being—

(a) a Government official or other person authorized by the Warden or authorized under this Act; or

(b) the lessee or licensee under this Act or a person employed by the lessee or licensee;

"Warden" means a Warden appointed under this Act and includes an acting Warden;

"Warden's Court" means any court held by or before a Warden;

"Warden's Office" means an office established under Section 123 in respect of a particular Warden's Court.

(2) The Minister may, by notice in the National Gazette, declare work to be work for the purposes of the definition of "mining purposes" in Subsection (1).

3. Suspension of application of Act to defined areas.

(1) The Minister may, by notice in the National Gazette, declare that this Act or any provision of this Act, does not apply to an area specified in the notice.

(2) Where a notice is published under Subsection (1), the Act or provision, as the case may be, shall not apply to the area specified in the notice until the notice is revoked.

4. Reservation of land.

(1) The Minister may, by notice in the National Gazette, reserve from occupation or prospecting under this Act any land specified in the notice, for such purposes and subject to such exceptions as are specified in the notice.

(2) A reservation under this section does not affect a mining tenement over any land or the occupation or use of any land in occupation under this Act, in the area specified in the notice where the tenement was in existence or the occupation had commenced at the date of publication of the notice.

5. Restriction on granting of tenements.

Notwithstanding this Act, a mining tenement shall not be granted over or in respect of land the occupation or inundation of which is authorized by a licence or lease under the *Water Resources Act*,

6. Director.

For the purposes of this Act there shall be a Director who shall be appointed by the Minister by notice in the National Gazette.

PART II.—RESERVATION TO THE STATE OF GOLD, MINERALS, ETC.

7. Gold and minerals the property of the State.

All gold and minerals in or on any land in the country are the property of the State.

PART III.—MINING ADVISORY BOARD.

8. Mining Advisory Board.

(1) A Mining Advisory Board is hereby established.

(2) Subject to Subsection (3), the Board shall consist of—

(a) the Director, who shall be the Chairman; and

(b) not more than four other members appointed by the Minister by notice in the National Gazette, one of whom shall be appointed as the Deputy Chairman.

(3) If a member of the Board, other than the Chairman or Deputy Chairman is, for any reason, unable to perform his duties as a member, that member may, in writing, appoint a person to act as his substitute for the period of his inability, and a person so appointed shall, while so appointed, be a member of the Board.

9. Meetings of the Board.

(1) The Board shall meet as often as is necessary to carry out its functions and at such times and places as the Chairman, or in his absence the Deputy Chairman, directs.

(2) At a meeting of the Board—

(a) the Chairman, or in his absence the Deputy Chairman, and two other members are a quorum; and

(b) all matters arising shall be decided by a majority of votes; and

(c) the Chairman, or in his absence the Deputy Chairman, shall have a deliberative and, in the event of an equality of votes, also a casting vote.

10. Powers and duties of Board.

(1) The Minister may refer to the Board for advice any question or matter relating to the administration of this Act.

(2) The Board shall inquire into and advise the Minister on any question or matter referred to it under Subsection (1).

(3) The referral of a question or matter under Subsection (1) shall be deemed to be a Commission issued under the *Commissions of Inquiry Act*, and the provisions of that Act, including those relating to penalties, apply to and in respect of an inquiry under this section as if the Minister were the Head of State, acting on advice, and the members of the Board were Commissioners within the meaning of that Act.

PART IV.—GOLD-FIELDS AND MINERAL FIELDS.

*Division 1.—Gold-fields.***11. Proclamation of gold-fields.**

The Minister may, by proclamation in the National Gazette—

- (a) constitute any land to be a gold-field; or
- (b) alter or amend the boundaries of, or abolish, any gold-field.

12. Provisional proclamation of gold-fields.

(1) Where the discovery of payable gold on any land is reported—

- (a) in writing under the hand of, and signed by, the person claiming to have made the discovery; or
- (b) if the person is unable to write—by a writing attested by a District Officer or Warden,

to the Warden whose office is nearest the situation of the discovery, the notification of the discovery by the Warden posted outside his office shall operate to proclaim the portion or portions of land to be a gold-field which shall be contained in a square the boundary lines of which shall be directed to the cardinal points and the central point in each boundary line shall be one kilometre from the place of discovery.

(2) A notification under Subsection (1)—

- (a) shall have the effect of a provisional proclamation of the area as a gold-field; and
- (b) shall be in force until it is revoked or cancelled or any enlarged or diminished area is proclaimed under this Act.

(2) A notification under Subsection (1) shall not be posted until the Warden is satisfied by personal inspection that payable gold has been discovered on the land.

(3) A notification under Subsection (1) operates retrospectively from the day on which the discovery was reported, and the proclamation shall, as soon as practicable after the posting of the notification be published in the National Gazette.

13. Revocation.

If the Warden to whom the discovery is reported under Section 12, or any officer authorized by the Minister for the purpose, at any time during the continuance of the provisional proclamation, reports to the Minister that the alleged discovery of payable gold does not in his opinion warrant the proclamation as a gold-field of the area, the Minister may, by notice in the National Gazette revoke and cancel the provisional proclamation of the area, and the lands comprised in the area shall then resume the same character and incidents as were attached to them before the notification of the discovery.

*Division 2.—Mineral Fields.***14. Proclamation of mineral fields.**

The Minister may, by proclamation in the National Gazette—

- (a) constitute any land to be a mineral field; or
- (b) alter or amend the boundaries of, or abolish, a mineral field; or

- (c) constitute the whole or any portion of a mineral field an area within which mining shall be carried on solely by the holders of miners' rights.

PART V.—MINERS' RIGHTS.

Division 1.—Issue, Etc.

15. Miner's right.

(1) The Minister may if he thinks fit issue, or authorize an officer to issue, miners' rights.

(2) A miner's right may be issued for a number of years not exceeding 10, and subject to this Part, may be granted to any person applying for it on payment of a sum calculated at a prescribed rate for every year for which the right is to be in force.

(3) Subject to this Act, a miner's right is not transferable.

16. Form of miner's right.

On the face of every miner's right issued under this Act shall be specified—

- (a) the date and place of issue; and
- (b) the name of the person in whose favour it is issued.

17. Issue of consolidated miners' rights.

(1) The Minister may issue or cause to be issued consolidated miners' rights.

(2) A consolidated miner's right—

(a) may be issued for any number of years not exceeding 10; and

(b) may be granted—

(i) to any company or co-operative body of persons who have agreed to work in co-ownership or co-partnership any claim taken up or held under the provisions of this Act; or

(ii) to any manager, trustee or trustees for the company or co-operative body applying for the right,

and shall during its continuance be held on behalf of the persons who are from time to time members of the company or co-operative body.

(3) A consolidated miner's right is in place of and represents and has the same force and effect as a number of existing miners' rights granted for the same period of time equal to the number of the miners' rights by virtue of which the claim or claims is or are taken possession of or held.

(4) A consolidated miner's right may be granted to any company, co-operative body or persons specified in Subsection (2) so applying on payment of a sum at the prescribed rate multiplied by the number of miners' rights which the right is to represent.

18. Duplicate of miner's right in case of loss.

If a miner's right has been accidentally lost or destroyed before the expiry of the time for which it was issued, a duplicate right may be issued for the remainder of that time—

(a) on the applicant giving satisfactory evidence to the Warden of the loss of the right; and

(b) on payment of the prescribed fee.

19. Privileges conferred by a miner's right.

The holder of a miner's right shall, subject this Act and the regulations, be entitled, except as against the State—

- (a) to take possession of, mine and occupy Government land for mining purposes; and
- (b) to cut, construct and use races, dams and reservoirs, roads and tramways required for mining purposes through and on any Government land; and
- (c) to use, by way of an easement, any unoccupied Government land; and
- (d) to put up and at any time to remove a building or other erection on land so taken up and occupied; and
- (e) for his personal use for mining or domestic purposes, and for the purpose of building himself a place of residence—
 - (i) to cut and remove timber, subject to the provisions of any Act relating to Government land for the preservation of timber; and
 - (ii) to remove any stone, clay, or gravel from any claim occupied by him or from unoccupied Government land.

20. Holder of miner's right not to mine on land in mining lease.

The holder of a miner's right shall not, except with the consent of the lessee, enter on or carry on mining operations on any land comprised in a mining lease.

21. Title to land under miner's right.

(1) A person taking up and occupying Government land by virtue of a miner's right shall, subject to the provisions of this Act and the regulations, be deemed in law to be possessed, except as against the State, of the land so taken up and occupied.

(2) All gold and minerals extracted from any land under the authority of a miner's right remain the property of the State until the payment of royalties under Section 105 in respect of it, and on such payment being made, it becomes the property of the holder of the miner's right.

(3) The holder of the land so taken up and occupied may, in the prescribed manner, assign, transfer, let or lease and encumber the land or any share or interest in it.

(4) A person shall not obtain any interest under any assignment, transfer, lease or encumbrance unless he is the holder of a miner's right authorizing him to take up and occupy the land.

Division 2.—Provisions Applicable to Miners' Rights.

22. Nature of interest in land.

The interest in land held under a miner's right shall be and be deemed to be a chattel interest, and a miner's right and all rights and privileges conferred by it shall, on the death or insolvency of the holder, devolve on and become vested in his personal representative or trustee in insolvency, as the case may be, in the same manner as if the right had been originally issued to that representative or trustee.

23. Post-dating of miner's right.

If a person who is the holder of a miner's right at any time before the expiration of its currency makes application to take out a new right, the Minister or officer authorized under Section 15(1) shall—

- (a) on production of the expiring right; and
- (b) on payment of the sum payable for a miner's right,

issue to the applicant a new right dated as of the day of the expiration which shall have the same force and efficacy as if it had been issued on that day.

24. Certain land not to be occupied¹.

- (1) Government land—

- (a) that is in lawful occupation as a yard, garden, orchard or cultivated field; and
- (b) that is in actual occupation and on which a house, shed or other building has been erected; and

(c) on which an artificial dam or reservoir has been made or well or bore sunk, shall only be liable to occupation by the holder of a miner's right on payment of compensation to be determined in the prescribed manner.

(2) The Minister may at any time, by proclamation in the National Gazette, exempt from occupation by the holder of a miner's right any specified portions of Government land or any class of Government land.

PART VI.—PROSPECTING AUTHORITIES.**25. Grant of authority.**

(1) Subject to this Act, the Minister may grant a prospecting authority in the prescribed form to any person to occupy, and prospect for gold or a specified mineral or minerals on, any land not otherwise excluded from occupation under this Act, subject to such conditions as the Minister, after receiving a report from the Board, thinks fit and specifies in the authority.

(2) The area covered by a prospecting authority shall not be more than 25 000 km².

(3) The term of a prospecting authority shall not exceed two years, but may be extended in accordance with this Part.

26. Primary and secondary authorities.

(1) Notwithstanding the grant of a prospecting authority over any land in respect of gold or specified minerals, the Minister may grant a further prospecting authority in respect of the whole or part of that land but in respect only of gold or minerals to which the first-mentioned authority does not apply and which, in the opinion of the Minister, do not normally occur in association with gold or minerals to which the first-mentioned authority applies.

(2) Where any land is common to two prospecting authorities, for the purposes of this Part the first-granted authority shall be known as the primary authority, and the subsequently-granted authority shall be known as the secondary authority.

(3) A secondary prospecting authority is subject to a condition that the holder of the authority shall so regulate and organize his operations that the holder of the primary

¹See, also, Section 176(2).

authority will not be hindered or obstructed in the carrying out of operations authorized or required under his authority.

(4) Where the holder of the secondary authority causes any hindrance or obstruction to the exercise of the rights of the holder of the primary authority, the former shall pay to the latter such amount of compensation as is assessed by the Warden in accordance with the regulations.

(5) The holder of the primary authority is entitled to object, in accordance with the regulations, to the grant of a mining tenement to the holder of the secondary authority, and the holder of the secondary authority is entitled to object to the grant of a mining tenement to the holder of the primary authority.

27. Application for prospecting authority.

An application for a prospecting authority shall be in the prescribed form and shall be dealt with as prescribed.

28. Fee.

A fee is payable for a prospecting authority, annually in advance, at the prescribed rate per square kilometre, in respect of the area held at the time of payment.

29. Extension of term.

The term of a prospecting authority may be extended for periods each not exceeding two years and (except in the case of an authority over an area not exceeding 250 km²) in respect of such area or areas not exceeding in the aggregate 50% of the area held at the commencement of the previous term, as the Minister, after receiving a report from the Board, thinks fit.

30. Terms and conditions of prospecting authorities.

The terms and conditions of a prospecting authority—

- (a) shall include a requirement for the expenditure of a specified sum of money during the currency of the authority in prospecting on the land the subject of the authority; and
- (b) shall require the deposit of a sum of money to be held as security for due performance of the terms of the authority and the provisions of this Act; and
- (c) shall stipulate a time within which prospecting shall commence; and
- (d) may include—
 - (i) a program of works approved by the Minister; and
 - (ii) a reservation of a right for any person authorized under this Act—
 - (A) to enter and prospect for alluvial gold within the area of the authority; and
 - (B) to apply for and be granted claims to mine for alluvial gold within that area.

31. Rights under prospecting authority.

Subject to Section 26 and Part X. and to the conditions of the authority, the holder of a prospecting authority has the exclusive right to prospect for gold or the minerals specified in the authority on land within the area of the authority (other than land held under a

mining tenement under this Act and land within the boundaries of a town or reserve), and for that purpose may—

- (a) enter, with his agents and servants, on the land and there drill, sink shafts, dig trenches or otherwise prospect; and
- (b) whilst engaged on bona fide prospecting operations—
 - (i) erect on the land such temporary buildings and machinery as are necessary; and
 - (ii) subject to the consent and direction of the Warden—take timber for domestic and prospecting purposes; and
- (c) subject to the *Water Resources Act*—
 - (i) take and divert water from any lake, stream or watercourse within the area; and
 - (ii) graze on the land such stock as are necessary for subsistence and prospecting operations; and
- (d) construct on the land roads, airstrips or helicopter pads necessary to give adequate access to the land for prospecting purposes.

32. Occupation fee payable to owner of private land.

(1) The holder of a prospecting authority is liable to pay, in addition to any compensation in accordance with Section 102, an occupation fee to the owner of any private land within the area of the authority for any deprivation of possession of the surface caused by or arising from the prospecting operations of the holder.

(2) Subject to Subsections (3) and (4), the occupation fee is 5% per annum of the unimproved capital value of the land of which the owner is from time to time deprived, as assessed by the Warden.

(3) The unimproved capital value shall be calculated in accordance with the *Valuation Act*.

(4) The minimum payment under this section is K2.50 per hectare per year.

33. Saving of other mining tenements.

The grant of a prospecting authority shall not affect any mining tenement already granted within the area of the authority.

34. Duties of holders.

The holder of a prospecting authority shall—

- (a) within the time stipulated in the authority, and during the whole term of the authority, carry out prospecting operations to the satisfaction of the Director; and
- (b) at the expiration of three months immediately after the date of the grant, and every three months afterwards during the term of the authority, forward to the Director, in duplicate, a report giving such details as the Director may require relating to prospecting operations conducted during the immediately-preceding three months; and
- (c) at the expiration of 12 months immediately after the date of the grant, and every 12 months afterwards during the term of the authority, forward to the Director, in duplicate, a report giving such details as the Director may require

relating to prospecting operations conducted during the immediately-preceding 12 months; and

- (d) on the relinquishment or surrender of any portion of the authority, forward to the Director, in duplicate, a report giving such details as the Director may require relating to that portion; and
- (e) on the expiration or sooner termination of the authority, forward to the Director, in duplicate, a report giving such details as the Director may require; and
- (f) at the expiration of six months immediately after the date of the grant, and every six months afterwards, and on the expiration or sooner termination of the authority, forward to the Director, in duplicate, a statement showing—
 - (i) the amounts expended in relation to the authority during the immediately-preceding six months or since the last such statement; and
 - (ii) the total amounts so expended since the commencement of the authority.

35. Restriction on dealing.

The holder of a prospecting authority shall not, without the consent of the Minister, deal with it in any way.

36. Ownership of minerals won.

(1) Subject to Subsection (2), minerals obtained in the course of prospecting under a prospecting authority are the property of the State and, except for the purpose of sampling and assay and with the written consent of the Warden, must not be removed from the land or disposed of by the holder of the authority or by any other person.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months, or both.

(2) The Warden may, subject to such conditions (if any) as he thinks fit, authorize the removal of minerals from the land from which they have been obtained to any place approved by him for safe custody.

37. Revocation of authorities.

(1) In the case of a breach by the holder of a prospecting authority—

- (a) of any provision of this Act or the regulations; or
- (b) of the terms and conditions of the authority,

the Director may, by written notice, require the holder of the authority, within the time specified in the notice, to show cause to the Minister why the authority should not be revoked.

(2) Where the holder of an authority fails, in the opinion of the Minister, to show cause in accordance with a notice under Subsection (1), the Minister may revoke the authority and then all privileges and rights conferred by or enjoyed under the authority cease, as from the date of the revocation.

38. Surrender of authorities.

(1) On application by the holder of a prospecting authority and on being satisfied that the obligations of the holder have been fulfilled and that further prospecting is not warranted, the Minister may accept the surrender of the whole or portion of the authority.

(2) Where the whole or a portion of an authority is surrendered in accordance with this Act, a refund of such part as is prescribed of the fees paid shall be made, in the prescribed manner, in respect of the area so surrendered.

39. Grant of mining tenements to holders of authorities.

(1) Subject to Subsection (2), the holder of a prospecting authority may at any time apply for and be granted a mining tenement over land within the authority.

(2) A mining tenement shall not be granted over land within a prospecting authority in respect of gold or a mineral which is the subject of that authority, except to the holder of that authority.

(3) The grant of a mining tenement within the area of an authority does not affect the rights or obligations of the holder of the authority except in so far as is agreed on between him and the Minister at the time of the grant.

40. Rehabilitation of land.

The Minister may require the holder of a prospecting authority to carry out specified works to rehabilitate any land damaged during the course of the prospecting operations.

41. False, etc., information.

A person who wilfully or negligently gives false or misleading information in or in connexion with an application, report or statement under this Part is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months, or both.

PART VII.—MINING LEASES.

Division 1.—Gold-mining Leases.

42. Power to grant gold-mining lease.

The Minister may, if he thinks fit, subject to this Act and the regulations, grant to any person, a gold-mining lease of Government land, not exempted by Section 43, for any or all of the following purposes :—

- (a) for mining for gold and for all purposes necessary to carry on effectually such mining operations in or on the land; or
- (b) for cutting and constructing water-races, drains, dams, reservoirs, tramways and roads to be used in connexion with such mining; or
- (c) for erecting any buildings or machinery to be used in connexion with such mining; or
- (d) for pumping or raising water from any land mined for gold; or
- (e) for residence in connexion with any purpose specified in Paragraph (a), (b), (c) or (d).

43. Exemption of lands from gold-mining lease.

Subject to this Act, the following lands shall be exempted from lease under the powers conferred by Section 42 :—

- (a) all Government land which consists of alluvial ground except land which in the opinion of the Minister—
 - (i) has been already worked and abandoned; or

- (ii) is only suitable for leasing on account of—
 - (A) its great depth or excessive wetness; or
 - (B) the costliness of the appliances required for its development; or
- (iii) for any sufficient reason ought not to be exempt from lease; and
- (b) all Government land occupied by virtue of a miner's right unless the holder consents in writing to the leasing of the land.

44. Power to grant leases to limited depth from surface.

(1) Subject to the provisions of this Act and the regulations, the Minister may grant a gold-mining lease of Government land to a depth of not more than 20m below the surface, where only the soil below 20m from the surface is held under a gold-mining lease.

(2) In every gold-mining lease granted under Subsection (1), the Warden shall set apart and reserve such portion or portions of the leased area as he deems necessary for the working of the soil below 20m from the surface.

(3) The holder of the mining lease below 20m from the surface may use the portion or portions of the leased area referred to in Subsection (2) for the purpose of and in relation to the working of his lease.

(4) The holder of a gold-mining lease granted under Subsection (1) shall give to the lessee of the soil below 20m from the surface, and to the satisfaction of the Warden, access including ingress, egress and regress into, on, over and out of, his gold-mining lease, to and from the soil, below his gold-mining lease, held by the lessee.

45. Term and area.

(1) The term of a gold-mining lease shall not exceed 21 years, but may be renewed for a further period of 21 years on such terms as are in force with regard to gold-mining leases at the time of renewal.

(2) The area of a gold-mining lease shall not exceed 20ha or such other area as is prescribed.

46. Reservation of portion of surface.

In every gold-mining lease exceeding 2ha a portion of the surface of the area not exceeding 50% of the area over and above the 2ha shall be reserved for business and residence purposes.

47. Covenants and conditions.

(1) Subject to the provisions of this Act, every gold-mining lease shall be deemed to contain the following covenants on the part of the lessee, his executors, administrators and assigns :—

- (a) a covenant to pay the royalty at the prescribed times; and
- (b) a covenant to pay the rent and occupation fees payable at the prescribed times; and
- (c) a covenant to use the land continuously and bona fide for the purposes for which it is demised and in accordance with this Act and the regulations; and
- (d) a covenant to work the land demised by not less than the prescribed number of men, unless exemption or partial exemption is granted in such manner as is prescribed; and
- (e) such other covenants not inconsistent with this Act as are prescribed.

(2) Every gold-mining lease is subject to the condition, and shall be deemed to contain a covenant to the effect—

- (a) that for a breach of a covenant in the lease the lessee is liable to pay to the State, within the time specified by the Minister by written notice to the lessee, K200.00, or such lesser amount specified in the notice; and
- (b) that on non-payment of that amount within the time specified, the Minister may forfeit the lease.

(3) A liability imposed by Subsection (2) shall be enforced by the courts, notwithstanding any rule of law or equity that would otherwise make it unenforceable.

48. Exemption from labour covenants.

Total or partial exemption from labour covenants of all mining leases may be granted by the Minister on the prescribed conditions.

Division 2.—Mineral Leases.

49. Power to grant mineral leases.

The Minister may, if he thinks fit, subject to this Act and the regulations, grant to a person a mineral lease of any Government land for any or all of the following purposes :—

- (a) for mining and for all purposes necessary to carry on effectually mining operations in or on the land for any mineral other than gold; or
- (b) for cutting and constructing water-races, drains, dams, reservoirs, tramways and roads to be used in connexion with such mining; or
- (c) for erecting any buildings and machinery to be used in connexion with such mining; or
- (d) for pumping or raising water from any land mined for such mineral; or
- (e) for residence in connexion with any purpose specified in Paragraph (a), (b), (c) or (d).

50. Exemption of lands from mineral leaseholds.

(1) The following lands shall be exempted from lease under the powers conferred by Section 49 :—

- (a) all Government land which consists of alluvial ground, except such land as in the opinion of the Minister—
 - (i) has been already worked and abandoned; or
 - (ii) is only suitable for leasing on account of—
 - (A) its great depth or excessive wetness, or
 - (B) the costliness of the appliances required for its development; or
 - (iii) for any sufficient reason ought not to be exempt from lease; and
- (b) all Government land occupied by virtue of a miner's right unless the holder consents in writing to the leasing of the land.

(2) Notwithstanding Subsection (1), unless the lease is applied for under Part VIII, any residence or business area may be converted into a mineral lease if the person applying for the lease first pays compensation to the holder of the area for any improvements on it made by him or any prior holder.

51. Term and area.

(1) The term of a mineral lease shall not exceed 21 years and may be renewed for a further term of 21 years on the same terms as are in force with regard to mineral leases at the time of the renewal.

(2) The area of a mineral lease shall not exceed 100ha, or such other area as is prescribed.

52. Covenants and conditions.

(1) Subject to the provisions of this Act, every mineral lease shall be granted for the working of some mineral or combination of minerals specified in it, and every mineral lease shall be deemed to contain the following reservation, covenants and conditions :—

- (a) a reservation of all gold found in the land comprised in the lease; and
- (b) a covenant by the lessee, his executors, administrators and assigns to pay rent and occupation fees payable at the prescribed times; and
- (c) a covenant on the part of the lessee, his executors, administrators and assigns to use the land continuously and bona fide for the purposes for which it is demised and in accordance with the regulations; and
- (d) a covenant on the part of the lessee, his executors, administrators and assigns not to assign, underlet or part with the possession of the land demised or any part of it without the previous consent of the Minister; and
- (e) a covenant that there shall be employed on the lease one man for every 32ha or fraction of 32ha unless exemption or partial exemption has been granted; and
- (f) such other covenants not inconsistent with this Act as are prescribed; and
- (g) a condition—
 - (i) that for a breach of a covenant contained in the lease the lessee is liable to pay to the State, within the time specified by the Minister by written notice to the lessee, K200.00, or such lesser amount specified in the notice; and
 - (ii) that on non-payment of that amount within the time specified, the Minister may forfeit the lease.

(2) A liability referred to in Subsection (1)(g) shall be enforced by the courts, notwithstanding any rule of law or equity that would otherwise make it unenforceable.

53. Exemption from labour covenants.

Total or partial exemption from labour covenants of all mineral leases may be granted by the Minister on the prescribed conditions.

54. Provisions applicable when gold found on mineral leasehold.

(1) When gold is found in any land held under a mineral lease otherwise than in association or combination with the mineral specified in it, the land may, for the purpose of mining for gold, be dealt with, notwithstanding the mineral lease, under the provisions of this Act relating to mining for gold.

(2) A person mining for gold on land referred to in Subsection (1) shall not—

- (a) interfere with the workings of the lessee in actual use; or

(b) be entitled to acquire any mining tenement in or on any mineral lease except at a distance beyond 200m from—

(i) the workings; or

(ii) the crushing, smelting or any other works used for the reduction or treatment of the minerals specified in the lease.

(3) In the event of a dispute as to—

(a) what workings are in actual use; or

(b) what works are used for crushing, smelting or otherwise used for the reduction or treatment of such mineral,

the Warden within whose jurisdiction the lease is situate shall decide the matter, and his decision is final between the parties¹.

(4) If the lessee mines for gold found otherwise than in association or combination with the mineral specified in his mineral lease, not being authorized to do so by a miner's right or gold-mining lease, the lease is liable to forfeiture.

55. Provisions applicable when lessee desires to work other minerals.

(1) Subject to Subsection (2), if a lessee desires to mine for any mineral other than that specified in the lease, he shall apply to the Minister for permission to do so, and the Minister may—

(a) grant permission; and

(b) alter or vary the conditions of the lease so as to make them applicable to mining for that other mineral in accordance with this Act and the regulations.

(2) If a lessee mines for any such other mineral without obtaining permission under this section, he is liable to a penalty not exceeding K10.00 for every day on which he so offends.

Division 3—Provisions Applicable to Gold-mining Leases and Mineral Leases.

56. Interpretation of Division 3.

In this Division, unless the contrary intention appears, "lease" means a gold-mining lease or a mineral lease.

57. Effect of application in certain cases.

When application is made under this Act for a lease of any land a part or the whole of which is held by the applicant under a miner's right—

(a) the interest of the applicant held under the miner's right shall in no way be prejudiced by the application, nor by its refusal, abandonment or failure; and

(b) if the lease is granted, the interest of the applicant held under the miner's right shall merge in the interest held by him under the lease.

58. Provisions relating to applications.

(1) Every application for a lease shall be made in the prescribed form, and shall be accompanied by the first year's rent or prescribed portion of it.

(2) Applications for leases by persons who have complied with the regulations shall take priority according to the order in which they are lodged at the Warden's Office.

¹But, see, Constitution, Section 155.

(3) If more than one application for a lease of the same land or any part of it is lodged at the same time, the applications shall take priority according to the order in which the applicants marked the land out under the regulations.

(4) If the application of any person is refused, he shall be informed of the reasons for the refusal.

59. Surveys and survey fees.

(1) A lease may be granted after survey or subject to survey.

(2) The Warden may order that the prescribed survey fees be lodged with an application for a lease.

(3) At any time before or after the granting of an application for a lease the Warden may—

(a) order the land the subject of the application or lease to be surveyed; and

(b) direct that the prescribed survey fees, if not already lodged, be lodged with him within a specified time, not exceeding two months.

(4) Where survey fees are not lodged with the Warden in accordance with an order under Subsection (3), the Minister may refuse to grant the application, or the Warden may forfeit the lease, as the case may be.

(5) Within 35 days after receiving notification of the forfeiture of a lease under Subsection (4), the lessee may appeal against the forfeiture to the Minister whose decision is final.¹

60. Protection of land applied for as leasehold.

(1) The entry on, occupation of, or interference with, any land in relation to which a lease has been applied for by a person who has not, prior to the application, been in the lawful occupation of the land, shall, at any time after the lodging of the application, and until and unless the application is refused, or the entry, occupation or interference authorized by the Minister, be deemed to be a trespass or encroachment.

(2) Subject to Subsection (3), the applicant for the land may proceed before any Warden's Court—

(a) for trespass or encroachment; and

(b) for any damages in respect of the trespass or encroachment; and

(c) for the recovery of any gold or other mineral taken by the first-mentioned person from the land, or for the value of it.

(3) An applicant shall not recover under this section unless he proves, to the satisfaction of the Warden's Court, that he has complied with the regulations in force and applicable for the time being to the class of lease applied for so far as those regulations are, at the time of the entry, occupation or interference, capable of being complied with.

61. Power to amend description of land.

(1) If, after the issue of a mining lease, it is found on survey or by mutual consent of the parties interested that the description of the land comprised in the lease does not describe with sufficient accuracy the land intended to be so comprised, the Minister may, by proclamation in the National Gazette, describe the land intended to have been comprised in the lease.

¹But, see, Constitution, Section 155.

(2) The land described in any proclamation under this section shall be taken to be the land described in the lease to which the proclamation refers, and to have been leased by it.

62. Consolidation of leases.

(1) For the purpose of this section, leases shall be deemed to be contiguous; and may be united in the manner and subject to the conditions set out in this section, if they are wholly or partially separated only by other land held otherwise than on lease from the Minister or by any road, street, water or watercourse and whether the road, street, water or watercourse is comprised in a lease or not.

(2) Subject to this section, where the Minister is satisfied that greater facilities for the working of two or more contiguous leases would be insured by the union of those leases, he may authorize the union, subject to the following conditions :—

- (a) the application shall be made for union by a majority in number and value of the persons registered for the time being as holders of each lease; and
- (b) the leases may be surrendered and a new lease embracing the aggregate area of the surrendered leases issued; and
- (c) the conditions as to working contained in the several surrendered leases in the aggregate shall be embodied and contained in the new lease; and
- (d) the general provisions and conditions and the power of resumption and re-entry on the part of the Minister for non-payment of rent or occupation fees and breach of covenant shall be the same as those prescribed for the individual leases; and
- (e) where the unexpired terms of the surrendered leases are not the same, the new lease shall be for the residue of that one of such terms which will first terminate; and
- (f) where the conditions or provisions of the surrendered leases are not identical, the conditions and provisions of the new lease shall be such of the conditions and provisions of the surrendered leases or any of them as the Minister determines.

(3) In the case of gold-mining leases no greater area than 100 ha shall be comprised in any united lease.

(4) In the case of mineral leases no greater area than 300 ha shall be comprised in any united lease.

(5) Instead of surrendering the leases under Subsection (2) (b) the applicants may have their leases endorsed by the Minister sanctioning a union of the leases and then—

- (a) all the conditions applicable in case of surrender and issue of a new lease shall apply to those leases the union of which has been sanctioned; and
- (b) the conditions as to working contained in the separate leases in the aggregate shall be endorsed on those leases.

63. Transfer of leases.

Subject to this Act, a lease or an application for a lease or any interest in it may be transferred, assigned, sublet or encumbered in the manner prescribed on payment of the prescribed fee.

64. Transfer of portion of dredging or sluicing leases.¹

(1) Notwithstanding anything in this Act or in the 1922 Act, a lessee under a dredging or sluicing lease may make application to the Minister for permission to transfer any portion of his lease or any interest in it.

(2) A lessee referred to in Subsection (1) shall submit with his application—

(a) a plan of the boundaries of the portion of the lease in respect of which the application is made; and

(b) survey fees at the prescribed rate per kilometre in respect of boundaries of the portion other than the boundaries of the original lease.

(3) The Minister may, if he thinks fit, grant any such application and, on payment of the prescribed fee, issue a fresh lease for the portion in respect of which permission to transfer has been given.

(4) A lease granted under Subsection (3) shall be subject to the terms and conditions contained in it and to the provisions of the 1922 Act and the regulations under that Act.

65. Surrender of leases.

A lease may be surrendered at any time if at the time of the surrender—

(a) the conditions of the lease on the part of the lessee have been fulfilled as far as the time which has elapsed permits; and

(b) all payments due in respect of it up to date have been made.

66. Conditional surrender of lease.

(1) Notwithstanding anything in this Act, an applicant for, or lessee under, a lease or leases held under this Act or the 1922 Act may apply through the Warden for the consent of the Minister to surrender, wholly or in part, his lease or leases or any rights under it or them on condition that a new lease or leases of the land comprised in the whole or part of the lease or leases in respect of which an application under this section to surrender is made be granted in place of the lease or leases surrendered.

(2) The Warden may require an applicant under Subsection (1) to deposit fresh survey fees.

(3) Where, under Subsection (2) fresh survey fees are required, a survey fee paid in respect of any lease surrendered under this section but not surveyed at the date of surrender shall be refunded.

(4) The Warden shall submit each application to the Minister with such report and recommendation as he thinks fit.

(5) The Minister may grant or refuse, wholly or in part, any application under this section.

(6) Until an application to surrender is granted under Subsection (5), the applicant shall fulfil the terms and conditions of the lease or application for a lease in respect of which application to surrender is made.

(7) When assessing the rent payable in respect of the first year of any lease granted under this section, the Minister shall take into account any rent paid in respect of any lease that has been surrendered and in place of which the lease under this section has been granted.

¹See, also, Section 175.

(8) Where, in the opinion of the applicant, it is necessary or convenient for any land not comprised in the whole or part of the lease or leases in respect of which the application is made to be included in the lease or leases applied for in place of those surrendered, the applicant may include the land in his application, but the application in respect of the land shall be dealt with as an application for a lease under this Act.

(9) When an application is made in accordance with this section, the interest of the applicant for, or lessee of, the lease in respect of which the application is made shall in no way be prejudiced by the application, nor by its refusal, abandonment or failure.

67. Recovery of leases.

(1) Where—

- (a) a lease granted under the authority of this Act or the regulations or of any Act authorizing the granting of leases for mining purposes is, or is liable to be, forfeited or determined by a breach of condition or otherwise; or
- (b) the term so granted has expired, possession of the land demised shall be taken on behalf of the Minister immediately and without suit or process of any kind by posting a notice in accordance with the prescribed form outside the Warden's Office.

(2) A certificate purporting to be signed by the Director or a Warden that the notice referred to in Subsection (1) has been duly posted shall be sufficient proof in every court and for all purposes—

- (a) that such notice has been duly posted; and
- (b) of the due taking possession of the land.

68. Area may be resumed for public purpose.

(1) If during the term of a lease of Government land under this Act or the 1922 Act, any part of the land comprised in the lease is required for a public purpose, the Minister may, on one month's written notice to the lessee, cancel the lease so far as it related to any right to the surface, and the depth of 20m below the surface of the land specified in the notice.

(2) On the expiration of the period referred to in Subsection (1) and without any compensation payable by the State the land shall be deemed to have been entered on and taken possession of by the State.

69. Mining lease of ground below dredging or sluicing lease.

(1) Where any land is held as a dredging or sluicing lease granted to a depth of 20m below the surface of the soil under Part IV of the 1922 Act, any person may, subject to this Act, apply for a lease of the ground comprised in the area below the dredging or sluicing lease.

(2) The holder of the dredging or sluicing lease referred to in Subsection (1) shall give to the holder of a lease so granted reasonable access, to the satisfaction of the Warden, including ingress, egress and regress into, on, over and out of the dredging or sluicing lease, through the surface of the soil to a depth of 20m.

(3) If it is necessary in order to carry out the provisions of this section for the dredging or sluicing leaseholder to set apart for the purpose any part of his dredging or sluicing lease not wholly worked out, he shall be paid by the applicant such compensation as is agreed on between the parties.

(4) If the parties are not able to agree on the amount to be paid under Subsection (3), the Warden shall, after due inquiry and the hearing of evidence, assess the compensation at a sum which to him seems reasonable.

(5) The sum agreed on under Subsection (3) or assessed under Subsection (4) is recoverable as a debt in any court of competent jurisdiction.

70. Merger of dredging or sluicing lease in gold-mining lease.

(1) Subject to this Act and the regulations, the holder of a dredging or sluicing lease may apply for a gold-mining lease of any land comprised in the dredging or sluicing lease.

(2) If the gold-mining lease is granted under Subsection (1), the interest of the applicant held under the dredging or sluicing lease merges in the interest held by him under the gold-mining lease.

(3) Notwithstanding this Act and the regulations, where an application is made for a gold-mining lease under Subsection (1), the survey fee shall be at the prescribed rate per kilometre in respect of the part of the boundary line of the gold-mining lease that is not common to both the dredging or sluicing lease and the gold-mining lease.

(4) When assessing rent payable in respect of the first year of the gold-mining lease, the Minister shall take into account rent for the whole or portion of the year paid under the dredging or sluicing lease.

Division 4.—Special Mining Leases.

71. Grant of special mining lease.

(1) Subject to Subsection (2), the Head of State, acting on advice, may grant a special mining lease over the whole or part of any land not otherwise excluded from occupation under this Act, subject to such conditions as the Head of State, acting on advice, after receiving a report from the Board, thinks fit.

(2) A special mining lease shall not be granted unless, in the opinion of the Minister, the presence of a large deposit of gold or minerals has been demonstrated, and the mining of the deposit under any other tenement provided under this Act would be impracticable by reason of—

- (a) the size of the deposit and the methods of mining and treatment to be employed; or
- (b) the cost of preparatory development of the project.

72. Holders of special mining leases.

A special mining lease may be held by—

- (a) a natural person; or
- (b) a corporation—
 - (i) the only income of which is—
 - (A) income derived from the sale of minerals or gold obtained from mining operations in the country carried on by it; or
 - (B) income from rents and interest derived in the course of carrying on such operations; or
 - (C) income from royalties, other forms of profit sharing income or other income derived in connexion with the carrying on of such operations by it or by another person; and

- (ii) that is incorporated under the *Companies Act* and has its principal place of business in the country.

73. Applications for special mining leases.

(1) An application for a special mining lease shall be in the prescribed form and shall be dealt with as prescribed.

(2) Notwithstanding any other provisions of this Act, the Minister may direct that an application for a gold-mining lease or mineral lease be treated as an application for a special mining lease.

74. Area of special mining leases.

A special mining lease may be granted over any area not exceeding 60 km².

75. Term of special mining lease.

A special mining lease may be granted for such period, not exceeding 42 years, as the Head of State, acting on advice, thinks fit, and may be renewed from time to time for further periods each not exceeding 21 years, subject to such variation of terms and conditions as the Head of State, acting on advice, thinks fit.

76. Conditions of special mining lease.

A special mining lease shall—

- (a) contain such terms, conditions and covenants as the Head of State, acting on advice, determines; and
- (b) specify the gold or minerals in respect of which it is granted; and
- (c) confer on the lessee—
 - (i) the right to mine the gold or minerals specified in the lease, but no other minerals, unless those other minerals are combined in the land with the gold or minerals specified in the lease in such a way that they must necessarily be mined in the mining of the gold or minerals specified in the lease; and
 - (ii) such other rights ancillary to that mining as are specified in the lease.

77. Rehabilitation of land.

The Minister may require the lessee to carry out such works as are specified by the Minister to rehabilitate any land damaged during the course of the mining operations.

78. Rent.

Rent on a special mining lease shall be as determined by the Head of State, acting on advice, and specified in the lease, subject to review at intervals of 21 years.

79. Finding of other minerals.

- (1) In this section "mineral" includes gold.
- (2) If a mineral other than a mineral which the lessee has under the lease the right to mine is found on land for the time being comprised in a special mining lease, the lessee shall, within 28 days, furnish a full report to the Minister.
- (3) The Minister may, by written notice to the lessee, require the lessee to surrender within three months, or such longer period specified in the notice as he considers necessary to enable the lessee to mine from the land the mineral specified in the lease, such part of

the land the subject of the lease as he considers necessary to permit the other mineral to be mined.

(4) The lessee may mark out land comprised in the lease for the purpose of an application for a mining tenement for mining the other mineral and, for the purpose of any such application by the lessee, marking out shall be deemed to have been done on the date of the surrender of the special mining lease in respect of that land.

(5) A special mining lease shall contain a condition that, if a lessee fails to comply with a requirement of the Minister made under Subsection (3), the Minister may resume without compensation the area of the leased land specified in the requirement.

80. Dealing with special mining leases.

A special mining lease may not be transferred, sublet, mortgaged or charged without the written consent of the Minister.

81. Non-fulfilment of conditions.

(1) If—

- (a) any rent, occupation fees or royalty payable under a special mining lease is not paid by the due date; or
- (b) any covenant or condition on the part of the lessee to be performed or observed is not performed or observed,

the Minister may require the lessee, within a period specified by written notice to the lessee, to pay the rent, occupation fees or royalty or perform or observe the covenant or condition.

(2) If the lessee fails to comply with a requirement of the Minister made under Subsection (1), the Minister may forfeit the lease.

82. Surrender of lease.

If the lessee has paid all rent, occupation fees and royalty then due, he may, with the consent of the Minister—

- (a) at any time surrender the lease; or
- (b) from time to time surrender any part of the land comprised in the lease.

Division 5.—Leases for Mining Purposes.

83. Interpretation of Division 5.

In this Division, "the dominant lease" in relation to a lease for mining purposes, means the mining lease in respect of which the lease for mining purposes was granted.

84. Application for lease for mining purposes.

(1) The holder of a mining lease granted under this Part may apply for a lease for mining purposes over any land not otherwise excluded from occupation under this Act.

(2) An application under this section shall be in the prescribed form and shall be dealt with as prescribed.

85. Grant of lease for mining purposes.

(1) Subject to Subsection (2), a lease for mining purposes may be granted by the Minister for specified purposes ancillary to mining operations carried out or to be carried out on the dominant lease.

(2) A lease for mining purposes in respect of a special mining lease shall not be granted except with the approval of the Head of State, acting on advice.

(3) The purposes for which a lease for mining purposes may be granted are—

- (a) the making of roads; and
- (b) housing and other accommodation; and
- (c) the construction of aerial rope ways; and
- (d) the laying of pipe lines; and
- (e) the construction of water races; and
- (f) the installation of treatment plant; and
- (g) the stacking of tailings or other waste products of mining operations; and
- (h) any other purpose ancillary to mining operations or to any of the preceding purposes approved by the Minister.

86. Area, etc.

A lease for mining purposes may be of such shape and area, approved by the Minister, as are reasonably required for the purpose of the lease.

87. Term of lease for mining purposes.

(1) The term of a lease for mining purposes shall be identical with the term or the remaining term of the dominant lease, and may be renewed concurrently with the renewal of the dominant lease.

(2) A lease for mining purposes, if not earlier terminated, shall terminate on the expiration or sooner termination of the dominant lease.

88. Conditions of lease for mining purposes.

(1) A lease for mining purposes shall contain such covenants and conditions relating to the installation of works and the use of the land as the Minister determines.

(2) The holder of a lease for mining purposes shall, as and when required by the Minister, submit a report giving details of his compliance with the covenants and conditions of the lease, together with such other information as the Minister requires or as is prescribed.

89. Surrender of lease for mining purposes.

The holder of a lease for mining purposes, having paid all rent and occupation fees then due, may, with the consent of the Minister—

- (a) at any time surrender the lease; or
- (b) from time to time surrender any part of the land comprised in the lease.

90. Cancellation of lease for mining purposes.

(1) Where, in the opinion of the Minister, the holder of a lease for mining purposes is not making reasonable efforts to comply with the covenants and conditions of the lease, the Minister may, by written notice, require the lessee, within a period specified in the notice, to show cause why the lease should not be cancelled.

(2) Where, in the opinion of the Minister, the lessee fails to show reasonable cause in answer to a requirement under Subsection (1), the Minister may cancel the lease.

91. Rights to improvements.

On the expiration or sooner termination of a lease for mining purposes the lessee has, for such period as the Minister determines, a right of access to the land for the purposes of, and the right of, dismantling and recovering improvements installed on the land by the lessee, doing as little damage to the land as may reasonably be.

PART VIII.—MINING ON RESERVES, RESIDENCE AREAS AND BUSINESS AREAS.**92. Power to grant mining leases of land in reserves, residence areas, etc.**

Notwithstanding anything in this Act,—

- (a) a mining lease may be granted under this Act of any land comprised in a reserve, residence area or business area; and
- (b) a lease of any such land may be applied for in accordance with this Act and the regulations, subject to the following conditions :—
 - (i) the lease shall, in respect of any land comprised in a residence area or business area, be deemed to be of the mines under the land only and not of the surface of the land, but the surface may be resumed under such conditions as are prescribed by this Act or the regulations; and
 - (ii) the lessee shall not be entitled to disturb the surface of a reserve which is a street or road or to do any act which will affect or disturb the beneficial enjoyment of the surface; and
 - (iii) in the case of a reserve which is not a street or road the lessee shall not be entitled to disturb the surface of the reserve or to do any act which will affect or disturb the beneficial enjoyment of the surface except in either case with the permission of the Warden and then only on such part of the reserve and under such conditions as he determines; and
 - (iv) if the lessee does injury to the surface or does any act affecting or disturbing the beneficial enjoyment of the surface he shall make compensation to the persons entitled to the surface or charged with the care and management of it for all such damage; and
 - (v) a claim for compensation shall be made within three months after the right to make the claim has accrued.

93. Reserve taken up as claims.

(1) The Minister may, by notice in the National Gazette declare that the whole or any part of the land comprised in a reserve and not being a street or road shall be open to be taken up as claims under miners' rights.

(2) On and after the day appointed by notice, for the purpose, the land referred to in Subsection (1) shall be open to be so taken up.

(3) In a claim under this section the conditions of Section 92 relating to leases shall, so far as they are applicable, apply to any claim so taken up, and for that purpose shall be read as if the words "claim" and "claimholder" were used instead of the words "lease" and "lessee" respectively.

94. Recovery of damages.

Any damages sustained by a person in respect of injury done to the surface of any reserve, residence area or business area, and which any other person is liable to pay, may be recovered in the Warden's Court.

PART IX.—MINING ON LAND TO WHICH THIS ACT DOES NOT APPLY.

95. Power to declare that holder of miner's right may apply for land subject to this part.

(1) Subject to this Part, the Minister may, by notice in the National Gazette—

(a) declare that this Act shall not apply to the whole or any portion of any Government land; and

(b) direct that any such land shall be divided into lots not exceeding 7 ha in area.

(2) Notwithstanding the provisions of this Act, the Minister may, by notice in the National Gazette, declare that all or any of the lots referred to in Subsection (1) may be applied for, for mining purposes, by the holder of a miner's right.

(3) A description of each of the lots which may be applied for under Subsection (2) shall be shown in a schedule to the notice.

96. Application for permit.

Within 30 days after the publication of a notice under Section 95, a holder of a miner's right may lodge with the Warden an application for a permit to occupy, for mining purposes, any lot described in the schedule to the notice.

97. Power to grant permit.

(1) Subject to this section, the Warden may grant to an applicant under Section 96 a permit in the prescribed form to occupy a lot for mining purposes.

(2) If not more than one application under Section 96 is received by the Warden for any lot, he shall grant a permit for that lot to the applicant.

(3) If more than one application under Section 96 is received by the Warden for any lot, he shall direct that the applicant to whom a permit is to be granted be decided by ballot in the prescribed manner.

98. Conditions under which land held.

(1) The land described in a permit shall be deemed to be land taken possession of and occupied under a miner's right, and, subject to this Part, this Act and the regulations apply to the land.

(2) On the grant of a permit to occupy a lot for mining purposes, the Warden shall register, as prescribed, the holder of the permit as the holder of a claim comprising the land described in the permit.

(3) The labour conditions prescribed by the regulations shall not apply to land held under a permit for a period of 40 days after the grant of the permit.

PART X.—PROSPECTING AND MINING ON PRIVATE LAND.

99. Application of Part X.

This Part applies notwithstanding anything to the contrary in this Act.

100. Permit to enter.

(1) On application to the Warden by a person wishing to enter and prospect on private land, the Warden may issue a permit to enter, in the prescribed form, specifying—

(a) the land to which the permit applies; and

(b) the nature of the proposed operations; and

- (c) the amount of the deposit lodged under this section.
- (2) As far as is practicable, the Warden shall take all reasonable steps to ensure that the owners of private land are informed of applications for permits to enter on the land.
- (3) Before issuing a permit to enter, the Warden shall—
 - (a) make a preliminary assessment of damage likely to occur; and
 - (b) assess a sum of money which shall be deposited with the Warden by the applicant to be held by the Warden against possible claims for compensation.
- (4) A permit to enter remains in force for such period, not exceeding six months, as is specified in the permit.

101. Application for mining tenement on private land.

- (1) An application for a mining tenement on private land shall be made in the prescribed form to the Warden.
- (2) As far as practicable, the Warden shall take all reasonable steps to ensure that the owner of private land is informed of applications for mining tenements on the land.
- (3) Notices of applications for mining tenements on private land shall be published in the National Gazette and in such other manner as is prescribed.
- (4) Applications for mining tenements on private land shall be heard by the Warden in open court following the giving of the prescribed notice of hearing.
- (5) Where a hearing under this section concerns a mining tenement that, under the provisions of this Act, the Warden has power to grant, the Warden shall, before granting the tenement—
 - (a) make a preliminary assessment of damage likely to occur; and
 - (b) assess a sum of money which shall be deposited with the Warden by the applicant to be held by the Warden against possible claims for compensation.
- (6) Where a hearing under this section concerns a tenement that is not within the power of the Warden to grant, the Warden—
 - (a) shall at the hearing adduce all the evidence of possible damage; and
 - (b) shall submit a full report to the Director.
- (7) Notice of the granting of an application for a mining tenement on private land shall immediately be published by the Warden in the National Gazette and in such other manner as is prescribed.
- (8) The holder of a mining tenement over private land does not require a permit to enter in respect of that tenement.

102. Compensation.

- (1) Compensation in respect of prospecting or mining on private land shall be assessed in relation to the following matters :—
 - (a) damage to the surface and to improvements on the surface, including crops and economic trees; and
 - (b) severance of the land from other land of the owner; and
 - (c) loss of surface rights of way; and
 - (d) all consequential damage.

(2) The owner of private land eligible for compensation in accordance with Subsection (1) may at any time lodge a claim with the Warden for assessment of compensation or additional compensation, and the Warden shall assess the compensation.

(3) In cases where either party is not satisfied with an assessment of compensation by the Warden, that party may require the matter to be referred to arbitration under the *Arbitration Act*.

103. Mining on private land.

(1) The grant of a mining tenement on private land confers on the owner of that tenement, where it comprises an area of the surface of the land—

- (a) the right to mine on or under so much of the surface or extended surface as is stated and described in the grant; and
- (b) the right to mine under the remainder (if any) of the mining tenement at such depth from the lowest level of the surface as is specified in the lease or certificate of registration, as the case may be; and
- (c) the right of ingress and egress to and from the mining tenement by a right of way to be stated and described in the grant.

(2) Where a mining tenement includes private land on which there are improvements, the holder of the tenement has the right to mine on the land subject to the following conditions :—

- (a) before commencing any prospecting or mining operations on the land, the holder of a mining tenement shall give notice to the Warden and to the owner of the land of the nature and extent of the proposed operations; and
- (b) the owner of the land may, by plaint, apply to the Warden for an order prohibiting the operations; and
- (c) if, on hearing the evidence, the Warden considers that undue hardship would result—
 - (i) he may order that the proposed operations be not undertaken; or
 - (ii) he may specify conditions under which the proposed operations may be undertaken, and shall assess the amount of compensation to be paid and the manner of paying it.

PART XI.—PROVISIONS RELATING TO MINERAL RETURNS AND ROYALTY.

104. Interpretation of Part XI.

In this Part, unless the contrary intention appears—

“f.o.b. revenue” means—

- (a) in the case of a delivery of mine products made pursuant to a sale by the miner, other than a sale to which Paragraph (b) of this definition applies—the whole of the consideration receivable by the miner for the mine products less the costs, charges and expenses bona fide incurred or suffered by the miner in respect of them from the time when the mine products are loaded on board a ship or aircraft in the country until the mine products are delivered to and accepted by the purchaser including, without limiting the generality of the foregoing—
 - (i) taxes, dues, duties, excise, tariffs and other levies imposed on the export of the mine products from the country; and

- (ii) trimming costs; and
 - (iii) ocean freight; and
 - (iv) marine insurance premiums; and
 - (v) port and handling charges at the port of discharge; and
 - (vi) delivery costs from the port of discharge to any place for the purpose of further processing; and
 - (vii) weighing, sampling, assaying, inspection, representation and selling agency costs and charges; and
 - (viii) shipping agency charges; and
 - (ix) taxes, dues, duties, primage duties, tariffs and other levies imposed in the country of the port of discharge on the import of the mine products; and
- (b) in the case of any delivery of mine products made pursuant to a sale by the miner for a consideration that is not a consideration that would be receivable by a willing seller from a willing buyer or that is made pursuant to a disposition by the miner otherwise than by way of sale—
- (i) an amount equal to the whole of such consideration as would have been receivable by the miner if such mine products had been sold at the weighted average of the whole of the considerations receivable by the miner (less the costs, charges and expenses referred to in Paragraph (a) of this definition) in respect of deliveries of mine products of substantially the same composition which were made during the period of 60 days immediately preceding the relevant delivery and to which Paragraph (a) applied, or
 - (ii) in the event of there being no such deliveries—such amount as the Warden may determine to be the value of the mine products after the miner has presented to him evidence of its value;
- “mine products” means any minerals, gold, ores containing minerals or gold or concentrated ores of minerals or gold that have been extracted from or produced by a mine;
- “miner” means a person who is a tributer or the owner of a mining tenement;
- “net smelter returns” means—
- (a) in the case of a miner who is also a processor in the country—the value of the products of his smelter or his smelter and refinery, as the case may be, less the costs, charges and expenses bona fide incurred or suffered by the miner in respect of those products from the time when the mine products are delivered to the smelter until the time when the smelter or refinery products are delivered to and accepted by the purchasers including, without limiting the generality thereof—
 - (i) smelting and refining costs that may include a reasonable profit element but that shall be no greater than amounts that are or would be charged to any other person for the smelting or smelting and refining, as the case may be, of similar mine products; and
 - (ii) realization costs; and

- (iii) the costs itemised in the definition of "f.o.b. revenue" to the extent they are payable by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers; and
- (b) in the case of a miner who has his mine products smelted or smelted and refined in the country by a person other than himself—the value of the products of the smelter or the smelter and the refinery, as the case may be, from mine products supplied by the miner less the costs, charges and expenses bona fide incurred or suffered in respect of the products including, without limiting the generality thereof—
 - (i) smelting and refining charges payable by the miner to the processor which, if the processor is an associated person or a related corporation, shall be no greater than amounts that are or would be charged to any unassociated person or unrelated corporation; and
 - (ii) realization costs incurred by the processor or by the miner; and
 - (iii) the costs itemised in the definition of "f.o.b. revenue" to the extent they are payable by the processor or by the miner in respect of the transporting of the smelter or refinery products to the point of delivery to the purchasers;

"processor" means a person who engages in smelting or smelting and refining of mine products.

105. Royalty.

Notwithstanding Section 202, every miner shall pay to the State royalty at the rate of 1.25% of the value of—

- (a) the f.o.b. revenue applicable to deliveries of mine products by the miner pursuant to sales or other dispositions where the mine products are directly or indirectly for export from the country; and
- (b) the net smelter returns applicable to deliveries of mine products where the mine products are smelted or smelted and refined in the country.

106. Returns of gold and other minerals won.

(1) Every miner shall, once in every month, furnish to the Warden a return, in the prescribed form showing—

- (a) the amount of mine products extracted or produced by the miner during the month immediately preceding the month in which the return is made; and
- (b) the estimated value, being as appropriate the f.o.b. revenue or the net smelter returns, of the mine products.

(2) A miner who furnishes a return under this section shall at the same time pay to the State provisional royalty in accordance with Section 105 on the estimated value of the mine products included in the return.

(3) Within the prescribed time after the payment of provisional royalty is due under Subsection (2), the miner shall produce to the Warden such evidence as is prescribed regarding the actual price received for the mine products, and then the royalty payable on the mine products shall be finally determined and adjustments made in accordance with that determination.

(4) Notwithstanding anything in this section the Warden may—

- (a) at any time finally determine the royalty payable on any mine products found in the country; and
- (b) seize and retain the mine products until the royalty so determined has been paid.

(5) In proceedings against a person for failure to comply with any of the provisions of this section, the burden of proof that the provisions have been complied with is on that person.

(6) The Minister may, by written notice, appoint an officer to exercise the powers and functions of a Warden under this Part in a locality specified in the notice.

(7) An appointment under Subsection (6) shall not prevent the exercise of any power or function by the Warden.

107. Percentage of royalties to owner.

(1) In this section, "private land" means—

- (a) customary land; or
- (b) land the subject of a conversion order under the pre-Independence *Land (Tenure Conversion) Act 1963* (Adopted) to which the limitation referred to in Section 26(b) of that Act applies.

(2) The State shall pay to the owner of private land an amount equal to 5% of the total amount of any royalties paid under this Act in respect of mining leases on that land.

(3) Where the land comprised in the mining lease includes two or more parcels of private land but does not include any land other than private land, Subsection (2) requires the State to pay to the owner or owners of a parcel of private land so included, in respect of that parcel, an amount that bears to an amount equal to 5% of the total amount of any royalties paid in respect of the mining lease the same proportion as the area of the parcel bears to the area of land comprised in the mining lease.

(4) Where the land comprised in the mining lease includes private land and land other than private land, Subsection (2) requires the State to pay—

- (a) if there is only one parcel of private land included in the mining lease—to the owner or owners of that parcel the total amount payable in respect of the private land included in the mining lease ascertained in accordance with Subsection (5); or
- (b) if there are two or more parcels of private land included in the mining lease—to the owner or owners of a parcel of private land so included, in respect of that parcel, an amount that bears to the total amount payable in respect of the private land included in the mining lease ascertained in accordance with Subsection (5) the same proportion as the area of the parcel bears to the total area of private land included in the mining lease.

(5) For the purpose of Subsection (4), the total amount payable in respect of the private land included in a mining lease is the amount that bears to an amount equal to 5% of the total amount of any royalties paid in respect of the mining lease the same proportion as the area of private land included in the mining lease bears to the area of land comprised in the mining lease.

(6) Where an amount is payable under this section to the owners of a parcel of private land, each owner of that parcel is entitled to such part of that amount as is proportionate to his interest in the parcel.

108. Officers may examine books, etc.

An officer appointed for the purpose by the Minister shall, at any time, have access to and may, for the purpose of assessing the value of, or determining the royalty payable on, the mine products extracted or produced, examine the books and accounts of any person required to make the return mentioned in Section 106.

109. Enforcement of payment of royalty.

If the royalty payable in respect of any mine products referred to in a return furnished under Section 106 is not paid within 14 days—

- (a) after its value has been approximately assessed; or
- (b) the royalty finally determined,

an officer appointed for the purpose by the Minister may seize and appropriate any mine products found in the possession of the person who is liable for the unpaid royalty.

110. Refund of royalty in certain cases.

- (1) In this section—

“person” includes a partnership, but does not include a corporation;

“half-year” means the period of six months ending on the last day of June and December in any year.

(2) Where the total royalty, as determined finally by the Warden under Section 106, does not amount to K50.00 and was paid directly or indirectly during any half-year by a person who satisfies the Warden that—

- (a) his principal occupation is mining or prospecting or both; and
- (b) he has been personally engaged in obtaining the mine products on which he has paid the royalty,

the Minister shall refund to that person the whole of the royalty.

111. Penalty.

A person who—

- (a) is required, under this Part, to furnish a return or to produce prescribed evidence and who—
 - (i) neglects or refuses to furnish the return or to produce the evidence; or
 - (ii) makes a false statement in the return or as to evidence produced; or
- (b) impedes or obstructs any officer appointed by the Minister to perform any duties under this Part,

is guilty of an offence.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding six months, or both.

PART XII.—SPECIAL MINING EASEMENTS.**112. Application for authority to construct certain works over other land.**

(1) The holder of a mining tenement may apply to the Minister for authority to construct and maintain over, on, across or through any Government or other land, any roadway, tramway, power transmission line, aerial ropeway, or pipe line or other works, which may be necessary or expedient for the working of the mining tenement.

(2) The application referred to in Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) be lodged at the Warden's Office nearest to the mining tenement; and
- (c) be accompanied by the prescribed fee.

(3) A copy of the application shall be served, as prescribed, on the owner, lessee and occupier of the land the subject of the application.

(4) On the receipt of the application the Warden shall post, and keep posted, at his office a copy of the application throughout a period of not less than 30 days.

113. Objections to application.

Within the prescribed time any person may lodge, at the Warden's Office at which the application was posted in accordance with the provisions of Section 112, a written notice of his objection to the application.

114. Hearing of application and objections.

(1) An objection of which a notice has been lodged under Section 113 shall be heard by the Warden, with the application, as soon as practicable after the time for lodging a notice of objection has lapsed.

(2) The Warden shall—

- (a) appoint the time and place for the hearing of the application and of all objections of which the notices have been lodged as prescribed; and
- (b) give not less than seven clear days' notice of the time and place appointed to the applicant and to every objector.

(3) On the date appointed for the hearing, the Warden shall inquire into the objection and take such evidence on oath as is tendered by or on behalf of the applicant and the objectors.

(4) The hearing and inquiry under this section shall be conducted in open court and the Warden shall have all the powers of a Warden's Court.

(5) The Warden may adjourn the hearing for any time, or to any place, on such conditions as to costs as he thinks fit.

(6) At the conclusion of the hearing the Warden shall announce in open court the purport of his proposed report to the Minister on the application and the objections and shall transmit to the Director—

- (a) the application and any objections lodged; and
- (b) the copy of the evidence taken at the hearing; and
- (c) his report to the Minister.

(7) The Director, on receipt of the documents referred to in Subsection (6), shall submit them to the Minister.

115. Determination by the Minister.

(1) On receipt of the documents submitted to him under Section 114(7), the Minister may grant or refuse the application.

(2) The Minister may grant the application subject to such conditions as he thinks fit.

116. Penalty for obstruction of work authorized.

A person who hinders or obstructs the performance of any work authorized under this Part is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding six months.

117. Revocation of authority.

(1) Where any authority under this Part has been granted subject to conditions and there has been any failure to fulfil any of the conditions, the Warden may, by written notice served on the grantee of the authority, require him to show cause within the prescribed time why the authority should not be revoked.

(2) On failure to show cause, the Minister may revoke the authority.

PART XIII.—TRIBUTE AGREEMENTS.**118. Tribute agreements.**

(1) Subject to this Part and the regulations, a tribute agreement may be made in relation to any mining tenement or part of a mining tenement.

(2) Every tribute agreement shall be in writing and an executed copy of every tribute agreement shall, within the prescribed time, be delivered by the tributer to the Warden to be retained and registered by him, and shall be accompanied by the prescribed fee.

(3) A tribute agreement shall not take effect until registered by the Warden and a certificate of registration has been issued by him.

(4) The Warden shall not register any tribute agreement which does not comply with this Part and the regulations.

119. Land under tribute to be defined.

Every tribute agreement shall define the area of the land which is subject to the tribute agreement.

120. Term of tribute agreement.

A tribute agreement shall not be made for any less period than three months but shall provide for the right of either party to terminate the tribute agreement on the breach by the other party of any condition contained in it.

121. Notice of termination.

(1) Before any tribute agreement may be terminated for breach of any condition, written notice of the termination shall be delivered to the party affected at least seven days before the date of termination.

(2) A copy of the notice shall be lodged at the Warden's Office at least three days before the date of termination.

122. Disputes between parties determined by Warden.

Where the parties consent, a dispute arising between the parties to a tribute agreement and in relation to the tribute agreement shall be determined summarily by the Warden and his decision shall be final and conclusive¹.

¹But, see, Constitution, Section 155.

PART XIV.—ADMINISTRATION.

*Division 1.—Wardens' Courts, Wardens, and other Officers.***123. Establishment of Wardens' Courts, etc.**

The Minister may by proclamation in the National Gazette establish courts called Wardens' Courts, with offices called Wardens' Offices, at such places as he thinks fit.

124. Alteration or discontinuance of Warden's Court.

The Minister may by proclamation in the National Gazette alter the place at which a Warden's Office is situated or order that any Warden's Court be discontinued.

125. Transfer of proceedings and records.

Where a Warden's Court is discontinued, all the proceedings pending in it and all the records of it shall be transferred to and continued in such other Warden's Court or Courts as the Minister directs.

126. Status and general jurisdiction of Wardens' Courts.

(1) In this section, "the mining legislation" means this Act and the *Mining (Safety) Act* and includes any corresponding previous law and the regulations made under this Act and the *Mining (Safety) Act* or any corresponding previous law.

(2) Every Warden's Court is a court of record and has jurisdiction to hear and determine all actions, suits, claims, demands, disputes and questions which may arise in relation to—

- (a) mining or in any way relating to any mining tenement where the land in respect of which any dispute arises is held under the mining legislation; and
- (b) any breach of the mining legislation; and
- (c) any alleged forfeiture,

and such other jurisdiction as is provided by this Act.

127. Territorial jurisdiction of Warden's Court.

Every Warden's Court has jurisdiction throughout the whole of the country.

128. Certain cases to be heard by particular Courts.

Where the hearing of a complaint involves the trial of a right to any land or mining tenement or share in it, or any money due in respect of it, or contributions or calls made or apportioned by or between persons or corporations for the purpose of carrying on the business of mining or in any way connected with mining, the complaint shall be heard before the Warden's Court that has its office nearest to the place where the land or mining tenement is situated.

129. Appointment of Wardens.

(1) After consulting the Judicial and Legal Services Commission, and acting in accordance with any advice it may give, the Minister may appoint officers to be Wardens.

(2) Every Warden shall have and exercise jurisdiction in any Warden's Court in respect of the matters contained in this Act with power to issue summonses, warrants, and other processes with legal effect and operation throughout the country.

130. Places for holding Warden's Court.

(1) Subject to Subsection (2), a Warden's Court may be held from time to time at any place for which the office of the Court is the nearest Warden's Office to the place in respect of which the cause of action to be heard arose.

(2) Subject to Subsection (3) this Act does not prevent a Warden's Court from sitting at any place that the Warden, taking into account the nature and subject of the complaint and the parties to the action, considers to be convenient.

(3) A Warden's Court shall not sit at a place other than the place for which it is established unless the Warden gives to the parties concerned reasonable notice of the intention to sit at that other place.

131. Warden's Court held before Warden sitting with assessors.

(1) Where a Warden is of the opinion that a particular complaint being, or to be, heard before a Warden's Court in which he is, or is to preside, should be heard by him sitting with assessors, he may request the Director to appoint such assessors.

(2) On receiving a request under Subsection (1), the Director shall, in the prescribed manner, appoint such assessors as he considers necessary for the purposes of the hearing.

(3) A complaint in respect of which assessors have been appointed under this section shall, subject to this Act and the regulations, be heard by the Warden sitting with assessors.

132. Manner of hearing cases in Warden's Court.

Subject to Section 131, a Warden's Court shall in all cases be held by and before a Warden sitting alone.

133. Appointment of Registrar.

The Minister may by notice in the National Gazette appoint a person to be the Registrar of a Warden's Court.

*Division 2.—Procedure of Wardens' Courts.***134. Procedure of Warden's Court.**

(1) The proceedings taken, forms used, and manner, time and place of hearing and determining all matters within the jurisdiction of a Warden's Court shall be in accordance with this Act and the regulations.

(2) Notwithstanding anything in this Act, a Warden may, on oral or written complaint of any party, with the consent of both parties, immediately on the making of such complaint, or at any time agreed on by the parties, and at any place, investigate the matter of the complaint, and inquire into the case, and on his own view or the oath of any witness, determine the complaint in a summary way, and exercise all the powers and authorities vested in a Warden's Court in the same manner in every respect as if the case had been heard on plaint and notice of defence in the usual way.

(3) In all cases where such consent is given under Subsection (2), the decision of the Warden shall be final and there shall be no right of appeal¹.

(4) The Warden shall in every case under this section make an entry of the grounds of complaint and defence or cross claim and of the decision.

¹But, see, Constitution, Section 155.

135. Representation of suitor.

A person having a suit in a Warden's Court has the right to be represented by an agent.

136. Payment into Court.

(1) In any case in a Warden's Court, the defendant—

(a) may at any time before the hearing, pay into Court—

(i) such sum of money as he considers to be a full satisfaction in respect of the matters complained of; and

(ii) the costs incurred by the complainant up to the time of the payment; and

(b) shall cause notice of the payment to be given to the complainant,

and that sum of money and costs may, at the request of the complainant, be paid to the complainant or his lawyer.

(2) Acceptance by the complainant of the sum and costs referred to in Subsection (1) shall fully discharge the defendant's liability to the complainant in respect of the matter complained of.

(3) If the complainant elects to proceed and recovers no further sum than has been paid into court under Subsection (1), he shall pay to the defendant the costs incurred by the defendant in the proceeding after the payment, and the Warden may decree accordingly.

137. Penalty for obstructing Warden.

A person who—

(a) wilfully insults or obstructs a Warden acting in the exercise of his jurisdiction under this Act; or

(b) wilfully interrupts the proceedings of a Warden's Court,

is guilty of an offence and may be excluded from the Court by the order of the Warden and whether he is excluded or not—be summarily convicted.

Penalty: A fine not exceeding K20.00 and in default of immediate payment imprisonment for a term not exceeding 14 days.

138. Agreement to bar appeal.

Before the hearing of a complaint, the parties may agree to accept the decision of the Warden's Court as final, and a memorandum of every such agreement shall be entered by the Warden in the register to be kept by him as provided in this Act and no appeal shall in such case be made from that decision.

Division 3.—Special Powers and Duties.

139. Right of inspection of mining tenements.

(1) Each of the parties is at liberty, before or during the hearing of a complaint, to apply to a Warden for inspection to be made of any land or mining tenement in dispute.

(2) If the party applying under Subsection (1) satisfies the Warden as to the propriety and reasonableness of his application, the Warden—

(a) if the case is to be heard before him alone—shall make such inspection; or

(b) if the case is to be heard before him and assessors—shall order that the inspection be made by the assessors alone on payment to the Warden by the

party applying of such sum (if any), and on such terms, as to the Warden seems reasonable.

(3) Any sum paid under Subsection (2)(b)—

- (a) shall be appropriated towards defraying the expenses of the assessors in carrying out the inspection ordered by the Warden; and
- (b) shall be deemed to be a part of the costs of the proceedings.

140. Power for Warden to order survey.

If, before or during the hearing of a complaint, it appears to the Warden that it is necessary for a survey to be made of any land or water in dispute, he may order either party to cause the survey and a plan of the survey to be made, and the costs of the survey and the plan shall be deemed to be a part of the costs of the hearing.

141. Power for Warden to order seizure of gold.

A Warden, if he thinks fit, at the time of the making of a decision under this Act or the regulations, may order that any gold or other mineral in the possession of and belonging to the party by whom payment of a sum in respect of a debt, damages or costs is ordered, to the extent in value of the sum (the value to be fixed by the Warden's Court), shall be delivered up to the party entitled to the sum by way of satisfaction or in part satisfaction of the debt, damages or costs.

142. Power for Warden to authorize entry on adjacent claim.

A Warden may, on the application of a person claiming to be legally or equitably interested in a claim or in any land comprised in a mining lease or application for a mining lease or in any other land adjoining or adjacent to a claim or land so comprised, by order under his hand, authorize such person as the Warden thinks fit to enter on a claim or land adjoining or adjacent to the first-mentioned claim or land or other land for the purposes of ascertaining whether the owner or occupier of the claim or land so to be entered on is encroaching on the first-mentioned claim or land or other land, or if there is any influx of water from it or any accumulation of water on it.

143. Powers of persons authorized to enter on claim.

(1) Any persons authorized may enter on the claim or land described in the order mentioned in Section 142 and descend a shaft or mine to make the necessary surveys and for such purpose may use the engines and other machinery ordinarily employed for that purpose by the persons whose shaft or mine is descended, and to make such plans and sections of the claim or land entered on, and of any drives or other works in it as is necessary for that purpose.

(2) A person authorized, under Subsection (1), to enter on a claim or land shall, before entering, make a statutory declaration before a person authorized to take it that he will not, except as a witness in a court of justice, without the written consent of the owner or occupier of the land to be entered on, divulge, or cause to be divulged, to any person any information obtained on or by such entry, save only as to whether there is any such encroachment or any such influx or accumulation of water.

144. Power for Warden to grant injunction on notice.

(1) A Warden, on the application of a person claiming to be legally or equitably interested in a mining tenement, may hear, receive and examine evidence, and if he, in his

discretion, thinks fit and on such terms (if any) as he considers just, may, by order under his hand, enjoin a person named in the order—

- (a) from encroaching on, occupying, using or working the mining tenement; or
- (b) from seeking for, washing out, winning, extracting or removing any earth, gold or mineral taken from the mining tenement; or
- (c) from selling or disposing of or damaging or otherwise interfering with the mining tenement, earth, gold or mineral, or any share or interest in them; or
- (d) from doing any act by which the right, title or interest of the applicant in or to the tenement might be affected.

(2) An application under Subsection (1), shall be heard on notice served, at least 24 hours before the time for its making, on the parties interested in opposing the application or such of them as appear to the Warden sufficiently to represent the parties so interested, or on such of them as the applicant can, by using reasonable diligence or means, in the opinion of the Warden, serve with notice.

(3) The Warden may refuse to make an order unless he is satisfied that all parties interested have received notice of the date and place of hearing the application.

(4) The order shall remain in force for the period mentioned in it, unless sooner discharged by the Warden or some other court of competent jurisdiction.

(5) A person who acts in contravention of an order made under this section shall, on conviction before a District Court, be liable to a fine not exceeding K2 000.00, or imprisonment for a term not exceeding six months, or both.

145. Service of notice by advertisement, etc., in certain cases.

If the Warden is satisfied that reasonable endeavours to serve a notice in accordance with Section 144 have failed, it shall be sufficient service of the notice if it is—

- (a) advertised in a newspaper circulating in the district in which the subject matter of the application is situated and published at least 24 hours before the time for the making of the application as the Warden directs; and
- (b) if there is no such newspaper—by causing a notice to be affixed to the door of the Warden's Office,

and on every such application the Warden may make an order as to costs as to him seems just.

146. Injunction may be granted for seven days.

(1) Subject to Subsection (2), if, by reason of the urgency of a particular case, it seems proper to a Warden to do so, he may on an application under Section 144, but without any notice, by order under his hand, grant an injunction.

(2) An injunction granted under Subsection (1) remains in force for seven days inclusive of the day on which the order is made, or until the order is, by a Warden, sooner discharged, and no further injunction shall be granted under this section for the same cause.

(3) A person at whose instance an injunction is granted under this section shall be at liberty at any time to apply under this Act for an injunction for any longer period.

(4) A person who acts in contravention of an order made under this section shall, on conviction before a District Court, be liable to a fine not exceeding K2 000.00, or imprisonment for a term not exceeding six months, or both.

147. Power for Warden to order deposit of gold, etc.

(1) A Warden may, on the application of a party to a cause, by order under his hand, direct a person, or party to or interested in such proceeding, to deposit within the time or times mentioned in the order with a person or at a place named in the order, in the name of the Warden, or of any other person mentioned in the order, to abide the decision of the Warden's Court, any gold or other mineral, or any earth, amalgam or matter containing gold or any other mineral, or any money or other chattel described in the order which then is or which at any time before the final termination of the proceeding comes into the possession, power or control of that person, or party to or interested in the proceedings, and the right to the possession of it is claimed by the applicant.

(2) An order under Subsection (1) shall not be made except on proof to the satisfaction of the Warden that at least 12 hours' notice of the application has been given to the parties interested in opposing the order or such of them as appear to the Warden sufficiently to represent the whole.

(3) Section 145 applies, with the necessary modifications being made, to the notice referred to in this section and to the service of that notice.

148. Power of Warden to amend defects or errors.

(1) A Warden may at any time amend a defect or error in any proceeding before him whether there is anything in writing to amend or not and whether the defect or error is that of the party applying to amend or not.

(2) An amendment may be made on or without payment of costs and on such terms as the Warden thinks fit, and all such amendments as are necessary for the purposes of determining the real questions in controversy between the parties shall be so made.

(3) If it appears to the Warden that—

(a) a party has been delayed, misled or taken by surprise by reason of such defect or error; or

(b) injustice would be done by proceeding at once with the case,

the Warden may, on such terms as to costs or otherwise as he thinks fit, grant such adjournment as he thinks just.

149. Proceedings for recovery of land, etc.

(1) Where a proceeding before a Warden's Court is for the recovery and possession of any gold, mineral, earth, land, mining tenement, water-race, drain, dam or reservoir or a share in them, the Court shall determine—

(a) the right to the same and fix the boundaries of them or the limits and quantity of water to be taken by either of the parties, if necessary to do so, for the purpose of terminating the dispute; and

(b) if the complainant succeeds—whether any and what sum in the nature of mesne profits shall be paid to the complainant.

(2) Where a complainant under this section succeeds, the Warden shall order possession of such gold, mineral, earth, land, mining tenement, water-race, drain, dam, reservoir or water, or share in them, to be delivered to the complainant, and any sum to be paid by him.

(3) The Warden before whom the proceedings under this section were had, shall, or any other Warden may—

- (a) cause the complainant to be put into possession of any such gold, mineral, earth, land, mining tenement, water-race, drain, dam, reservoir or water, or share in them; and
- (b) if necessary—cause or order any defendant or his servants—
 - (i) to quit the same or such part of them as have been awarded to the complainant; or
 - (ii) to remove any buildings or other erections on them; or
 - (iii) to desist or be prevented from using the water.

150. Proceedings relating to diversion of waters, etc.

Where a proceeding before a Warden's Court relates to the right to divert water or to use, remove, or otherwise meddle with any reservoir, water-race, drain or dam, the Court shall determine that right, and if the complainant succeeds the Warden—

- (a) shall declare him at liberty to divert, use, remove, or otherwise meddle with the same; and
- (b) may make an order restraining a defendant, his servants, agents and workmen from preventing the complainant from doing so.

151. Proceedings in respect of encroachment.

(1) Where a proceeding before a Warden's Court relates to an encroachment or trespass on or injury to any land, mining tenement, water-race, drain, dam, reservoir or water, the Court shall—

- (a) determine the right to the same and fix the boundaries of the land, mining tenement, or the limits or quantity to be taken by either or any of the parties of the water if necessary to do so for the purpose of terminating the dispute; and
- (b) at the same time—assess the amount to be paid to the complainant by way of damages (if any) by reason of any encroachment, trespass or injury found to have been committed.

(2) The Warden shall order—

- (a) any damages awarded under Subsection (1) to be paid accordingly; and
- (b) that the person found to have encroached, trespassed or injured and his servants, agents and workmen to cease from such encroachment, trespass or injury,

and the same or any other Warden may—

- (c) cause the person so found to have encroached, trespassed or injured and his servants, implements, goods and chattels—
 - (i) to quit or be removed from the land, mining tenement, water-race, drain, dam, reservoir or water so encroached or trespassed on or injured; or
 - (ii) to desist or be prevented from the using of such water and to cause the complainant to be put into possession of it.

152. Proceedings in respect of money due on a contract, etc.

Where a proceeding before a Warden's Court relates to a debt or contract or to money due—

- (a) in respect of, or any share or interest in, any land or water; or
- (b) in respect of any gold, mineral or earth or to the amount of a contribution or other sum of money,

the Warden shall order any money or damages or gold, mineral or earth found due or payable or deliverable by either of the parties to the other of them to be paid or delivered accordingly.

153. Proceedings in respect of a partnership.

Where a proceeding before a Warden's Court relates to money due, or gold, mineral or earth deliverable on a mining partnership account or accruing to the complainant from any mining partnership, adventure or interest, the Warden shall take the account of such partnership, adventure or interest so far as is necessary to ascertain what sum or amount of gold, mineral or earth (if any) is so due or accruing, and the Warden—

- (a) shall order such sum or gold or mineral to be paid or delivered; and
- (b) may make an order for the dissolution of the partnership if he thinks fit on such terms as to—
 - (i) the sale or division of the partnership property; and
 - (ii) the payment of the partnership debts as he considers equitable and just.

Division 4.—Mode of Enforcing Orders and Decisions and Interpleader.

154. Enforcing decision in case of debt, etc.

(1) When a sum of money is awarded in a Warden's Court by way of debt, damages or costs or otherwise, and it is not paid promptly, the Warden on the application of the person entitled to receive it or of a lawyer on his behalf shall grant to the party so applying, a writ of execution under his hand.

(2) A person to whom a writ is delivered for execution—

- (a) may, by virtue of the writ, seize and take such property and dispose of it in the same manner as he could seize, take and dispose of it by virtue of a writ issuing out of the National Court; and
- (b) shall have the same powers in respect of the sale and disposal of the property and do and execute all duties in respect of it as are by law conferred and imposed on the sheriff of the National Court on a writ of *feri facias* issued out of that Court.

(3) No such writ shall, except on special cause shown to the satisfaction of the Warden, be issued until after the expiration of seven days from the day on which the decision, under which the sum of money was awarded, was made.

155. Mode of enforcement where not otherwise provided for.

Where a Warden is empowered or required by this Act to cause any act to be performed and the mode of performing that act is not otherwise expressly provided for, any person authorized in writing by the Warden may perform the act, and all members of the

Police Force shall, if so required, aid and assist any Warden or person so authorized in the performance of his duty under this Act.

156. Interpleader.

(1) If a claim is made to or in respect of any goods or chattels taken in execution under any process issued by a Warden or in respect of the proceeds or value of them, by a person not being the party against whom the process has issued, the Warden may, on application by the person charged with the execution of the process, before or after any action brought against that person, issue a summons calling before the Warden the party on whose behalf the process was issued and the party making the claim.

(2) Where the Warden issues a summons under Subsection (1)—

- (a) any action which has been brought in a court in respect of the claim shall be stayed and the court in which the action is brought may, on proof of the issue of the summons and that the goods and chattels were so taken in execution, order the party bringing the action to pay the costs of all proceedings had on the action after the service on him of the summons issued by the Warden; and
- (b) he shall adjudicate on the claim and make such order between the parties in respect of the claim and of the cost of the proceedings as he thinks fit, and the order may be enforced in like manner as any order made in any suit brought or any proceedings before the Warden, as the case may be.

Division 5.—Statement of Special Case for the Opinion of the National Court.

157. Power for Warden to state special case.

On any proceeding before a Warden's Court in which the decision is not by this Act declared to be final—

- (a) the Warden may, if he thinks fit, reserve a question of law in the form of a special case for the opinion of the National Court; and
- (b) no final order shall be made in respect of a matter on which the question is reserved until the opinion is given.

158. Transmission of special case to National Court.

Every special case shall, after it is prepared by the Warden, be transmitted to the Registrar of the National Court, who shall cause it to be set down for argument before the Court whose decision when given shall be drawn up and transmitted by the Registrar to the Warden who shall make his order in accordance with that decision.

159. Warden may grant an injunction, etc., in certain cases.

Where a special case is reserved, the Warden who has reserved it may, on the application of a party interested in the case, make an order for an injunction or payment of money into court on such terms as the Warden thinks proper.

Division 6.—Appeals to National Court.

160. Appeal to National Court.

(1) A party aggrieved by a decision of a Warden's Court in a case, in respect of which the decision is not by this Act declared to be final, may appeal to the National Court from the decision within 60 days after its pronouncement.

(2) The Warden may, on application of the party made within three days of the pronouncement of the decision, extend the period referred to in Subsection (1).

(3) A party entitled to appeal under this section shall, on application to the Warden and the payment of the prescribed fee, be furnished with a copy of the evidence in relation to the case.

(4) The appeal shall be instituted by the party—

(a) serving a written notice of the appeal on the other party or parties affected by the decision; and

(b) lodging in the Warden's Office—

(i) a copy of the notice of appeal accompanied by an affidavit proving that it has been duly served; and

(ii) security, for an amount not exceeding K1 000.00 as the Warden deems satisfactory and sufficient to cover the costs of appeal.

(5) Where the security has been lodged under Subsection (4)(b), the Warden shall forward to the Registrar of the National Court certified copies of the proceedings and evidence in the case.

161. Extension of time.

Notwithstanding Section 160, the National Court may, on application ex parte by the party appealing, extend the time for compliance with any condition precedent to the hearing of an appeal from a decision of a Warden's Court.

162. Preliminaries to hearing appeals.

An appeal under this Division shall not be heard unless, at the hearing, a copy of the minutes of the decision of the Warden's Court signed and certified under the hand of the Warden or the Registrar, is produced to the National Court, and the Warden is required to lodge the copy or cause it to be lodged at the office of the Registrar of the National Court.

163. Power of National Court to make order on appeal.

On the hearing of an appeal the National Court may make an order reversing or varying the decision of the Warden's Court, or dismissing the appeal, and the National Court shall, if necessary, order—

(a) payment of money or the delivery of the possession of any land, mining tenement, water, gold, mineral, or other property to the person who was the complainant before the Warden's Court; or

(b) restitution of any land, mining tenement, water, gold, mineral, or other property,

as the case requires, and may make an order with respect to the costs of the appeal, and of the proceeding appealed from, as the Court thinks fit.

164. Costs when allowable.

If, on the hearing of the appeal, the subject matter of the dispute appears to the National Court not to exceed in value K100.00, the appellant shall not, although he succeeds, be entitled to receive any costs of his appeal from the opposite party, unless the court is of opinion—

(a) that the interests involved directly or indirectly in the decision exceed that amount; or

(b) that the special circumstances of the case entitle the appellants to costs, in which cases the question of costs shall be in the discretion of the National Court.

165. Hearing of appeals.

Subject to Section 166, every appeal shall—

- (a) be heard and determined by a Judge sitting alone, and
- (b) be in the nature of a rehearing or on such points only as the parties may by consent determine at any time before the hearing of the appeal.

166. Hearing before a Judge with assessors.

(1) When the appeal is from a decision in a case tried before a Warden sitting with assessors, if either of the parties to the appeal so require, it shall be tried before a Judge sitting with three assessors.

(2) At least five days prior to the day fixed for the hearing of the appeal, the party requiring the appeal to be heard by a Judge with assessors shall give written notice to the Registrar of the National Court, and shall pay to him the prescribed fee.

167. Appointment of assessors.

Assessors for the purpose of this Division may be appointed in the manner and receive remuneration as prescribed.

168. Order by Warden pending appeal.

(1) Where an appeal has been brought, or is about to be brought, the Warden, from whose decision the appeal is brought or is about to be brought, on the application of any of the parties interested in the appeal, may make an order for an injunction, or receiver, or payment of money into the hands of the Warden, to abide the event of the appeal, or for stay of proceedings or otherwise, and on such terms, as he thinks proper, and the Warden may at any time afterwards, if he thinks fit, discharge or vary the order.

(2) In the absence of an order under Subsection (1), or an order to the same effect by the Judge, no appeal shall operate as a stay of proceedings.

Division 7.—Costs.

169. Payment of costs in absence of direction.

In default of any special direction each party shall pay his own costs.

170. Taxation of costs.

(1) On the application of any party chargeable with costs by a lawyer employed by that party in proceedings before the National Court or a Warden's Court under this Part, an appointment for taxation of costs may be obtained from the Registrar of the National Court, if the matter is in the National Court or from the Warden, if in the Warden's Court and such costs and the demand of the lawyer on the costs shall be taxed and settled and allowed at such amount as is determined by the Registrar of the National Court or the Warden, as the case may be, and the only costs payable or recoverable, save in the case of a written agreement to the contrary, shall be the costs so taxed and allowed by the Registrar of the National Court or the Warden.

(2) Any sum or sums paid by the party to the lawyer on account of or by way of costs of the proceeding in excess of the amount taxed and allowed shall, on application by the

party to the Registrar of the National Court or the Warden, be ordered to be repaid to the party by the lawyer.

171. Review of taxation of costs.

(1) A person who is dissatisfied with the result of the taxation by the Registrar of the National Court or the Warden under Section 170 may, within 30 days of the conclusion of the taxation, apply for a review of a taxation to a Judge.

(2) An application under Subsection (1) shall—

- (a) be in writing; and
- (b) be sent through the Registrar or Warden whose taxation it is desired to review; and
- (c) state the general grounds on which the application is made.

(3) Where an application for a review is received by a Warden or a Registrar of a Warden's Court, he shall promptly forward the application to the Registrar of the National Court, together with his notes of the taxation which it is desired to review.

(4) The review of taxation as provided in this section shall be by way of rehearing and the Judge shall hear and determine any question or questions arising on the review and may make an order which, in his opinion, the Registrar or Warden could and should have made in relation to the taxation.

(5) The Judge before whom taxation is reviewed under this section may make an order as to the costs of the review as he deems fit.

PART XV.—GENERAL PROVISIONS.

172. Rent on mining tenements.

(1) This section applies to mining tenements other than special mining leases.

(2) Rent is payable to the State in advance in the prescribed manner on all mining tenements to which this section applies whether granted before or after the commencement date, at the prescribed rate per hectare per year.

(3) Where, before the commencement date, rent had been paid on a mining tenement to which this section applies in respect of a period expiring after that date, Subsection (2) applies to and in relation to that tenement as from the expiration of that period.

173. Occupation fee.

(1) Occupation fees are payable to the owner of private land in advance in the prescribed manner on all mining tenements over the land or part of the land, whether granted before or after the commencement date.

(2) Subject to Subsection (4), the occupation fee on a mining tenement is 5% per annum of the unimproved value of the private land included in it, calculated in accordance with the *Valuation Act*.

(3) The unimproved value of private land within a mining tenement shall be re-assessed every seven years, calculated from—

- (a) the date on which the land becomes private land; or
- (b) the date of grant of the tenement; or

(c) the date of commencement of the corresponding provision of the repealed Act,
whichever last occurs.

(4) The minimum payment under this section is K5.00 per hectare per year.

(5) In Subsection (3), "the corresponding provision" means—

- (a) in the case of land situated in that part of the country formerly known as the Territory of Papua—Section 168B of the *Mining Act* 1937 (P); and
- (b) in the case of land situated in that part of the country formerly known as the Territory of New Guinea—Section 116B of the 1928 Act.

174. Devolution of mining tenements, etc.

All mining tenements shall on the death or insolvency of the holder or holders, devolve on his or their personal representative or representatives or assignee or trustee in insolvency, and shall be liable to seizure and sale under any execution issued from the National Court, Warden's Court, or District Court, and the proper officer appointed to sell the mining tenements shall have full power to give an effectual transfer of the interest sold by him.

175. Dredging or sluicing leases.

Subject to Section 64, no dredging or sluicing lease shall be granted under this Act or the regulations, but a dredging or sluicing lease granted under the 1922 Act shall, subject to this Act—

- (a) continue in full force and effect; and
- (b) may be renewed from time to time,

subject to the terms and conditions contained in the lease and to the provisions of that Act and the regulations under that Act.

176. Business licences.

(1) Subject to Subsection (3), no business licence shall be granted under this Act or the regulations, but a business licence granted under the 1928 Act shall, subject to this Act—

- (a) continue in full force and effect; and
- (b) may be renewed from time to time,

subject to the terms and conditions contained in the licence and to the provisions of that Act and the regulations made under that Act.

(2) Section 24 applies to the holder of a business licence as if references in that section to the holder of a miner's right were references to the holder of a business licence.

(3) The holder's interest in a business licence may at any time during its currency be assigned or transferred in the following manner :—

- (a) the holder shall, in writing under his hand endorsed on the licence and signed by him in the presence of a witness, express his desire and intention to assign or transfer his interest in the licence to a person named in the endorsement; and
- (b) on the production and surrender to the Warden of the licence so endorsed and on payment of the prescribed fee the person named in the endorsement

shall be entitled to a new licence in the prescribed form for the unexpired period of the original licence.

177. Special Areas.

Special Areas shall not be declared under this Act or the regulations, but a Special Area declared under the 1928 Act shall, subject to this Act, continue in full force and effect subject to that Act and the regulations made under that Act.

178. Restriction on certain dealings.

(1) In this section, "mining interest" means a mining tenement and an authority or permit under this Act, other than a prospecting authority or special mining lease.

(2) Notwithstanding anything in this Act but subject to this section, the holder of a mining interest shall not, without the written approval of the Minister, transfer, assign, underlet or part with the possession of that interest or any part of that interest and every purported transfer, assignment, underletting or parting with possession effected without that approval is void and of no effect.

(3) A contract or agreement for the transfer, assignment, underletting or parting with the possession of a mining interest or any part of a mining interest is not a contravention of this section if that contract or agreement—

(a) is expressed to be subject to the approval of the Minister; and

(b) provides that, unless and until approval is given, the contract or agreement shall have no force or effect.

(4) Where the Minister is satisfied that the failure to obtain his approval for a purported transfer, assignment, underletting or parting with possession of a mining interest was due to inadvertence, he may, at any time within a period of six months immediately after that purported transfer, assignment, underletting or parting with possession, as the case may be, give written approval of that action, and on such approval being given, the purported transfer, assignment, underletting or parting with possession shall be deemed to have been done with the approval of the Minister having first been obtained.

(5) This section does not derogate from any obligation or covenant implied or expressed in any mining lease or any other lease of a mining tenement not to assign, underlet or part with the possession of the land demised without the previous consent of the Minister.

179. Disqualification of certain companies.

Subject to Section 72 in respect of special mining leases, a miner's right, mining tenement, prospecting authority or any other authority or permit under this Act to enter and prospect on private land shall not be granted to or held under this Act by a company that is not—

(a) incorporated by or under an Act; or

(b) registered as a foreign company under the *Companies Act*.

180. Notice for protection of investors.

(1) Where it appears to the Minister that—

(a) any share in a company holding an interest, or an option over an interest, in a miner's right, mining tenement, prospecting authority or any other authority or permit under this Act, is either by advertisement or otherwise being offered for sale; and

- (b) any representation of fact or of opinion is being made, published or circulated in relation to the company or to the miner's right, mining tenement, prospecting authority or any other authority or permit, which representation is not in accord with the facts and conditions known to the Director; and

- (c) it is advisable in the interests of investors,

he may by notice in the National Gazette and without stating a reason for the notice, publish such warning, advice or information as he considers necessary for the protection of investors.

(2) The publication of any warning, advice or information pursuant to Subsection (1) is absolutely privileged.

181. Leases, etc., to be approved.

Notwithstanding anything in the *Land Act*, no Government land comprised in a gold-field or mineral field shall be leased or disposed of under the provisions of that Act without the approval of the Minister.

182. Party imprisoned may be discharged by Judge of National Court.

(1) A person in custody under any order of commitment made under this Act or the regulations may, on giving reasonable notice to—

- (a) the person, or to one of the persons if more than one, on whose application the order was granted; or
- (b) if the person or none of the persons can be found—to the Judge by whom the order was made,

apply in a summary way on affidavit to a Judge of the National Court for his discharge.

(2) On an application under Subsection (1) the Judge may, in his discretion and on such terms (if any) as he thinks fit, by order under his hand directed to the person in whose custody the applicant may be, direct that the applicant be discharged.

(3) When the order of commitment has been founded on a previous decree or order, the Judge, on the application, shall not inquire into the merits of the previous decree or order.

183. Security for wages.

(1) The amount for the time being due to all managers, clerks, miners, artisans and labourers employed in or about a mine in respect of their wages or other earnings in relation to the mine, not exceeding four weeks' wages or earnings to each person, shall, notwithstanding that—

- (a) the mining tenement is mortgaged or charged to secure the payment of any other money; or
- (b) there is any lien on the mining tenement,

be a first charge on the mining tenement in or on which the mine is situated.

(2) In the winding-up of a company formed for or engaged in working a mine the amount (if any) due to the date of the winding-up order to persons in respect of wages or earnings, not exceeding four weeks' wages or earnings to each person, shall be paid in priority to all other debts secured or unsecured of the company and such first charge shall include all costs awarded against a person or company in proceedings before a court to recover such wages or earnings and any costs, charges or expenses properly incurred in enforcing such order.

(3) The debts so charged on a mining tenement and the debts so payable in priority to all other debts of a company shall rank equally amongst themselves and if necessary shall abate in equal proportions between themselves.

184. Incapacity to sue, etc., without miner's right.

(1) Subject to Subsection (2) a person may not institute proceedings in a court—

- (a) to recover possession of a claim or of a share in it; or
- (b) to recover damages for, or to restrain the occupation of, or encroachment on, that claim; or
- (c) to obtain any relief as tenant in common, joint tenant or co-partner against his tenant in common, joint tenant or co-partner; or
- (d) to recover any interest or part interest in a water-race, dam or reservoir used or to be used for or in connexion with mining under or by virtue of a miner's right,

unless that person was the holder of a miner's right at the time when his alleged title to recover possession, damages, or interest or to obtain such relief first arose or accrued.

(2) This section does not extend or apply to a *cestui que trust* who seeks to enforce the fulfilment of a trust with respect to a claim, water-race, dam or reservoir.

(3) The non-production of a miner's right shall not be a bar to suing for wages in the Warden's Court.

185. Infancy.

A person under the age of 21 years being the holder of a miner's right may, notwithstanding any law, statute, custom or usage to the contrary, sue and be sued in respect of a matter that is within the jurisdiction of a Warden's Court, in the same manner as if he were of full age.

186. Persons authorized to take affidavits.

An affidavit to be used in a Warden's Court or court of appeal from a Warden's Court, or before a Judge or Warden, may be sworn before a Judge, a District Officer, a Warden or other person authorized by law to administer an oath.

187. Warden holding mining interest, etc.

A warden who, at any time during his appointment, holds an interest or share in a miner's right, mining tenement, prospecting authority, or any other authority or permit under this Act or any mining venture in the country is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding three years.

188. Assault on Warden and other officer.

(1) A person who assaults, obstructs, or resists a Warden or a person duly authorized by a Warden or an inspector or other person, in lawfully entering on a claim or land, or in performing any act authorized by this Act or in the performance of his duty or in the exercise of his powers under this Act is guilty of an offence.

(2) A person who, after being removed by a Warden under the provisions of this Act from any lands held under this Act, forcibly or clandestinely retakes or retains, or endeavours to retake or retain, possession of them or of any portion of them, or of any share in them is guilty of an offence.

(3) A person who, after a decision of a Warden that a complainant is entitled to use for mining purposes or to divert any water (such decision not having been reversed on appeal), resists the complainant or his agents in that use or diversion is guilty of an offence.

(4) A person who, on or in consequence of the decision of a Warden's Court against him, assaults or threatens to assault a person in whose favour the decision has been made is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months.

189. Power of Warden to fine persons found mining without miner's right.

(1) If a person—

- (a) is found by the Warden to be engaged in mining for gold or any mineral on Government land not held by him or his employer under a mining lease; and
- (b) does not, on demand, produce his miner's right, or account to the satisfaction of the Warden for not having a miner's right,

he is guilty of an offence.

(2) If a person employs a person, not being the holder of a miner's right, in mining for gold or any mineral on Government land not held by him under a mining lease, the employer and the person employed are each guilty of an offence.

Penalty: A fine not exceeding K4.00 or imprisonment for a term not exceeding one month.

190. Penalty on witness neglecting to appear.

(1) A person on whom a summons, issued by a Warden requiring him to appear as a witness in the Warden's Court or before the Warden, has been served personally or in such other manner as is prescribed, and to whom at the same time payment or tender of his expenses on the prescribed scale has been made, who—

- (a) refuses or neglects, without sufficient cause, to appear according to the tenor of the summons; or
- (b) having so appeared, refuses to be sworn or answer any lawful question,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) A person committing an offence against this section may be charged before and dealt with by a Warden.

191. Unauthorized miners may be ejected.

A person who, not being the holder of a miner's right is found working for gold or minerals on Government land, not held by him or his employer under a mining lease, may be forcibly ejected by a Warden, member of the Police Force or other person so authorized by the Minister.

192. Timber rights.

(1) Subject to Subsection (2) and to such timber rights as exist at the time and to such conditions as are prescribed and for the purposes of mining and for domestic purposes in connexion with mining, the holder of a mining tenement may cut, take, and use any timber growing on the land which comprises the mining tenement.

(2) The holder of a mining tenement shall be liable for any fees and royalties payable under any legislation for the time being in force relating to timber or forests.

193. Mining or removing minerals without authority.

A person found working for gold or minerals, or removing gold or minerals or gold or mineral ores from the mining tenement of any other person who is personally or by his agents occupying the mining tenement, without permission of that other person, whether the mining tenement is—

(a) held under a mining tenement; or

(b) applied for to be so held,

is guilty of an offence and may be forcibly ejected by a Warden, a member of the Police Force or other person authorized by the Minister to do so.

Penalty: A fine not exceeding K1 000.00.

194. Removing minerals, etc., from claims.

A person—

(a) who takes or removes gold, precious stones or mineral ore from the mining tenement of another person without permission of the other person, shall be deemed to have stolen the gold, stones or ore; and

(b) receiving the gold, stones or ore knowing it or them to have been so taken or removed without permission shall be deemed to have received it or them knowing it or them to have been stolen.

195. Possession of gold without lawful excuse.

(1) In this section "gold" means gold, gold alloy, gold bullion, gold amalgam, retorted gold, copper plates retaining or containing gold, and all earth, quartz, concentrates, and products containing gold in sufficient quantity to pay for treatment, but does not include money or wrought gold.

(2) A person who has in his possession, power or control, without lawful excuse (proof of which is on him) any gold, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding three years.

196. Fees, penalties, etc., how recoverable and applied.

All fees, charges and sums of money which are or may be imposed or made payable, and all penalties incurred under this Act or under the regulations, for which no other mode of recovery is provided by this Act or by the regulations, may be recovered, carried out, or enforced by a District Court in the manner in which convictions and orders are enforceable by District Courts under the *District Courts Act*.

197. Proceedings not to be removed into National Court.

Proceedings under this Act shall not be removed or are not removable into the National Court except as provided by this Act.

PART XVI.—MINING RIGHTS OF AUTOMATIC CITIZENS.

198. Mining rights of automatic citizens.

(1) Automatic citizens have all the rights conferred by this Act on holders of miners' rights for purposes incidental to or connected with mining.

(2) Miners' rights shall not be issued to automatic citizens, nor shall an automatic citizen hold any mining tenement, on behalf of any person.

PART XVII.—MISCELLANEOUS.

199. Provincial government to be consulted.

Before granting a prospecting authority or mining lease under this Act, the Minister shall consult with the provincial government (if any) in whose province the land the subject of the authority or lease is situated.

200. Acquisition of land.

For the purposes of Section 53(1) (*protection from unjust deprivation of property*) of the Constitution and the *Land Act* the following are declared to be public purposes :—

- (a) the exercise by the holder of a prospecting authority of the rights conferred by Section 31; and
- (b) the exercise by the lessee of a special mining lease of the rights conferred by Section 76; and
- (c) the purposes for which a lease for mining purposes may be granted under Section 85; and
- (d) the exercise by the owner of a mining tenement on private land of the rights conferred by Section 103; and
- (e) the purposes for which an authority may be given under Section 112 to the holder of a mining tenement; and
- (f) the purposes of granting a mining tenement, other than a special mining lease.

201. Regulations.

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for—

- (a) determining—
 - (i) the dimensions, boundaries, form, position and extent of any mining tenement, or class of mining tenements; and
 - (ii) their subsequent adjustment where necessary; and
 - (iii) the time when such determination shall be deemed to take effect; and
 - (iv) the number and extent and classes of mining tenements of which any one person or any two or more persons may take possession; and
 - (v) the creation of any new class, type or form of mining tenement; and
- (b) determining—
 - (i) the manner in which persons desirous of taking possession of mining tenements on all lands coming within the operation of this Act shall mark out those tenements; and
 - (ii) the requirements to be complied with by those persons; and
- (c) providing—
 - (i) for the registration of mining tenements and any share or interest in, and any lien or encumbrance on, them; and

- (ii) for the assignment or sub-lease of them and of any share or interest in them, and of any such lien or encumbrance on them; and
 - (iii) for the discharge of any such lien or encumbrance; and
 - (iv) for the registration of any such mining tenement, share, interest, lien, encumbrance, assignment or sub-lease in the case of death, insolvency or insanity or of sale under the decree, judgement or order of a court; and
- (d) prescribing—
- (i) the labour conditions, not otherwise provided for in this Act, subject to which a mining tenement or class of mining tenements shall be held; and
 - (ii) the condition on which exemption from the performance of those conditions may be applied for, granted and obtained; and
 - (iii) generally the manner in which and with what incidents the rights and obligations of a mining tenement or class of mining tenements shall be taken possession of, held, occupied, used, worked or enjoyed; and
- (e) determining—
- (i) the events on which the title to a mining tenement or any share in it shall become forfeited and for imposing a penalty on the happening of one or more of those events in place of forfeiture; and
 - (ii) what shall constitute exemptions from, or suspensions of, forfeiture; and
 - (iii) what person shall be entitled to enforce forfeiture or penalty, and prescribing an order of priority of right in any persons to enforce a forfeiture or penalty; and
- (f) limiting the time within which, and prescribing the mode in which, proceedings for a forfeiture or penalty must be taken; and
- (g) determining whether and under what circumstances a person who has obtained an adjudication of a forfeiture shall, as a condition precedent to his obtaining possession of the forfeited tenement, pay to the person as against whom the tenement is adjudged forfeited, a sum as compensation for any property on that mining tenement; and
- (b) regulating the cutting, constructing, use and maintenance of water-races, dams and reservoirs on Government land; and
- (i) determining—
- (i) whether and under what circumstances and subject to what conditions the holders of licences and miners' rights entitled to the use of water shall have, amongst themselves, priority of supply of that water; and
 - (ii) if so—
 - (A) how, or according to what system, that supply shall be regulated; and
 - (B) when the events on the order of priority of which any such priority is to depend shall be deemed to have occurred; and

(j) determining—

- (i) what shall constitute relinquished, abandoned or deserted, as distinguished from forfeited, mining tenements or shares in them; and
- (ii) by what person lawfully competent to do so and in what mode, and under what circumstances, it shall be ascertained whether any particular mining tenement or share is relinquished, abandoned or deserted within the meaning so determined; and
- (iii) whether, and under what circumstances, a person shall be permitted to relinquish without being liable to any consequences as for the forfeiture of a mining tenement; and

(k) determining—

- (i) the mode in which a mining tenement or a share in it that may be transferred, assigned, sublet or encumbered may be so transferred, assigned, sublet or encumbered, and in which a lien or encumbrance may be assigned or discharged; and
 - (ii) the rights and obligations of an assignee, licensee or encumbrancee of or on a mining tenement or share in a mining tenement, and the order of priority of two or more such licensees or encumbrancees; and
- (l) regulating the mode in which the rights, privileges and interests of the owners of mining tenements may be exercised or enjoyed, and for limiting, qualifying or restricting the exercise and enjoyment of those rights, privileges and interests, and generally for the protection of the owners in the exercise and enjoyment of those rights, privileges and interests; and
- (m) preventing the defiling or wasting of water used for domestic purposes, and for determining whether any and what waterhole, spring or other depository of water shall be reserved for domestic use and the mode of its reservation; and
- (n) determining the cases in which Government lands exempted from occupation for mining purposes shall cease to be so exempted; and
- (o) prescribing the manner in which compensation shall be ascertained and paid under the provisions of this Act and the regulations; and
- (p) prescribing rules for the management of goldfields and mineral fields; and
- (q) defining the manner of doing or performing anything by this Act required to be done or performed; and
- (r) prescribing the manner in which registers shall be kept; and
- (s) prescribing the survey of any land or mining tenement and the manner in which it shall be surveyed; and
- (t) defining the powers and duties of Wardens and Registrars in all cases where such powers and duties have not been defined by this Act; and
- (u) prescribing the manner in which persons desirous of having leases or licences granted to them shall mark out the land they apply for; and
- (v) prescribing—
- (i) the mode of making and investigating and determining applications for and objections to the granting of leases and licences; and

- (ii) the amount of deposit (if any) to be paid by applicants and objectors respectively in connexion with those determinations; and
- (u) prescribing the manner of dealing with cases when two or more applications are made in respect of the same mining tenement; and
- (x) prescribing the forms of leases, licences, certificates, applications, objections, notices and other documents granted, issued, or used under or for the purposes of this Act; and
- (y) prescribing—
 - (i) the covenants, conditions, reservations and exceptions to be inserted in leases and licences granted under this Act; and
 - (ii) the manner in which those leases and licences shall be registered; and
- (z) determining the time and mode of ascertaining the amount of royalty and the time for payment of it; and
- (za) prescribing returns to be furnished by owners and managers of mines and mineral works; and
- (zb) requiring that information required to be furnished under the regulations be verified by statutory declaration; and
- (zc) regulating—
 - (i) the pleading, practice and procedure in the Wardens' Courts; and
 - (ii) the sittings of those courts and the duties of the officers and costs of the proceedings; and
- (zd) prescribing the qualifications of assessors, the time and mode of election, and their tenure of office; and
- (ze) in addition to the fees that are required or permitted by this Act to be prescribed, prescribing the fees (if any) that shall be payable for—
 - (i) the inspection during office hours of a register kept under this Act; and
 - (ii) appeals from the Warden's Court to the National Court; and
 - (iii) applications, surveys, travelling expenses, and processes and exemptions from performance of labour conditions or conditions of use or occupation or otherwise; and
- (iv) the registration—
 - (A) of an amalgamation, union or subdivision of leases or mining tenements; or
 - (B) of a mortgage, lien or encumbrance, or
 - (C) a transfer or discharge; or
 - (D) of an under-lease, assignment or transfer; or
 - (E) of rules or agreements, or of any other document of any kind; and
- (v) the filing of a declaration of the loss of any document; and
- (vi) the registration of transmission by death or under the laws relating to insolvency or insanity; and
- (zf) prescribing penalties of fines not exceeding K1 000.00 or imprisonment for terms not exceeding six months for offences against the regulations.

(2) The regulations may impose, for any disobedience of a lawful order of a Warden or other authorized officer, a fine not exceeding K1 000.00 and in default of payment imprisonment for a term not exceeding six months.

(3) The Minister may waive any conditions imposed by the regulations if in his opinion the conditions have been substantially satisfied.

PART XVIII.—TRANSITIONAL.

202. Transitional provisions.

(1) The purpose of this section is to substitute rights, liabilities, functions and duties under this Act for the rights, liabilities, functions and duties which existed under the repealed Act immediately before the commencement date.

(2) Unless the contrary intention appears in this Act, all things and circumstances created, made, done, issued, given, granted or continued under the repealed Act and existing immediately before the commencement date shall be deemed, subject to Subsection (3), to be the corresponding thing or circumstance under this Act.

(3) Any thing or circumstance deemed to be under this Act by virtue of Subsection (2)—

- (a) shall be subject, to the extent to which they are consistent with this Act, to the same vested, contingent and accrued rights, liabilities and incidents (if any) which applied immediately before the commencement date in relation to or attached to that thing or circumstance under or by virtue of the repealed Act; and
- (b) shall, where it had a term under the repealed Act which was still current at the commencement date, expire at the end of that term and shall not be extended or renewed.

(4) Subsection (2) does not apply to appointments to the Mining Advisory Board under the repealed Act.

(5) In this section, a reference to an Act includes a reference to a regulation made under that Act.

203. Saving and adaptation of regulations under the repealed Act.

(1) Subject to Subsection (2), all regulations in force under the repealed *Mining Act* 1928 (NG) (as in force immediately before the commencement date) immediately before the commencement date shall, except in so far as they are inconsistent with this Act, be deemed to have been made under this Act.

(2) At any time after this Act is certified, the Minister may take whatever action is necessary or desirable to adapt any regulations to which Subsection (1) applies to the circumstances of mining under this Act and for the regulation of mining in accordance with this Act.

(3) Any action taken before the commencement date under Subsection (2) takes effect on the commencement date, unless a later date is provided for.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining Regulation.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

CHAPTER No. 195.

Mining Regulation.

MADE under the *Mining Act*.

PART I.—PRELIMINARY.

1. Interpretation.

In this Regulation, unless the contrary intention appears—

“applicant” includes a person to whom an interest in an application has been transferred;

“lake” means any lake, lagoon, swamp, or other collection of still water, whether permanent or temporary, not contained in an artificial work;

“mines office” means the office of the Department of Minerals and Energy;

“reef” means any lode, seam, vein or bed of any mineral substance not being alluvial land;

“river” means any stream of water, whether perennial or intermittent, or flowing in a natural channel;

“river bed” means the soil between the tops of the banks of a river.

2. Forms of miner's right.

(1) A miner's right shall be in Form 1.

(2) A consolidated miner's right shall be in Form 2.

3. Fees.

(1) Fees under this Regulation are as prescribed in Schedule 2.

(2) A registration of or other dealing with—

(a) any mining tenement; or

(b) any interest in a mining tenement; or

(c) any matter or thing relating to a mining tenement,

shall not be recorded in the Warden's Office until the prescribed fee has been paid.

4. Notices, etc.

Any notice, application, or objection prescribed by this Regulation to be given or made shall be in writing signed by the person giving or making it, or by his agent or lawyer.

5. Notices to agent.

(1) Any notice required by the Act or this Regulation shall be deemed to be duly given to a person if given to his agent or lawyer.

(2) If—

(a) any person leaves a gold-field or mineral field without having appointed an agent; or

(b) an agent, when appointed cannot be found on a gold-field or mineral field;

it shall be deemed sufficient service of any notice required by the Act or this Regulation—

- (c) if a copy of the notice is kept posted at the Warden's Office; and
- (d) if the notice relates to any mining tenement—also on a conspicuous part of such tenement,

for a period of seven days or such other period as is prescribed.

PART II.—CLAIMS GENERALLY.

6. Number of claims taken up, etc.

The holder of a miner's right may, by himself or by his agent, if the appointment of the agent is registered at the Warden's Office, take up and hold any number of claims or shares in them, provided that the claims or shares are duly worked and represented by the prescribed number of men.

7. Taking forcible possession.

A person who—

- (a) takes forcible possession of any claim or share in the claim; or
- (b) commences to work the claim after his right to take possession of it has been disputed,

forfeits all right and title to the claim or share which he has acquired.

8. Taking up claims.

(1) Subject to this Regulation, the holder of a miner's right may take up and work as a claim any land authorized to be so taken up and worked by fixing firmly in the ground, at each angle of the claim, a post—

- (a) 8 cm in diameter, standing at least 1 m above the surface, and sunk not less than 50 cm in the ground; and
- (b) set in L trenches 1 m long and 15 cm deep along each boundary line.

(2) The posts referred to in Subsection (1) shall be kept uncovered at all times.

(3) When posts cannot be procured or sunk the angles of claims may be marked by stones at least 50 cm high.

(4) When the angles referred to in Subsection (1) are situated on any public street or road, or any other place where the fixing of a post or stone is impracticable or would be inconvenient, the angles may be permanently marked off by off-sets, or sunken pegs, or in such other manner as the Warden directs, and in every case an entry shall be made in the register at the Warden's Office stating the manner in which the angles are marked off.

(5) Land shall not be marked out on Sunday.

9. Number of claims.

Subject to this Regulation, the holder of a miner's right may mark off and apply for any number of claims in one block on behalf of himself and his partners on production to the Warden of the miners' rights of all the applicants.

10. Registration of claim.

(1) If the holder of a miner's right desires to register a claim, he shall make an application to the Warden in Form 3.

(2) On receipt of an application under Subsection (1) the Warden or Mining Registrar shall deliver to the applicant a certificate in Form 4.

(3) The applicant shall, within seven days after the receipt of the certificate, cause a copy to be posted and kept posted for 14 days—

- (a) on some conspicuous part of the ground applied for; and
- (b) at the Warden's Office.

(4) The applicant shall make and lodge at the Warden's Office a declaration in Form 5.

(5) If no objection is lodged against an application under Subsection (1) within 14 days the Warden may register the applicant as the holder of the claim and issue to him a certificate in Form 6, but, if an objection is lodged within that period, the Warden shall—

- (a) defer registration until the objection has been heard and determined by the Warden's Court; and
- (b) if the objection is upheld by that Court—proceed no further with the registration of the claim.

(6) If an objection is lodged the claim shall not be worked by any person until the objection has been heard and determined.

11. Marking too much ground.

(1) A holder of a miner's right who marks off more ground than he is entitled to may have the surplus ground pegged off at either end or side of the claim, at the option of any holder of a miner's right who applies to the Warden for the surplus.

(2) This section does not apply to the marking of dredging claims prior to their survey.

12. Labour conditions applicable to claims.

(1) Subject to this Regulation a claim shall be continuously worked by the prescribed number of men—

- (a) from a date commencing not later than seven days after it has been marked off; or
- (b) from such other date as is prescribed with reference to any specific claim,

or the claim or share in it not so worked is liable to forfeiture.

(2) Subject to Subsections (3) and (4) after the period referred to in Subsection (1), any claim or share in it remaining unworked by the prescribed number of men for three days within any period of 14 days may, on the application of any holder of a miner's right, be forfeited.

(3) A claim or share in a claim is not liable to forfeiture under this section if the holder or shareholder or the representative of the holder or shareholder is employed on any necessary work in connexion with it, or if his absence is caused—

- (a) by sickness; or
- (b) by compulsory attendance at a court of justice; or
- (c) by a general cessation of work through floods; or
- (d) for any reason necessary for the purpose of procuring food for the holder or shareholder, or for his employees.

(4) If any man who is working as a miner or workman on or in connexion with a claim absents himself from such work without the knowledge of the holder or shareholder, the claim or share in the claim is not liable to forfeiture unless it remains unrepresented for 48

hours after notice of the absence has been served on the holder or shareholder and the licensee (if any) of the claim or share.

(5) A copy of a notice under Subsection (4) with a declaration of its service shall be lodged at the Warden's Office.

13. Exemption from work.

(1) The holder of a claim may make application to the Warden in Form 7 for exemption from work.

(2) The applicant shall cause a copy of the application to be posted—

(a) at the Warden's Office; and

(b) on a conspicuous part of the claim,

for a period of—

(c) seven days before the hearing of the application by the Warden if the term applied for exceeds one month; and

(d) three days if the term applied for does not exceed one month.

(3) Any person may lodge an objection to an application under this section within the time fixed by the Warden.

(4) The Warden—

(a) shall hear all applications and objections on a day appointed by him, being not less than 14 days from the day of application; and

(b) may grant the exemption, subject to such conditions as he thinks just or without conditions, on payment of the prescribed fee.

(5) Failure to comply with any condition imposed renders the claim liable to forfeiture.

(6) The Warden may, on sufficient cause being shown, grant immediate exemption for a period not exceeding 14 days, and may renew the exemption for a further period of 14 days.

(7) Any exemption granted under this section shall be registered at the Warden's Office.

14. Abandoned claims.

If a claim continuously remains unworked, without lawful excuse, for a period of 30 days it shall be deemed to be abandoned, and may be taken up and applied for as if it were land available for application under the Act.

15. Rules, etc., for management, etc., of claims.

(1) Subject to the Act and this Regulation, all rules and agreements made and entered into by a majority of at least two-thirds in interest of the shareholders in a claim for the management and working on it shall be binding on all shareholders and on any person who subsequently becomes a shareholder.

(2) Any rules or agreements made or entered into under Subsection (1) may be rescinded or amended at any time by a like majority of the shareholders in the claim.

(3) All rules and agreements shall be registered on lodging a copy, signed by the parties or their agents, at the Warden's Office.

(4) Notice of any rescission or amendment shall be lodged at the Warden's Office and shall be noted in the register, but no rescission or amendment has effect until such notice is given.

16. Sale of interest of defaulting shareholder.

(1) Non-payment by any shareholder in a claim of any call made on him by the majority in interest of the shareholders for the purpose of defraying the working expenses of the claim shall entitle the other shareholders to a preferent lien on the defaulting shareholder's interest in the claim until every call due by him is paid.

(2) When any call remains unpaid on any share in a claim for a period of four weeks from the date when the call became due, a majority in interest of the shareholders may request the Warden to inquire into the matter.

(3) At an inquiry under Subsection (2), the Warden shall hear any evidence adduced by any lienee or other person having a registered interest in the claim or share.

(4) If the Warden is satisfied on inquiry that—

- (a) the sum is lawfully due in respect of any share; and
- (b) every reasonable effort has been made to serve notice of the call personally on the defaulting shareholder, and the lienee (if any) of the share; and
- (c) a reasonable time has elapsed to enable payment to be made by the shareholder or lienee,

he shall cause the share to be levied on and sold by his bailiff.

(5) Due notice of a sale under Subsection (4) shall be given—

- (a) by advertisement in some newspaper circulating generally in the neighbourhood, or by such other means as the Warden directs; and
- (b) by posting a copy of the notice on a conspicuous part of the claim and at the Warden's Office.

(6) The proceeds of sale under this section shall be applied—

- (a) firstly—in the payment of any lawful expenses incurred by the process and all calls due in respect of the share; and
- (b) secondly—in the payment of the lienee of such share (if any) of the amount of his lien,

and the residue, (if any) shall be paid to the Warden on behalf of the late holder of the share.

(7) The Warden shall, without further process, register the share in the name of the purchaser.

17. Application for claim or share.

(1) Subject to this Regulation, when a claim or share in a claim is liable to forfeiture, any holder of a miner's right may apply for possession of the claim or share—

- (a) by posting notices signed by himself and by the Warden on a conspicuous part of the claim and at the Warden's Office; and
- (b) by serving a copy on the holder or shareholder or his agent and the lienee (if any), at least seven days before the hearing of the application; and
- (c) by lodging at the Warden's Office a declaration of the posting and service.

(2) A notice under Subsection (1) shall be in Form 8, and the declaration shall be in Form 9.

(3) If no objection is lodged within seven days after the posting and service of notices under Subsection (1) the Warden shall—

- (a) cancel the registration of the claim or share in it; and
- (b) register the applicant as holder of the claim or share in it.

(4) Any person who objects to a registration under Subsection (3) shall, within the time specified in that Subsection, lodge a notice of objection at the Warden's Office stating the grounds of the objection.

(5) On receipt of an objection under Subsection (4), the Warden shall defer registration until the matter has been heard by the Warden's Court.

(6) Application for possession of a claim or share in a claim on the ground of liability to forfeiture for breach of the prescribed labour conditions shall be made not later than 30 days from the time when the alleged liability to forfeiture first arose.

(7) Proceedings to enforce the forfeiture of a claim or share in a claim shall be commenced not later than 14 days from the time of application for possession of the claim or share, and in the proceedings—

- (a) the applicant for possession shall be the plaintiff; and
- (b) the objector and lienee of the claim or share (if any) shall be the defendants, and in the event of forfeiture being decreed, the forfeiture shall enure to the successful applicant.

18. Saving in case of forfeiture of claims.

(1) Subject to Subsection (2) when a claim is forfeited, the mining plant and machinery situated on the claim shall not be forfeited.

(2) The Warden may order that the mining plant and machinery shall be removed from the forfeited claim within one month from the time when forfeiture was decreed, or within such further time as the Warden deems reasonable.

(3) When a share in a claim is forfeited, the Warden shall at the time of declaration of forfeiture, or within seven days afterwards, assess and declare the value of the forfeiting shareholder's interest in the mining plant and machinery.

(4) Within seven days after the declaration of the value under Subsection (3)—

- (a) the incoming shareholder shall pay into the Warden's Court the full amount of the value to the use of the shareholder whose share has been forfeited; and
- (b) in default of payment—the forfeited share may be granted to any holder of a miner's right who applies for the share and pays into the Warden's Court the full amount of the value.

19. Abandonment of share.

(1) A shareholder in a registered claim who desires to abandon his share in it may do so—

- (a) by making application to the Warden to cancel the registration by which his share has been held; and
- (b) by serving on one of the remaining shareholders or his agent a notice of the application and if there is a lien on the share, also serving notice on the lienee; and
- (c) by posting a copy of the notice at the Warden's Office and on a conspicuous part of the claim for seven days prior to the hearing of the application.

(2) The Warden, after satisfying himself that the notices have been served and posted as provided in Subsection (1), shall immediately cancel the registration, and the shareholder shall be released from any liability which may afterwards be incurred in respect of the share.

20. Preferent right on abandonment.

(1) The lienee (if any) has, for seven days after the abandonment, a preferent right to be registered as holder of the abandoned share, but if there is no lien then the remaining shareholders jointly have that preferent right.

(2) On failure by the lienee (if any) to avail himself of the preferent right—

(a) the lien is cancelled, so far as it creates any charge on the abandoned share, but without prejudice to the rights of the lienee in respect of any covenants contained or implied in the lien; and

(b) the remaining shareholders jointly have a preferent right for seven days after abandonment to be registered as holders of the abandoned share,

and if there is no lien then the remaining shareholders jointly have the preferent right and on failure of the remaining shareholders to avail themselves of the right, the first applicant for the abandoned share may at once be registered for the share without process of any kind other than an application to the Warden for that purpose.

21. Stacked earth.

(1) Subject to this section, the holder of a miner's right who has forfeited or abandoned his claim or share in his claim, may retain possession of any earth, or other materials, the produce of the claim or share, that has been raised at the time of the forfeiture or abandonment.

(2) The earth or other materials, referred to in Subsection (1), shall be stacked to the satisfaction of the Warden and so as not to interfere with mining operations.

(3) On application made to him, the Warden shall—

(a) register the earth or material as the property of the holder of the miner's right for any period not exceeding 13 months; and

(b) issue to the applicant a certificate of registration in Form 10.

(4) A copy of the certificate referred to in Subsection (3) shall be kept continuously posted on the stack, and no person during the period of the registration shall remove the stack, or any portion of it, or the notice on it, without the permission of the owner.

(5) The registration under Subsection (3) may be renewed from time to time.

(6) Subject to Subsections (7) and (8), at the expiration of the period of registration, the stacked material shall, unless registration is renewed, be deemed to be attached to the ground.

(7) The Warden may cause the stack to be removed at the cost of the owner if, after the granting of the registration, it is found to interfere with mining operations.

(8) If the shareholder in a claim forfeits or abandons his share in it and earth the produce of the claim is situated on the claim at the time of the forfeiture or abandonment, the Warden may, after at least seven day's notice to the lienee (if any) direct the interest of the shareholder in the earth to be sold in such manner as the Warden thinks fit.

(9) The proceeds of a sale referred to in Subsection (8) shall, after deducting the expenses of sale, be paid to the lienee of the share or earth (if any) to the extent of his lien, and the residue (if any) shall be paid to the later holder of the share.

PART III.—SPECIFIC AREAS AND CLAIMS.

Division 1.—Prospecting Areas.

22. Prospecting area for reef or alluvial gold.

(1) The holder of a miner's right who desires to prospect for reef or alluvial gold may mark off and hold for that purpose an area to be called a prospecting area of the following dimensions :—

- (a) outside the limits of a gold-field—400 m by 400 m; and
- (b) within the limits of a gold-field—
 - (i) if distant more than 5 km from the nearest gold mine on which mining operations are being carried on at the date of marking off, or have been carried on within the period of six months next preceding that date—300 m by 300 m; or
 - (ii) if distant not more than 5 km but more than 1 km from that mine—200 m by 200 m; or
 - (iii) if distant not more than 1 km but less than 400 m from that mine—150 m by 150 m,

or of any less dimensions which in any case the Warden thinks fit to grant.

(2) A prospecting area shall not be granted at a distance of less than 1 km from any such mine.

23. Prospecting area for mineral other than gold or coal.

(1) The holder of a miner's right who desires to prospect for any mineral other than gold or coal may mark off and hold for that purpose an area to be called a prospecting area of the following dimensions :—

- (a) outside the limits of a mineral field—60 ha; and
- (b) within the limits of a mineral field—
 - (i) if distant more than 15 km from the nearest mine, other than a gold or coal mine, in or on which mining operations are being carried on at the date of the marking off, or have been carried on within the period of six months next preceding that date—20 ha; or
 - (ii) if distant not more than 15 km, but more than 5 km from that mine—10 ha; or
 - (iii) if distant not more than 5 km, but not less than 1 km from that mine—5 ha,

or of any less dimensions which in any case the Warden thinks fit to grant.

(2) A prospecting area shall not be granted at a distance of less than 1 km from any such mine.

24. Marking off and registration of prospecting areas.

(1) A prospecting area shall be marked off as an equilateral rectangular block, or as nearly so as circumstances will permit, and in the manner prescribed for the marking off of claims generally.

(2) Marking off and the posting and keeping posted on some conspicuous part of the area of a notice showing—

- (a) the names of prospectors; and

(b) the numbers and dates of their miners' rights; and

(c) the date on which the area was taken up,

shall, subject to the performance of the prescribed labour conditions, be deemed a sufficient title for a period of 14 days or such further period as the Warden determines.

(3) At or before the expiration of the period referred to in Subsection (2) application shall be made to the Warden for registration, and the prospecting area shall be registered.

(4) Registration of any prospecting area shall be renewed quarterly but the Warden may, by certificate, exempt any prospecting area from the necessity of renewal of registration for any period, not exceeding 30 days, specified in the certificate.

(5) The Warden may refuse to renew the registration of a prospecting area, and may by notice require the holder to mark off and apply for the land comprised in that area, or a portion of it, as a lease or as a claim or claims.

(6) If, within 14 days from the time of receiving a notice under Subsection (5), the holder of the prospecting area does not mark off and apply for the area or a portion of it as a lease or as a claim or claims the prospecting area shall be forfeited.

(7) The certificate of registration or of renewal of registration or a copy of the notice shall be posted and kept posted in the manner prescribed in Subsection (2).

25. Labour conditions in prospecting areas.

(1) A prospecting area shall be worked by at least one man on every ordinary working day, commencing on a date not later than 14 days after the date of marking off, or, if the area is situated at a considerable distance from the Warden's Office, commencing at such later date as the Warden determines.

(2) A prospecting area not worked as prescribed by Subsection (1) shall be liable to forfeiture on application for that purpose to the Warden by a holder of a miner's right.

(3) Work other than bona fide prospecting shall not be considered to be performance of the prescribed labour conditions.

26. Prospectors to report finding of gold.

(1) Within 30 days after the finding of gold in apparently payable quantities within any prospecting area, the holders shall report the fact of the finding at the Warden's Office and in default the area is liable to forfeiture.

(2) On receipt of a report under Subsection (1), the Warden shall proceed to the area as soon as he can conveniently do so, and if in his opinion, sufficient gold has been found to warrant it, shall—

(a) allot to the prospectors, in addition to the number of ordinary claims to which they would otherwise be entitled, a prospecting claim of the dimensions specified in this Regulation; and

(b) register the prospectors as holders of the prospecting claim.

(3) When other ground adjoining the prospecting area has been marked off before the allotment of claims to the prospectors, then, if after that allotment any spare ground remains between the claims so allotted and the other ground so marked off, the holders of the other ground shall, at their option, be entitled, in order of proximity of their ground to the prospecting area, to have their posts or marks moved, so as to bring their ground as near as may be to the nearest boundary of the claims allotted to the prospectors.

27. Prospectors to report finding of minerals, etc.

(1) Within 30 days after the finding of any mineral, other than gold or coal, in apparently payable quantities within any prospecting area, the holders shall report the fact of the finding at the Warden's Office and in default the area is liable to forfeiture.

(2) On receipt of a report under Subsection (1) the Warden shall proceed to the area as soon as he can conveniently do so, and if in his opinion sufficient mineral has been found to warrant it, shall register the area in the name of the holders as a prospecting claim.

28. Labour conditions applicable to claims for minerals, etc.

Every prospecting claim referred to in Section 27 shall be worked by one man at least on every ordinary working day, commencing on a date not later than seven working days after its registration.

*Division 2.—Ordinary Reef Claims.***29. Ordinary reef claims taken up for gold-mining.**

(1) The extent allowed for each holder of a miner's right in an ordinary reef claim taken up for the purpose of mining for gold shall be 60 m along the supposed line of reef by a width of 120 m and not more than 10 claims may be taken up conjointly.

(2) The width of every claim under Subsection (1) shall be marked off at right angles to the base line, or as nearly so as circumstances will permit, but the whole or any part of the width may, at the option of the shareholders, be marked on either side of the line.

30. Registration of ordinary reef claim.

(1) The following particulars of every reef claim shall be registered at the Warden's Office :—

- (a) the name of the claim; and
- (b) the name of the reef on which it is situated; and
- (c) the names of the shareholders, and the dates and numbers of their miners' rights.

(2) A copy of the registered entry shall be kept continuously posted in a conspicuous place at or as near as possible to the principal working shaft of the claim.

31. Labour conditions applicable to ordinary reef claims for gold.

(1) Until a reef claim has been proved payable, and whenever it ceases to be payable, it shall only be necessary to employ on it one man for every 120 m or part of 120 m in length along the reef.

(2) When a reef claim has been proved payable it shall be necessary to employ on it one man for every 60 m or part of 60 m in length along the reef.

(3) For the purposes of this section, a claim shall be deemed to be payable when the quantity of gold obtained from it is equal in value to the sum which has been paid, or at current rates would have been payable for wages to all the men actually employed in extracting, carting, and crushing the stone treated, together with the other necessary working expenses, but a reef claim shall not be deemed to be payable until a crushing has been obtained.

(4) The burden of proof that the claim is not payable lies on the shareholders.

32. Ordinary reef claims for minerals other than gold.

(1) The extent allowed for each holder of a miner's right in an ordinary reef claim taken up for the purpose of mining for any mineral other than gold shall not exceed 300 m by 150 m and not more than 10 claims may be taken up conjointly.

(2) The width of every claim under Subsection (1) shall be marked off at right angles to the reef or base line or as nearly so as circumstances will permit, but the whole or any part of the width may, at the option of the shareholders, be marked on either side of the line.

(3) Every claim under this section shall be registered.

(4) Application for registration may be made at any time within 14 days from the date of marking off.

33. Labour conditions applicable for ordinary reef claims for minerals, etc.

Any claim referred to in Section 32 shall be worked continuously by one man for every 300 m or part of 300 m in length along the reef.

34. Amalgamation of ordinary reef claims.

(1) When two or more ordinary reef claims are contiguous, they may be amalgamated, on application for that purpose being made to the Warden, with the consent of at least a two-third majority in interest of the shareholders in each claim.

(2) Where claims are taken up for the purpose of mining for gold, an amalgamated claim shall not exceed 1 000 m in length along the supposed line of reef.

(3) Where claims are taken up for the purpose of mining for any mineral other than gold, an amalgamated claim shall not exceed 4 000 m in length along the supposed course of the lode.

(4) An application under Subsection (1) shall be in Form 11.

(5) When claims are amalgamated under this section the Warden shall—

(a) grant a certificate of amalgamation in Form 12; and

(b) register the amalgamated claim.

(6) An amalgamated claim shall be deemed to be a tenement distinct from the claims that it comprised, and all conditions applicable to claims of the dimensions of the amalgamated claim apply to it.

Division 3.—Alluvial Claims; River and Creek Gold Claims; Puddling Claims; Permits to Mine on Dredging or Sluicing Leases.

35. Ordinary alluvial claims for gold-mining.

The extent allowed for ordinary alluvial claims, taken up for the purpose of mining for gold, shall be as follows :—

(a) for one holder of a miner's right—60 m by 30 m; and

(b) for two holders of miners' rights—120 m by 30 m; and

(c) for three holders of miners' rights—180 m by 30 m; and

(d) for four holders of miners' rights—240 m by 30 m,

and so on, in the same proportion, for any number of holders of miners' rights, not exceeding 10, without restriction as to the shape of the claim, but the claim of each party

shall, as nearly as circumstances permit, be a rectangular block, no side of which shall be less than 30 m if such width is available.

36. Wet alluvial claims for gold-mining.

(1) In wet ground, where water other than surface water exists, and slabbing is necessary throughout, or in rocky ground where blasting for a depth of 10 m is necessary in the sinking of the shaft, the extent allowed for an ordinary alluvial claim, taken up for the purpose of mining for gold, shall be as follows :—

- (a) for one holder of a miner's right—60 m by 60 m; and
- (b) for two holders of miners' rights—120 m by 60 m; and
- (c) for three holders of miners' rights—180 m by 60 m; and
- (d) for four holders of miners' rights—240 m by 60 m,

and so on, in the same proportion, for any number of holders of miners' rights, not exceeding 10.

(2) Any claim under Subsection (1) shall be registered.

37. Ordinary alluvial claims for other than gold-mining.

(1) The extent allowed for each holder of a miner's right in an ordinary alluvial claim taken up for the purpose of mining for any mineral other than gold shall not exceed 400 m by 100 m, and 10 claims may be taken up conjointly.

(2) All claims under Subsection (1) shall be registered after the boundaries have been defined to the satisfaction of the Warden.

38. Ordinary river or creek claims for gold-mining.

(1) The extent allowed for each holder of a miner's right in an ordinary river or creek claim taken up for the purpose of mining for gold shall be a frontage of 120 m in the general direction of the course of the stream, with a width of from bank to bank, unless the width exceeds 100 m, in which case the excess may be claimed by any other holder of a miner's right, and not more than 10 claims may be taken up conjointly.

(2) All river or creek claims shall be registered.

39. Puddling claims.

(1) A puddling claim, taken up for the purpose of mining for gold, and to be worked in connexion with a puddling machine, may be taken up—

- (a) on alluvial ground which has been previously worked and abandoned; or
- (b) on ground which has been tested and found to be too poor to pay when worked by the ordinary method of working.

(2) The extent allowed for a claim under Subsection (1) shall be double the extent allowed for ordinary alluvial claims, for every man employed on or in connexion with the claim or the puddling machine, and not more than 10 claims shall be taken up conjointly.

(3) As nearly as circumstances permit, every claim under Subsection (1) shall be marked as a rectangular block, any side of which shall not be less than 30 m in length.

(4) All puddling claims shall be registered.

40. Labour conditions.

(1) Subject to this Regulation any alluvial claim, river or creek claim and puddling claim, shall be worked on every ordinary working day (commencing in the case of an alluvial

claim not later than seven days after it is marked off) by not less than one man for every one man's ground.

(2) Where Subsection (1) is not complied with claims are liable to forfeiture, on application made to the Warden by a holder of a miner's right.

41. Power of holder of alluvial claim.

A holder of an alluvial claim may work all quartz reefs, veins, leaders, and other deposits of gold within the claim.

Division 4.—Prospecting Claims.

42. Prospecting claims for the discovery of gold in reefs.

(1) The length of a prospecting claim granted for—

- (a) the discovery of gold in apparently payable quantities in a new reef; or
- (b) the rediscovery of gold in apparently payable quantities in a reef previously occupied and abandoned,

shall be as follows :—

- (c) if distant not more than 1 km from a reef which is being worked—200 m along the line of reef; and
- (d) if distant more than 1 km but not more than 2 km from such a reef—240 m along the line of reef; and
- (e) if distant more than 2 km but less than 10 km from such a reef—360 m along the line of reef; and
- (f) if distant 10 km or more from such a reef—600 m along the line of reef,

and in all cases the width of the claim shall be 120 m.

(2) A prospecting claim under Subsection (1) shall—

- (a) be in addition to the number of ordinary reef claims to which the party would otherwise be entitled; and
- (b) have attached to it an ordinary claim of not less than one man's ground,

and the prospecting claim and ordinary claim shall be deemed to be one tenement.

(3) A prospecting claim under Subsection (1) shall be liable to forfeiture if the labour conditions prescribed with respect to the ordinary claim attached to it are not duly performed.

(4) Every prospecting claim under this section shall be registered.

43. Prospecting claims for the discovery of alluvial gold.

(1) The extent of ground allowed for a prospecting claim granted for the discovery of payable alluvial gold in any ground, creek, or river shall be as follows :—

- (a) if distant more than 400 m but not 0.5 km from the nearest occupied gold workings of the same description—two ordinary claims of one man's ground; and
- (b) if distant 0.5 km and upwards but not 1 km from such workings—three such claims; and
- (c) if distant 1 km and upwards but not 2 km from such workings—four such claims; and

- (d) if distant 2 km and upwards but not 3 km from such workings—five such claims; and
- (e) if distant 3 km and upwards from such workings—10 such claims; and
- (f) if outside the limits of a gold-field—15 such claims.

(2) A prospecting claim under Subsection (1)—

- (a) shall be in addition to the number of ordinary claims to which the party would otherwise be entitled; and
- (b) may, at the option of the prospectors, be marked off in one block in any rectangular shape, or as nearly rectangular as circumstances permit, provided that no side of the block shall be less than 60 m, if such distance is available.

(3) Every prospecting claim under Subsection (1) shall have attached to it an ordinary claim of not less than one man's ground, and the prospecting claim and the ordinary claim shall be deemed to be one tenement.

(4) The prospecting claim under Subsection (1) shall be liable to forfeiture if the labour conditions prescribed in respect of the ordinary claim attached to it are not duly performed.

(5) Every prospecting claim under this section shall be registered.

Division 5.—Extended Claims.

44. Extended claims, reef or alluvial.

(1) Where—

- (a) the expense of erecting mining machinery or works is likely to be great; or
- (b) the poverty of the ground warrants it; or
- (c) the ground has been previously worked and abandoned,

the Warden may, on application, allot to each holder of a miner's right, either in reef or alluvial ground, an extended claim not exceeding the area of four ordinary claims.

(2) Until the claim has been proved to be payable, it shall only be necessary to employ on an extended claim a number of men equal to one-half of the number of holders of miners' rights to whom the ground is allotted.

(3) Not more than one extended claim may be allotted to a holder of a miner's right.

(4) Every extended claim shall be registered.

45. Amalgamation of extended reef claims.

(1) Extended reef claims, when contiguous, may be amalgamated in the manner prescribed with respect to ordinary reef claims, but no amalgamated claim shall exceed the area of 10 extended claims.

(2) The amalgamated claim shall be deemed to be a tenement distinct from the claims which it comprised and all conditions applicable to claims of the dimensions of the amalgamated claim shall apply to it.

Division 6.—Hydraulic Claims.

46. Hydraulic Claims.

(1) When ground, having a frontage to any terrace or hillside requires to be worked by hydraulic pressure, an hydraulic claim may be taken up on such ground.

(2) The extent allowed for an hydraulic claim shall not exceed 120 m frontage to the terrace or hillside by a width or depth into the terrace or hill of 300 m for each holder of a miner's right who applies for an hydraulic claim.

(3) Not more than one hydraulic claim shall be taken up by a holder of a miner's right.

(4) An hydraulic claim shall be rectangular or as nearly so as circumstances permit.

(5) An hydraulic claim shall be registered, and shall be continuously worked by not less than one man for every one man's ground.

(6) Two or more contiguous hydraulic claims may be amalgamated in the manner prescribed with respect to ordinary reef claims.

(7) The amalgamated claim shall be deemed to be a tenement distinct from the claims which it comprised, and all conditions applicable to claims of the dimensions of the amalgamated claim shall apply to it.

(8) A holder of an hydraulic claim may work all quartz reefs, veins, leaders, and other deposits of gold within the claim.

Division 7.—Dredging or Sluicing Claims.

47. Grant of dredging or sluicing claims.

(1) Dredging or sluicing claims shall only be granted in respect of alluvial ground—

(a) when the ground applied for has previously been worked and abandoned; or

(b) when the known poverty of the ground warrants it; or

(c) when the ground is only suitable for dredging or sluicing on account of—

(i) its excessive wetness; or

(ii) the costliness of the appliances required to work it.

(2) When any reef is discovered on a dredging or sluicing claim and the Warden is satisfied after inspection that it is a reef to which the provisions of this subsection should apply, the holder of the dredging or sluicing claim may, within three months of the date of the notification to him of the inspection and satisfaction of the Warden, mark out and apply for a mining lease on it.

(3) In the event of a dredging or sluicing claim holder not marking out and applying for a mining lease within the time prescribed by Subsection (2), the Minister may immediately resume the area contained in the reef.

48. Claim for dredging or sluicing in river, etc.

(1) The Warden may, on the application of a holder of a miner's right, grant a dredging or sluicing claim for dredging or sluicing for gold or any other mineral on land which consists of the bed and banks of any river and of land adjoining it.

(2) The area comprised in any one claim under Subsection (1) shall not exceed 200 ha, and the length of the claim along the course of the river shall not exceed 10 km.

(3) Dredging claims registered before 15 January 1936 shall be deemed to be dredging or sluicing claims.

49. Claim for dredging or sluicing under ocean.

(1) The Warden may, on the application of a holder of a miner's right, grant a dredging or sluicing claim for dredging or sluicing for gold or any other mineral on the foreshore and adjoining lands under the ocean.

(2) The area comprised in any one claim under Subsection (1) shall not exceed 200 ha and the length of the claim along the foreshore shall not exceed 10 km.

50. Claim for dredging or sluicing in lake.

(1) The Warden may, on the application of a holder of a miner's right, grant a dredging or sluicing claim for dredging or sluicing for gold or any other mineral on land that consists of the bed of a lake, and land adjoining the lake.

(2) The area comprised in any one claim under Subsection (1) shall not exceed 200 ha.

51. Amalgamated claims.

(1) On written application to the Warden made by the holders of contiguous dredging or sluicing claims, and on payment of the prescribed fee, the Warden may amalgamate any number of claims into one amalgamated dredging or sluicing claim.

(2) On application to the Minister made by the holders of dredging or sluicing claims and on payment of the prescribed fee, the Minister may amalgamate into one amalgamated dredging or sluicing claim any number of such claims, whether contiguous or not, which are wholly contained within the limits of a circle having a diameter of 30 km.

(3) An application under Subsection (2) shall be lodged with the Warden who shall transmit it to the Minister.

(4) An amalgamated dredging or sluicing claim shall be deemed to be a tenement distinct from the claims which it comprised and, subject to Section 47, the conditions applicable to a claim of an area equal to such amalgamated claim apply.

(5) An amalgamated dredging or sluicing claim other than an amalgamated dredging or sluicing claim held under Subsection (1) or (2) on 15 January 1936 shall not exceed in area twice the maximum area which may be granted as one dredging or sluicing claim.

52. Marking out of dredging or sluicing claims.

(1) Any area intended to be included in an application for a dredging or sluicing claim shall be marked out by the erection of squared boundary posts at least 8 cm by 8 cm, standing at least 1 m above the surface, and sunk at least 50 cm in the ground.

(2) Of the posts referred to in Subsection (1)—

(a) one—

(i) shall be painted white; and

(ii) shall have engraved, or in some way durably marked on it, the initial letters of the applicant's name; and

(iii) shall be deemed to be the datum post or starting point from which the surveyor shall commence the survey of the land as provided in this Regulation; and

(b) the other posts shall be deemed to provisionally mark the boundaries of the land applied for until the true boundaries have been defined by actual survey.

53. Application for dredging or sluicing claims.

(1) When the applicant desires to register as a dredging or sluicing claim an area marked as prescribed he shall, within 30 days after the marking, make an application to the Warden in Form 13.

(2) On receipt of the application under Subsection (1) the Warden shall deliver to the applicant a certificate in Form 14.

- (3) Each application shall be accompanied by—
- (a) a description and sketch plan approximately defining the position of the land applied for; and
 - (b) an application fee of K15.00.
- (4) The applicant shall, within 30 days from the receipt of the certificate under Subsection (2), cause a copy of it—
- (a) to be posted at or near to the datum post on the area applied for, and also at the Warden's Office; and
 - (b) to be kept in both places for a period of seven days.
- (5) The applicant shall make and lodge at the Warden's Office a declaration in Form 15.
- (6) When the Warden is satisfied that under this Regulation a dredging or sluicing claim in respect of the land applied for may be granted, he shall, if no objection is lodged against the application before the expiration of 21 days from the lodging at the Warden's Office of the declaration referred to in Subsection (5), register the applicant as the provisional holder of the dredging or sluicing claim, and the claim shall be deemed to have been granted to him subject only to the fixing of the actual boundaries by survey.
- (7) If any objection is lodged under Subsection (6), the Warden shall defer registration until the matter has been heard and determined by the Warden's Court.
- (8) After an application under Subsection (1) has been lodged and granted, and until a survey of the dredging or sluicing claim has been made, the entry on, occupation of, or interference with, any part of the area applied for and proposed to be comprised in the area by any person who was not prior to the application in lawful occupation of the ground shall be deemed to be a trespass or encroachment.

54. Survey and survey fees.

- (1) A dredging or sluicing claim may be provisionally registered either after survey or subject to survey.
- (2) The Warden may order that the prescribed survey fee be lodged with an application for a dredging or sluicing claim.
- (3) At any time either before or after the provisional registration of an application for a dredging or sluicing claim, the Warden may order the land the subject of the application or claim to be surveyed, and may direct that the prescribed survey fee, if not already lodged, be lodged with him within a specified time, not exceeding two months.
- (4) Where survey fees are not lodged with the Warden in accordance with an order under Subsection (3) the Warden may refuse to provisionally register the application, or may forfeit the claim, as the case may be.
- (5) Within 35 days after receiving notification of the forfeiture of a dredging or sluicing claim under Subsection (4), the holder may appeal against the forfeiture to the Minister, whose decision is final¹.

55. Survey of dredging and sluicing claims.

- (1) Surveys of dredging or sluicing claims shall be executed—
- (a) by a mining surveyor appointed to act within the limits of any gold-field or mineral field; or

¹But, *see*, Constitution, Section 155.

(b) by a licensed surveyor approved by the Warden,

who shall, within three months after receipt of instructions from the Warden, or such extended time as the Warden allows, furnish to the Warden in duplicate a plan, field-book, and description showing the boundaries of the area as actually surveyed and marked by him.

(2) The surveyor shall delineate all dredging or sluicing claims on a map to be kept at the Warden's Office.

(3) The surveyor shall commence his survey from the datum post and shall, when the land is available, comprise within his survey the full extent of land applied for irrespective of the position of the posts provisionally marking the boundaries.

(4) On the receipt of the plan and description from the surveyor, the Warden shall, by public notice posted up at his office, appoint a day for hearing objections (if any) to the survey, which day shall be not less than 30 days from the date of the posting of the notice.

(5) Any holder of a miner's right who claims to be interested in the land comprised in the survey may, within the prescribed period, lodge at the Warden's Office a notice of objection to the survey, specifying the grounds of his objection.

(6) If no objection is lodged under Subsection (5), and if the plan and description are approved by the Warden, he shall immediately and without requiring the attendance of the applicant or his agent, register the claim as the property of the applicant, and the applicant shall then be deemed to be in lawful possession of the dredging or sluicing claim comprised in the plan, notwithstanding any irregularity in the marking or application.

(7) If any objection is lodged under Subsection (6) the Warden shall defer registration until the matter has been heard and determined by the Warden's Court.

(8) When the description and sketch plan accompanying an application for a dredging or sluicing claim show that the land applied for adjoins land held under application but not surveyed, the applicant, on the completion of the survey of the last mentioned land, may move his datum post to the boundary of the surveyed land, so that his claim when surveyed may comprise the land defined by such description and sketch plan.

(9) Notwithstanding anything contained in this Regulation, a dredging or sluicing claim shall be of such shape as is most conformable to the natural features of the ground, and as the Warden approves after survey.

(10) The fees payable in respect of the survey of dredging or sluicing claims are as prescribed in Schedule 2.

56. Conditions of occupation.

Notwithstanding anything in this Regulation, any single or amalgamated dredging or sluicing claim in the bed of a river, that may be granted under this Regulation, shall be taken and held subject to the condition that any person who—

(a) may at the time of granting the dredging or sluicing claim hold any mining tenement or miner's homestead on the banks of or in the vicinity of the river; or

(b) may afterwards lawfully take up or acquire any such tenement or homestead, shall not, in consequence of the granting or holding and working of any such dredging or sluicing claim, be restrained from discharging the tailings, waste water, or debris from his tenement or homestead into the river, and the holder of the dredging or sluicing claim shall have no right of action against any such person for so discharging tailings, water, or debris into the river.

57. Entry, etc., on adjoining claim.

(1) When, for the purpose of enabling the holder of a dredging or sluicing claim to work his ground to the full extent at or near to any of its boundaries, it becomes necessary for him to enter on any dredging or sluicing claim or other mining tenement adjoining the boundary, he may do so, and by himself, his workmen and agents, use and employ his dredge, machinery and appliances, and do all acts and things necessary and requisite for working his ground.

(2) Before making entry under Subsection (1) the holder shall give to the holder of the adjoining claim or tenement and to the Warden at least 30 days written notice of his intention to do so.

(3) Before commencing work under Subsection (1) the holder shall give security to the satisfaction of the Warden by bond with a surety or sureties or by deposit to compensate the holder of the adjoining claim or tenement for any loss or injury to the improvements on it or to the beneficial enjoyment of it, sustained by him in consequence of the entry and work.

58. Labour conditions applicable.

(1) For the period of six months after the grant of a dredging or sluicing claim the holder shall not be required to employ any men or machinery on or in connexion with it and that period may be extended by the Warden for a further period not exceeding six months.

(2) After the expiration of the period or the further period referred to in Subsection (1), the holder of a dredging or sluicing claim (other than a dredging or sluicing claim comprised within an area declared to be a "Special Area") shall, subject to any total or partial exemption from labour conditions which may be granted by the Warden—

(a) employ continuously on the claim not less than one man for every 50 ha or fraction of 50 ha in area of the claim; or

(b) keep continuously employed, and fully manned, machinery of a value calculated at a rate of not less than K2 000.00 for every 50 ha or fraction of 50 ha in area of the claim.

(3) The value of the machinery employed shall not be less than K6 000.00.

(4) Failure to comply with labour conditions renders the claim liable to forfeiture on application made to the Warden by the holder of a miner's right.

(5) Notwithstanding this Regulation, on good grounds being shown, and on proof of the posting of the prescribed notices and the making of the prescribed declaration, but without it being necessary to prove that the claim has been continuously worked for any period or is not payable, the Warden may at any time grant partial or total exemption from the labour conditions of a dredging or sluicing claim for any period not exceeding six months.

(6) Where application is made by the holder of a miner's right for the forfeiture of a dredging or sluicing claim for any cause, the Warden may, in place of ordering an immediate forfeiture, make an order—

(a) that the holder of the claim pay into the Warden's Office, within such time as the Warden fixes, any amount by way of penalty not exceeding K200.00, and in default of payment within that time the forfeiture shall take immediate effect; and

- (b) directing what portion (if any) of the amount is to be received by the applicant for forfeiture.

59. Labour conditions when claims amalgamated.

Dredging or sluicing claims may be amalgamated notwithstanding that with respect of all or any of them the period of six months after their grant has not expired, and the prescribed labour conditions shall successively be observed as and when that period expires with respect to each such dredging or sluicing claim until the labour conditions wholly apply to the amalgamated dredging or sluicing claim.

60. Transfer of portion of claim.

(1) Where, under Section 55, a dredging or sluicing claim is registered as the property of any person, that person may make application to the Minister for permission to transfer any portion of the dredging or sluicing claim.

(2) An applicant under Subsection (1) shall submit with his application—

- (a) a plan of the boundaries of the portion of the dredging or sluicing claim in respect of which the application is made; and
- (b) a survey fee at the rate of K60.00 per kilometre in respect of the boundaries of such portion other than the boundaries of the original dredging or sluicing claim; and
- (c) an application fee of K6.00.

(3) The Minister may grant or refuse an application made under Subsection (1).

(4) The person to whom the portion of the dredging or sluicing claim, in respect of which permission to transfer has been granted under this section, is transferred shall be registered as the holder of a dredging or sluicing claim of the area transferred to him.

61. Rent of claims.

(1) Subject to Subsection (2) the rent of a dredging or sluicing claim shall be payable in advance at the time of making the application, and afterwards not later than 31 December in each year.

(2) The deposit of rent payable by the applicant shall be such a proportion of one year's rent as is equal to the rent for the period from the date of application up to the next 31 December.

(3) Subject to Subsections (4) and (5) if default is made in the payment of rent of any dredging or sluicing claim, the claim shall be forfeited.

(4) Forfeiture may be avoided by the payment of the rent within a period of 90 days after the rent became due, together with a sum by way of penalty, calculated at the rate of 5% of the rent for every month or part of a month during which the default continued.

(5) After a lapse of the period of 90 days, the Minister may waive forfeiture under Subsection (3) on payment of the rent together with such sum by way of penalty as he thinks fit to impose.

(6) Every dredging or sluicing claim shall be registered.

*Division 8.—Machine Areas, Areas for Erection of Furnaces and Areas for Stacking Tailings.***62. Machine area.**

(1) Application for permission to occupy a machine area shall be made to the Warden, in the manner prescribed with reference to claims generally, after the ground has been marked.

(2) The application shall be accompanied by particulars of the machinery proposed to be erected, a sketch plan of the area, and a deposit of the prescribed rent.

(3) A copy of an application shall be kept posted on the ground on which it is proposed to erect the machinery, and at the Warden's Office, for seven days before the hearing of the application.

(4) If no valid objection is lodged, the Warden may grant permission to occupy an area not exceeding 2 ha.

(5) Every permission to occupy shall be registered.

(6) Any permission to occupy may, on application to the Warden by the holder of a miner's right, be cancelled if the holder fails to commence the erection of machinery within four months from the date of permission to occupy, or if at any time the machinery is removed.

(7) If the holder desires to obtain an extension of the time within which he is to commence the erection of machinery he shall make application to the Warden for that purpose and keep posted notices to that effect on a conspicuous part of the area and at the Warden's Office for seven days before the hearing of the application.

(8) If he is satisfied that the application under Subsection (7) is reasonable, and if no valid objection is lodged, the Warden may grant extension of time for any period not exceeding six months and further applications may be made for further extensions that may from time to time be granted by the Warden.

(9) Every extension shall be registered.

(10) The Warden may cancel the permission to occupy any machine area, which is not being used bona fide for the purpose for which the permission was granted, but the permission shall not be cancelled until after due notice to the holder and licensee (if any) and hearing any evidence and reasons which may be adduced against the cancellation.

63. Areas for erection of furnaces.

(1) Under the same conditions as to manner of application, payment of rent, use and occupation, and subject to the same liability to cancellation as is prescribed for machine areas, the Warden may grant permission to occupy an area not exceeding 4 ha for the erection of furnaces to be used in connexion with mining for minerals other than gold.

(2) Every permission to occupy shall be registered.

64. Areas for stacking tailings.

(1) Applications for areas for stacking tailings shall be made to the Warden, in the manner prescribed with reference to claims generally, after the ground has been marked.

(2) The application shall be accompanied by a description and sketch plan of the ground applied for, and a deposit of the prescribed rent.

(3) A copy of the application and description of the ground applied for shall be kept posted on the ground and at the Warden's Office for seven days before the hearing of the application.

(4) If the ground is not known to be suitable for mining, and no valid objection is lodged, the Warden may grant permission to occupy an area not exceeding 2 ha.

(5) Every permission to occupy shall be registered.

(6) The Warden may, on application to him by the holder of a miner's right, cancel the permission to occupy any such area when the holder during a period of not less than six months has failed to use the area in a bona fide manner for the purpose for which permission to occupy was granted, but the permission shall not be cancelled until after due notice to the holder and licensee (if any) and hearing any evidence and reasons that may be adduced against the cancellation.

65. Surveys and survey fees.

(1) In this section, "application" means an application under Section 62, 63 or 64.

(2) An application may be granted either after survey or subject to survey.

(3) The Warden may order that the prescribed survey fee be lodged with an application.

(4) At any time before or after the granting of an application, the Warden may—

(a) order the land the subject of the application or grant to be surveyed; and

(b) direct that the prescribed survey fee, if not already lodged, be lodged with him within a specified time, not exceeding two months.

(5) Where survey fees are not lodged with the Warden in accordance with an order under Subsection (4) he may refuse to grant the application, or may forfeit the grant, as the case may be.

(6) Within 35 days after receiving notification of the forfeiture of a grant under Subsection (5), the holder may appeal against the forfeiture to the Minister, whose decision is final¹

66. Rents.

(1) Subject to Subsection (2) rent shall be payable in advance at the time of making the application, and afterwards not later than 31 December in each year.

(2) The deposit of rent payable by the applicant shall be such a proportion of one year's rent as is equal to the rent for the period from the date of application up to the next 31 December.

(3) Subject to Subsections (4) and (5), if default is made in the payment of rent of any area, the area shall be forfeited.

(4) Forfeiture may be avoided by the payment of the rent within a period of 90 days after the rent became due, together with a sum by way of penalty, calculated at the rate of 5% of the rent for every month or part of a month during which the default continued.

(5) After a lapse of the period of 90 days, the Minister may waive forfeiture under Subsection (3) on payment of the rent, together with such sum by way of penalty as he thinks fit to impose.

67. Resumption of area.

The Warden may resume any machine area, area for the erection of furnaces, or area for stacking tailings when they are required for public or mining purposes, on payment of compensation to the holder of the area.

¹But, see, Constitution, Section 155.

PART IV.—PROSPECTING AUTHORITIES.

68. Mode of application.

(1) An application for a prospecting authority shall be made in duplicate to the Warden whose office is situated nearest to the area over which the authority is applied for in Form 16.

(2) A sketch plan shall accompany an application and show the following details :—

- (a) the relative positions of the chief local objects or physical features; and
- (b) the approximate bearings (specifying whether magnetic or true) and the distances of the lines forming the boundaries of the area, or descriptions of the boundaries by references to natural features such as roads, streams or coastal water marks.

(3) An application shall be accompanied by a fee of K2 500.00.

(Amended by No. 29 of 1982, s. 1.)

69. Time for objections.

(1) On receipt of an application under Section 68 the Warden shall register it and endorse a registration number on it.

(2) The Warden shall fix a date, not being less than 30 days after the date on which the application was registered, as the date before which objections to the grant of the application may be made.

(3) The date fixed under Subsection (2) shall be endorsed on the copies of the application.

70. Time for hearing of application.

(1) The Warden shall fix a place and day, being a day not later than 14 days after the date fixed under Section 69(2) as the place and day at which and on which the application will be heard.

(2) The Warden shall endorse on the application the time and day fixed in accordance with this section.

71. Additional copies of application.

The Warden shall prepare such additional copies of the application together with all endorsements on it, as are necessary and shall—

- (a) send two copies by registered post to the applicant; and
- (b) cause one copy to be immediately published in the National Gazette; and
- (c) keep one copy continuously exhibited outside his office, until the application is finally determined.

72. Applicant to publish copy.

On receipt of the copies referred to in Section 71(a) the applicant shall cause a copy to be immediately published—

- (a) in a newspaper published in and circulating throughout the country not less frequently than once a week; or
- (b) in some other manner specified by the Warden.

73. Objections.

- (1) An objection to the grant of a prospecting authority shall—
 - (a) be in Form 17; and
 - (b) be lodged with the Warden before the date fixed under Section 69(2).
- (2) On receipt of an objection lodged under this section, the Warden shall immediately—
 - (a) forward a copy of the objection, by registered post, to the applicant; and
 - (b) exhibit outside his office, in a conspicuous place, a copy of the objection.

74. Hearing.

- (1) On the day and at the place fixed under Section 70(1) the Warden shall take such evidence on oath as is tendered by the applicant and by the objector (if any) and he may if he thinks fit take evidence on oath from any other person.
- (2) Evidence taken under this section shall be reduced to writing and signed by the person giving the evidence.
- (3) The Warden may adjourn the hearing from time to time or from place to place on such conditions as to costs or otherwise as he thinks fit.
- (4) At the conclusion of the hearing, or the adjourned hearing, as the case may be, the Warden shall submit to the Director—
 - (a) a copy of the application together with any endorsement; and
 - (b) a copy of the notice of objection (if any); and
 - (c) a copy of evidence taken.
- (5) The Director shall, on receipt of the documents referred to in Subsection (3), forward them to the Board together with his comments.

75. More than one application.

- (1) Where more than one application is lodged under this Part in respect, whether wholly or partly, of the same area those applications shall be dealt with under this Part in the order in which they were lodged.
- (2) The second or subsequent applicant to whom Subsection (1) applies shall, if his application is lodged before the date specified in relation to any earlier application in Section 69(2), be deemed to be an objector for the purposes of this Part in relation to that earlier application.

76. Notice of grant or refusal.

Notice of grant or refusal of an application under this Part shall be published in the National Gazette.

77. Form of prospecting authority.

A prospecting authority shall be in Form 18.

78. Hinderance or obstruction.

Where the holder of a primary authority within the meaning of Section 26 of the Act considers that he has a right to compensation under Subsection (4) of that section, he may serve on the Warden and the holder of the secondary authority under that section a notice in Form 19.

79. Hearing of claim.

On service on him of a notice under Section 78 the Warden shall fix a time and place for the hearing and determination of the claim and shall notify the parties accordingly.

80. Determination of claim.

At the time and place fixed under Section 79, or at such other time and place to which he has from time to time adjourned the hearing, the Warden shall determine the claim for compensation.

80A. Fee.

The fee under Section 28 of the Act is at the rate of K0.50 per km².
(Added by No. 29 of 1982, s. 2.)

81. Refund of fees.

Where the surrender of the whole or portion of a prospecting authority is accepted by the Minister under Section 38 of the Act, there shall be refunded to the person so surrendering such amount of the fee paid for the authority under Section 28 of the Act as is proportionate to the area surrendered and the number of whole months remaining unexpired of the period in respect of which the fee was paid.

82. Application for extension.

An application for an extension of a prospecting authority shall be made not later than two months before the date of termination of the authority and shall be made, considered and dealt with, the necessary modifications being made, as if it were an application for a prospecting authority.

PART V.—LEASES IN CONNEXION WITH MINING.*Division 1.—General.***83. Interpretation of Part V.**

In this Part unless the contrary intention appears, "application" means an application for—

- (a) a mining lease; or
- (b) a lease for mining purposes.

*Division 2.—Mining Leases and Leases for Mining Purposes Generally.***84. Application for leases to which this Part applies.**

An application in triplicate shall be lodged at the Warden's Office nearest to the land in relation to which the lease is applied for and shall be—

- (a) in the case of a gold-mining lease or a mineral lease—in Form 20; and
- (b) in the case of a special mining lease—in Form 21; and
- (c) in the case of a lease for mining purposes—in Form 22,

and in all cases shall be accompanied by a description and sketch plan in triplicate sufficient, in the opinion of the Warden, to define the position of the area applied for.

85. Fees.

An application shall be accompanied by the following fee—

- (a) in the case of a gold-mining lease or mineral lease—K15.00; and
- (b) in the case of a special mining lease—K100.00; and

(c) in the case of a lease for mining purposes—K50.00,
and in addition such further amount as is determined by the Warden under Section 86(1).

86. Rent and occupation fees.

(1) On receipt of an application the Warden shall, in the case of—

- (a) a mining lease other than a special mining lease; or
- (b) a lease for mining purposes,

determine an amount estimated as being equal to the rent and, in the case of any mining lease or lease for mining purposes, the occupation fees (if any) chargeable under the Act in respect of the period ending on the next 31 December following the date on which the lease may be assumed to commence.

(2) If an application under Subsection (1)—

- (a) is not granted; or
- (b) is granted over an area less than the area applied for,

the amount paid in accordance with this section shall be repaid to the applicant in whole or in the inverse of the proportion which the area granted bears to the area applied for, as the case requires.

(3) On the granting of an application the amount retained by the State under this section shall—

- (a) in the case of an amount deposited in respect of rent—be paid into the Consolidated Revenue Fund; and
- (b) in the case of an amount deposited in respect of occupation fees—
 - (i) be paid to the owners of the private land if those owners can be ascertained; or
 - (ii) if the owners of the private land cannot be ascertained—be held by the State in trust for the owners.

87. Marking out of leases, etc.

(1) Before making an application, the applicant shall mark off the land applied for, to the satisfaction of the Warden by—

- (a) erecting at each corner of the land a hardwood post or marker at least 10.16 cm¹ in diameter and standing at least 1.22 m¹ above the surface of the ground; and
- (b) clearing lines along the boundaries of the land; and
- (c) placing stakes or other markers at sufficiently close spacing to indicate clearly the boundaries of the land.

(2) Until the land in respect of which an application has been granted has been surveyed, the lessee shall—

- (a) maintain the posts and markers erected in accordance with this section; and
- (b) maintain the lines cleared in accordance with this section,

and afterwards the lessee shall—

- (c) maintain the survey marks; and
- (d) maintain the lines.

¹Metricated editorially. The original measurements were four inches and four feet respectively, but see Section 8.

88. Time for objections.

(1) On receipt of an application the Warden shall register it and endorse a registration number on it.

(2) The Warden shall fix a date, not being less than 30 days after the date on which the application was registered, as the date before which objections to the grant of the application may be made.

(3) The date fixed under Subsection (2) shall be endorsed on the copies of the application.

89. Time for hearing application.

(1) The Warden shall fix a place and day, being a day not later than 14 days after the date fixed under Section 88(2) as the place and day at which and on which the application will be heard.

(2) The Warden shall prepare such additional copies of the application together with the endorsements on it, as are necessary and shall—

- (a) send two copies to the applicant; and
- (b) cause one copy to be immediately published in the National Gazette; and
- (c) keep one copy continuously exhibited outside his office, until the application is finally determined.

90. Applicant to publish copy of application.

On receipt of the copies referred to in Section 89, the applicant shall cause a copy to be immediately published—

- (a) in a newspaper published in and circulating throughout the country not less frequently than once a week; or
- (b) in some other manner specified by the Warden.

91. Objections.

(1) An objection to the grant of an application shall—

- (a) be in Form 23; and
- (b) be lodged with the Warden before the date fixed under Section 88(2).

(2) On receipt of an objection lodged under this section, the Warden shall immediately—

- (a) forward a copy of the objection, by registered post, to the applicant; and
- (b) exhibit outside his office, in a conspicuous place, a copy of the objection.

92. Hearing.

(1) On the day and at the place fixed under Section 89(1) the Warden shall take such evidence on oath as is tendered by the applicant and by the objector (if any) and he may if he thinks fit take evidence on oath from any other person.

(2) Evidence taken under this section shall be reduced to writing and signed by the person giving the evidence.

(3) The Warden may adjourn the hearing from time to time or from place to place on such conditions as to costs or otherwise as he thinks fit.

(4) At the conclusion of the hearing, or the adjourned hearing, as the case may be, the Warden shall submit to the Director—

- (a) a copy of the application, together with any endorsements; and
- (b) a copy of the notice of objection (if any); and
- (c) a copy of evidence taken.

93. More than one application.

(1) Where more than one application is lodged under this Part in respect, whether wholly or partly, of the same area, those applications shall be dealt with under this Part in the order in which they were lodged.

(2) The second or subsequent applicant to whom Subsection (1) applies shall, if his application is lodged before the date specified, in relation to any earlier application, in Section 88(2), be deemed to be an objector for the purposes of this Division in relation to that earlier application.

94. Notice of grant or refusal.

Notice of the grant or refusal of an application shall be published in the National Gazette.

95. Commencement of term.

The term of a lease the subject of an application commences from the date of the publication of notice of the grant of that application under Section 94.

96. Determination of boundaries.

Where, on survey of land comprised in a granted application, the boundaries of the land surveyed differ from the boundaries described in the sketch plan accompanying the application, the Warden shall define the boundaries of the land in such a manner as will, in his opinion, effect substantial justice.

97. Area and shape of ground.

Unless the Warden in any particular case or class of cases permits otherwise, the shape of a lease the subject of an application shall be rectangular and its length shall not exceed twice its width.

98. Declaration by warden.

(1) The Warden may declare an application to be abandoned if the applicant fails to proceed with the application.

(2) An applicant may at any time, by written notice to the Warden, withdraw his application and that application shall be deemed to be abandoned.

99. Issue of lease for mining purposes.

(1) On survey of the land comprised in a granted application for a lease for mining purposes the Minister may issue a lease over that land.

(2) Before the issue of a lease under Subsection (1) and subject to Subsection (3) the Minister shall afford such opportunities for objections to the issue of the lease as he sees fit.

(3) The Minister shall not allow an objection under Subsection (2) if that objection is of a class or kind that could have been made at the hearing under this Part of the application for the lease proposed to be issued.

(4) There shall be payable in advance for a survey under this section the fees set out under the heading "Scale of Fees for Survey" in Schedule 2.

(5) Where a lease has been issued under this Part, the Director shall notify the Warden to whom is assigned the Warden's Court nearest the land over which the lease has been issued.

100. Labour conditions under certain mining leases.

(1) Subject to the Act and this Regulation, the lessee of, and the holder of a granted application for, a mining lease other than a special mining lease shall employ on the land at least five persons for every 16 ha or part of 16 ha.

(2) Subsection (1) shall not be deemed to apply in or in relation to an area declared under the Act to be a Special Area.

101. Exemption for 30 days.

(1) The Warden may on sufficient cause being shown and subject to such conditions as he sees fit, exempt—

(a) the lessee of the lease to which this Part applies; or

(b) the holder of a granted application for such a lease,

wholly or partly from any provisions of this Regulation relating to work on the land to which the lease or granted application relates, for a period not exceeding 30 days.

(2) A breach of a condition referred to in Subsection (1) shall cancel the exemption so granted.

102. Exemption for six months.

The Minister may, after receiving a report from the Warden and on sufficient cause being shown, and subject to such conditions as he sees fit, exempt—

(a) the lessee of a lease to which this Part applies; or

(b) the holder of a granted application for such a lease,

wholly or partly from any provisions of this Regulation relating to work on the land to which the lease or granted application relates, for a period not exceeding six months.

(2) A breach of a condition referred to in Subsection (1) shall cancel the exemption so granted.

(3) The Warden shall before making a report to the Minister in connexion with an application for an exemption under this section make such public enquiry in connexion with the application as seems to him necessary or desirable.

(4) An exemption under this section shall be registered by the Warden.

Division 3.—Breaches and Forfeitures, etc.

103. Breaches of labour conditions.

(1) Where it is proved to the satisfaction of the Warden that there has been a breach of any of the labour conditions applicable to any lease to which this Part applies the Warden shall certify the breach to the Minister.

(2) Before hearing any evidence of breach of the labour conditions the Warden shall give the lessee or the holder, or his agent four days notice to appear before him to show cause why such a certificate should not be given.

104. Forfeiture of lease to which this Part applies.

(1) A person who—

(a) gives notice to the Warden that ground held under a lease to which this Part applies is not being worked in accordance with the conditions applicable to it; and

(b) applies for the forfeiture of it; and

(c) gives the lessee or the holder or his agent and the mortgagee or lienee (if any) seven days notice, before the hearing of his application,

shall, on the granting of the application and for seven days afterwards have a preferent right—

(d) to take possession of all or any portion of the land comprised in the lease as a claim, if he is otherwise entitled to do so; or

(e) to apply for that land.

(2) An application under this section shall be accompanied by a deposit of K50.00 on account of costs.

105. Forms under Section 67 of the Act.

(1) A notice under Section 67(1) of the Act shall be in Form 24.

(2) A certificate under Section 67(2) of the Act shall be in Form 25.

Division 4.—Transfer of Mining Leases, etc.

106. Transfer.

(1) A lease to which this Part applies or any interest in such a lease may be transferred by Form 26.

(2) A transfer under this section shall be lodged at the Warden's Office or with the Director together with the lease instrument (if any) and the fee prescribed for registration.

(3) A transfer under this section shall be registered.

PART VI.—PERMITS UNDER PART IX. OF THE ACT.

107. Ballot to be held.

Where more than one application under Section 96 of the Act is received by the Warden for any lot he shall hold a ballot to decide the applicant to whom a permit to occupy the lot shall be granted.

108. Notice of ballot.

(1) Not less than three days before the holding of the ballot referred to in Section 107 the Warden shall post in a conspicuous place at his office a notice specifying the lot to be balloted for and the hour and date of the holding of the ballot.

(2) The date specified in the notice shall not be earlier than 34 days after the publication in the National Gazette of the notice under Section 95 of the Act in which it is declared that the lot may be applied for.

109. Ballot to be held in public.

Every ballot shall be held in public at the Warden's Office at the hour and on the date specified in the notice referred to in Section 108(1).

110. Conduct of ballot.

Every ballot shall be conducted in accordance with the following provisions :—

- (a) before the time specified for the holding of the ballot, the Warden shall obtain a number of sheets of paper of a uniform size being not less than 15.24 cm¹ by 10.16 cm¹, each sheet having legibly written on it the name of one of the applicants, so that the name of each applicant appears once on a separate sheet of paper but no name appears on more than one sheet of paper; and
- (b) at the ballot, each paper referred to in Paragraph (a)—
 - (i) shall be examined and checked with the applications lodged under Section 96 of the Act, by the Warden, the senior officer of the Public Service (other than an officer of the Department of Minerals and Energy) then present, and a third person nominated by the Warden; and
 - (ii) shall be folded by the Warden and placed by him in an empty box provided for the purpose of the ballot; and
- (c) after the papers have been placed in the box as provided in Paragraph (b), the Warden shall close the box which shall then be well shaken by each of the persons mentioned in that paragraph; and
- (d) after the box has been closed and shaken as provided in Paragraph (c), the Warden shall select a person from among those present, who shall draw out from the box one of the papers and hand it to the Warden; and
- (e) after the paper referred to in Paragraph (d) has been seen by the persons mentioned in Paragraph (b), the Warden shall announce to those present the name appearing on the paper as being that of the applicant to whom a permit to occupy the lot balloted for shall be granted.

111. Result of ballot to be notified.

After a ballot has been held under this Part, the Warden shall notify the Director of the result of the ballot.

112. Form of permit.

A permit under this Part shall be in Form 27.

PART VII.—LIENS AND MORTGAGES.**Division 1.—Liens.****113. Liens.**

(1) A lien may be given on any mining tenement or share, or interest in the tenement or share, other than land held under a mining lease or lease for mining purposes, as security for the payment of money or the discharge of any liability.

(2) When a lien is intended to be given the lienor and lienee shall execute a lien ticket in Form 28 with such variations and additions (if any) as circumstances require.

¹Metricated editorially. The original measurements were six inches and four inches respectively.

114. Registration of lien.

On production to the Warden of the miners' rights, licences, or other necessary documents of the lienor and lienee, and of the lien ticket, duly executed and attested, the Warden shall—

- (a) register the lien on the tenement, or share or interest in it; and
- (b) issue immediately to the lienee a duplicate of the lien ticket.

115. Priority of liens.

Subject to the provisions of this Regulation with respect to preferent liens, if more than one lien is effected on the same mining tenement, or share or interest in it, such liens shall take priority according to the dates of their production for registration.

116. Effect of lien.

(1) Every registered lien shall be and remain a charge on the property comprised in the lien ticket, until the money or liabilities secured by it have been fully paid or discharged.

(2) A lien shall cover all buildings, improvements and mining machinery and appliances in or on the mining tenement, whether they or any of them are affixed to the soil or not.

(3) A lienee shall not by virtue of his lien be held to be a co-partner in any property subject to the lien.

117. Provisions, etc., in lien.

A lien ticket may contain such covenants, provisions, stipulations, agreements, and powers as are agreed on.

118. Provisions, etc., implied in lien.

(1) Except as is otherwise expressly provided by the lien ticket, and without prejudice to any further or other covenants, provisions, stipulations, agreements, and powers contained in it, there shall be deemed to be included and implied in every lien ticket—

- (a) a stipulation that during the continuance of the security the lienee may, at the lienor's expense, do all acts and things necessary for the preservation or protection of the property comprised in the lien ticket and of the title to it when the lienor neglects or refuses to do so, and in particular may—

- (i) fulfil the conditions applicable to the property or obtain exemptions from them; and

- (ii) renew the lienor's miner's right and licences (if any); and

- (b) a power that, if default is made by the lienor—

- (i) in the payment or discharge of the moneys or liabilities secured by the lien ticket according to its tenor; or

- (ii) in the performance or observance of any of the covenants, stipulations, or agreements contained or implied in it and to be performed or observed on the part of the lienor,

the lienee may—

- (iii) enter on and take and retain possession of the property comprised in the security, or any part of it and work or let it, but the lienee is liable to account to the lienor for the rents and profits of the property until

- the lienor's right to redeem it has been determined by sale or otherwise; and
- (iv) cause the property comprised in the lien ticket to be sold by public auction after having advertised his intention of doing so—
- (A) in the National Gazette and in some newspaper generally circulating in the neighbourhood; or
- (B) by such other means as the Warden directs,
- and posted a copy of the advertisement on a conspicuous part of the mining tenement and at the Warden's Office not less than 14 days before the day of sale; and
- (c) notwithstanding anything in this Regulation to the contrary, that the lienee may sell, as part of the property comprised in the lien ticket, the right, share or interest, which, at the time of default made by him, the lienor has in any earth the produce of the mining tenement or share or interest encumbered.
- (2) If the lienee is unable to obtain by public auction a sum sufficient to pay or discharge the debt or liability then due to him he may sell the property by private contract.
- (3) If after sale there remains a balance of purchase money the lienee shall—
- (a) file at the Warden's Office a statement of accounts; and
- (b) pay the balance into the hands of the Warden—
- (i) to be paid to the lienor; or
- (ii) if there are any other lienees—to be paid to them in order of production of the liens for registration.

119. Lienee's expenses.

All expenses properly incurred by the lienee under any of the covenants, stipulations, agreements, or powers contained or implied in the lien ticket, together with interest at the rate named in the lien ticket in respect of the principal moneys, may be added to his security.

120. Transfer to purchaser by lienee.

When property comprised in a lien ticket is sold under the powers contained or implied in it, the lienee shall furnish to the Warden evidence that the sale has been made in accordance with those powers and on production to the Warden of a transfer of the property, signed by the lienee or his lawyer, the Warden shall register the transfer to the purchaser named in it.

121. Resumption of property.

If a mining tenement, or any part of it, is resumed for mining or other purposes, so much of the compensation money as is payable in respect of the lienor's interest shall be applied towards satisfying any debt or liability remaining due in respect of the lien, and shall be paid to the lienee, and the balance only (if any) shall be paid to the lienor.

122. Redemption.

The lienor shall be entitled to redeem the property subject to the lien at any time before its sale on payment or discharge of the money or liabilities secured by the lien.

123. Cancellation.

On delivery to the Warden by the lienor of a certificate duly signed by the lienee, and attested, that the debt or liability secured by the lien has been fully paid or discharged, the Warden shall, on receipt of the prescribed fee, immediately cancel the lien.

Division 2.—Mortgages.

124. Mortgage of mining lease.

(1) A mining lease, a lease for mining purposes or an interest in an application for either of such leases may be charged or made security for the payment of money or the discharge of any liability.

(2) When a lease or interest referred to in Subsection (1) is intended to be so charged, the lessee or applicant shall execute a memorandum of mortgage in Form 29 with such variations and additions (if any) as circumstances require.

125. Registration of mortgage.

(1) Every memorandum of mortgage shall be executed in triplicate and lodged by the mortgagee at the Warden's Office.

(2) Each copy shall, at the time of lodgement, be marked with the words "Received at the Warden's Office at" followed by the place at which the Warden's Office is and the hour and date when it was lodged and the signature of the officer receiving the memorandum of mortgage.

(3) The Warden shall register the memorandum of mortgage by—

- (a) endorsing on each copy the words "Registered on" followed by the date of registration; and
- (b) entering a note of the mortgage on the record of the mining lease or application for a mining lease contained in the Register of Mining Tenements; and
- (c) filing one copy and forwarding one copy to the mortgagor and one copy to the mortgagee.

126. Priority of mortgages.

Where several mortgages have been executed in relation to a mining lease, a lease for mining purposes or an interest in an application for either of such leases, they shall rank and take priority according to the time and dates of lodgement endorsed on them as provided in Section 125.

127. Effect of mortgage.

(1) A memorandum of mortgage shall have effect only as a security for the sum of money intended to be secured by it and shall not take effect as an assignment of the lease.

(2) The mortgage shall cover all buildings, improvements and mining machinery and appliances in or on the land comprised in the lease, whether they or any of them are affixed to the soil or not.

128. Provisions, etc., in mortgage.

A mortgage may contain such covenants, provisions, stipulations, agreements, and powers as are agreed on.

129. Provisions, etc., implied in mortgage.

(1) Except as is otherwise expressly provided by the mortgage and without prejudice to any further or other covenants, provisions, stipulations, agreements, and powers contained in it, there shall be deemed to be included and implied in every mortgage—

(a) a stipulation that during the continuance of the security the mortgagee may at the mortgagor's expense do all acts and things necessary for the preservation or protection of the property comprised in the mortgage and of the title to it when the mortgagor neglects or refuses to do so, and in particular may—

(i) fulfil the conditions applicable to the property or obtain exemptions from them; and

(ii) renew the mortgagor's miner's right and licences (if any); and

(b) a power that, if default is made by the mortgagor—

(i) in the payment or discharge of the money or liabilities secured by the mortgage according to its tenor; or

(ii) in the performance or observance of any of the covenants, stipulations, or agreements contained or implied in it and to be observed on the part of the mortgagor,

the mortgagee may—

(iii) enter on and take and retain possession of the property comprised in the mortgage, or any part of it, and work or let it, but the mortgagee in possession is liable to account to the mortgagor for the rents and profits of the property until the mortgagor's right to redeem it has been determined by sale or otherwise; and

(iv) cause the property comprised in the mortgage to be sold by public auction after having advertised his intention to do so—

(A) in the National Gazette and in some newspaper generally circulating in the neighbourhood; or

(B) by such other means as the Warden directs,

and posted a copy of the advertisement on a conspicuous part of the leasehold and at the Warden's Office not less than 30 days before the day of sale; and

(c) notwithstanding anything in this Regulation to the contrary, the mortgagee may sell, as part of the property comprised in the mortgage, the right, share, or interest which, at the time of default made by him, the mortgagor has in any earth the produce of the leasehold.

(2) If the mortgagee is unable to obtain by public auction a sum sufficient to pay or discharge the debt or liability then due to him he may sell the property by private contract.

(3) If after sale there remains a balance of purchase money the mortgagee shall—

(a) file at the Warden's Office a statement of accounts; and

(b) pay the balance into the hands of the Warden—

(i) to be paid to the mortgagor; or

(ii) if there are any other mortgagees—to be paid to them in order of production of the mortgages for registration.

130. Mortgagee's expenses.

All expenses properly incurred by the mortgagee under any of the covenants, stipulations, agreements, or powers contained or implied in the mortgage, together with interest at the rate named in the mortgage in respect of the principal moneys, may be added to his security.

131. Transfer to purchaser by mortgagee.

When property comprised in a mortgage is sold under the powers contained or implied in it the mortgagee shall furnish to the Warden evidence that the sale has been made in accordance with those powers and on production to the Warden—

- (a) of a transfer of the property signed by the mortgagee or his lawyer; and
- (b) in the case of a mining lease—the written consent of the Minister to the transfer,

the Warden shall register the transfer to the purchaser named in it.

132. Redemption.

The mortgagor shall be entitled to redeem the property subject to the mortgage at any time before its sale on payment or discharge of the money or liabilities secured by the mortgage.

133. Cancellation.

On delivery to the Warden by the mortgagor of a certificate duly signed by the mortgagee, and attested, that the debt or liability secured by the mortgagee has been fully paid or discharged, the Warden shall, on receipt of the prescribed fee, immediately cancel the mortgage.

*Division 3.—Transfer and Registration.***134. Transfer of lien or mortgage.**

A lien or mortgage may be transferred by means of a transfer in Form 30 with such variations and additions, (if any) as circumstances require.

135. Registration and effect of transfer.

On production to the Warden of the transfer duly executed and attested, the Warden shall register the transfer, and then there shall become vested in the person to whom the benefit of the security is expressed to be transferred—

- (a) the right to demand, sue for, recover and give receipts for the moneys secured by, or the unpaid part of, it; and
- (b) the interest then due and afterwards to become due on it; and
- (c) the benefit of all securities for it; and
- (d) the benefit of and the right to sue on all covenants and agreements with the lienee or mortgagee, as the case may be, and the right to exercise all his powers.

PART VIII.—SPECIAL MINING EASEMENTS.

136. Application for authority.

An application by the holder of a mining tenement for an authority under Section 112 of the Act shall be in Form 31 and shall be lodged in duplicate.

137. Service.

A copy of the application referred to in Section 136 shall be served on the owner, lessee, and occupier of the land the subject of the application—

- (a) by delivering it to each of those persons; or
- (b) by forwarding it through the post in a prepaid registered letter to the respective usual or last known place of abode of each of those persons.

138. Notice of objection.

Any person who desires to object to the grant of an authority applied for under Section 112 of the Act may, after the application for the authority has been lodged, but before the expiry of 30 days after the posting of the copy of the application at the Warden's Office under Section 112(4) of the Act, lodge in duplicate at the Warden's Office a written notice in Form 32 stating the particulars of his objection.

139. Form of authority.

The grant of an authority applied for under Section 112 of the Act shall be in Form 33.

140. Revocation of authority.

Where a notice under Section 117 of the Act has been served by the Warden, the grantee of the authority in respect of which the notice has been served shall show cause within 28 days after the date of service of the notice.

PART IX.—MINING TENEMENTS GENERALLY.

141. Boundary posts, etc.

(1) A holder of a mining tenement, or shareholder of a mining tenement shall point out the angle posts, marks, and boundary lines of the tenement to any person who requires to know them.

(2) A person who wilfully destroys, obliterates, or removes any boundary mark or any posted notice relating to any such tenement which has been lawfully made or erected or posted on it is guilty of an offence.

Penalty: A fine not exceeding K100.00 or in default, imprisonment for a term not exceeding three months.

142. Registration of mining tenements.

(1) The holder of every mining tenement for which registration is required shall apply to the Warden for registration of the tenement within seven days from the date of his being entitled to registration, or within such other period (if any) as is prescribed.

(2) Non-registration within the prescribed time shall not be deemed a breach of this Regulation if good cause is shown for the delay to the satisfaction of the Warden.

143. Register to be kept.

(1) Subject to Subsection (2) a register shall be kept at the Warden's Office to be called the Register of Mining Tenements in which shall be entered—

- (a) the location and name (if any) of the mining tenement; and
- (b) the date of application for the mining tenement; and
- (c) the number of the mining tenement; and
- (d) the date on which the instrument of lease or certificate of registration was issued; and
- (e) the names of all holders of mining tenements; and
- (f) the share of each holder of a mining tenement; and
- (g) all transfers made; and
- (h) all encumbrances on the shares of the holders of mining tenements; and
- (i) all exemptions granted or cancelled.

(2) A system of registration by cards if it contains the required information shall be a sufficient compliance with this section.

144. Registration of tribute agreements.

Every tribute agreement shall be registered at the Warden's Office within two months after execution.

145. Neglect of officials.

A penalty shall not be inflicted for non-performance within the prescribed time of any act required by this Regulation to be done by the holder of a tenement, if the holder proves that the non-performance was caused by—

- (a) the neglect or default of the Mining Registrar or Warden; or
- (b) any circumstance over which the holder had no control.

146. Re-establishment of surface of land.

(1) Where, under a proposed mining tenement, the surface of any land classified as suitable for agriculture or dairying is likely to be prejudicially affected the Warden shall report on it to the Minister before the tenement is granted¹.

(2) On receipt of a report under Subsection (1), the Minister may impose as conditions of the mining tenement such conditions as he thinks fit for the satisfactory re-establishment of any of the land that may be affected by the mining operations under the tenement.

(3) Where a condition imposed under Subsection (2) is not complied with, the Minister may, without prejudice to any other action that might be taken under the Act, cause the re-establishment to be carried out and the cost of doing so may be recovered by the State from the holder of the tenement as a debt.

¹Section 145A(1) of the Mining Regulations of the former Territory of New Guinea, added by No. 46 of 1960 read as follows:—

"Where under a proposed mining tenement the surface of any land classified under Section 27 of the *Land Ordinance* 1922-1960 as 'Class A' land is likely to be prejudicially affected, the Warden shall report thereon to the Administrator before the tenement is granted."

There does not appear to have been any such classification under the *Land Act* but Section 27 of the *Land Ordinance* 1922-1961 of the former Territory of New Guinea provided for the classification of land suitable for agriculture or dairying as Class A land.

147. Continuous work.

Ground shall be deemed to be continuously worked if six hours' bona fide work is performed on it by the prescribed complement of men on every day between Monday and Friday inclusive, except a public holiday or other holiday notified by the Warden, on which day no work shall be necessary.

148. Resumption of work during currency of exemption.

When exemption from work has been granted in respect of any mining tenement, the resumption or performance of any work during the currency of the exemption shall not be deemed to cancel the exemption.

149. Monthly return.

(1) The holder of a mining tenement under the Act or the repealed Act or under an Act repealed by the Act or the repealed Act and a person occupying or using land for mining purposes under one of those Acts shall, within the first 10 days of every month, furnish the Director, through the Warden at Konedobu¹, a return in duplicate in Form 34 covering operations for the previous month and setting out the particulars referred to in that form.

(2) A person who refuses or neglects to furnish a return under Subsection (1) within the prescribed time is guilty of an offence.

Penalty: For the first offence, a fine not exceeding K4.00.

For any subsequent offence, a fine not exceeding K100.00.

For a continuing offence a fine not exceeding K4.00 for every day for which the offence continues.

150. Assessment of royalty.

(1) The return required to be furnished under Section 106 of the Act, shall be in Form 35.

(2) Within three months after the assessment by the Warden under Section 106 of the Act, the person required to furnish the return shall—

(a) forward to the Warden all mint returns and sales receipt vouchers relating to the return; and

(b) at the discretion of the Warden—verify the actual price received for the gold by a statutory declaration.

151. Transfers.

(1) The registered holder of any mining tenement other than a leasehold, or of any interest in it, may transfer it by executing a transfer in Form 36.

(2) On production at the Warden's Office of his certificate of registration or transfer certificate, or certificate of loss of certificate, and on payment of the prescribed fee, the Warden shall issue to the transferee a transfer certificate in Form 37.

(3) The transferee shall be liable for all encumbrances, agreements, and conditions registered against the property transferred.

(4) If the holder of any such tenement surrenders it and such surrender is substantially a sale or assignment of the tenement, the surrender shall have no effect unless and until the tenement has been transferred in the prescribed manner.

¹See, National Gazette, No. G.59, 13.9.1979, p.750.

152. Roads, etc., across tenements.

The Warden, whenever in his judgement it becomes necessary for the efficient working of a mining tenement or in the public interest to do so, may authorize the making of a road, tramway, or a railway over or on any mining tenement or order the closure of any such road in such manner and under such conditions as to payment of compensation or otherwise as he thinks fit.

153. Injury to claims or roads.

(1) Subject to Subsection (2), any person who wilfully causes or permits sludge, tailings, or water to accumulate in or flow from his mining tenement so as to cause danger, injury, obstruction or inconvenience to any highway, or to any public or private interest is guilty of an offence.

Penalty: A fine not exceeding K100.00 or in default, imprisonment for a term not exceeding three months.

(2) A person may cause or permit sludge, tailings or water to flow from a tenement in channels and watercourses, that, in the judgement of the Warden, are the best natural means of escape for them.

154. Felling trees across roads.

Any person who, on any gold-field or mineral field, fells or causes to be felled any tree across any road or mining tenement and fails to remove it within 24 hours is guilty of an offence.

Penalty: A fine not exceeding K10.00.

155. Interference with roads and water.

(1) Unless expressly authorized by the Warden to do so, any person who sinks any shaft, or disturbs the surface of the ground, or erects any works, or deposits earth or other material, in any place, so as—

(a) to interfere with the supply of water used by the public; or

(b) to obstruct a highway,

is guilty of an offence.

(2) Any person who undermines any highway in such a manner as to endanger the public safety is guilty of an offence.

Penalty: A fine not exceeding K100.00 or in default, imprisonment for a term not exceeding three months.

156. Appointment of agents.

(1) Any person who holds or proposes to hold any share or interest in any mining tenement may appoint an agent in writing, in Form 38 with such variations and additions (if any) as circumstances require.

(2) The acts of an agent appointed under Subsection (1) shall be deemed to be the acts of the principal.

(3) Every appointment shall be registered at the Warden's Office.

(4) This section does not effect the validity of any power of attorney or other written authority executed by the holder of any share or interest in any mining tenement, but such power of attorney or other authority shall be registered at the Warden's Office prior to the registration of any dealing with the share, or interest under it, and the person in whose

favour the power of attorney or other authority is executed shall be deemed to be the registered agent of the holder of the share or interest.

157. Compulsory bailing.

(1) The holder of a mining tenement in which water has accumulated to the injury, or probable injury, of any adjoining mining tenement, shall, on service of a notice calling on him to do so by the party injured or likely to be injured, or his agent, bail his mining tenement, or in some other manner effectually remedy the injury.

(2) The party injured, or likely to be injured, may at once lodge a complaint with the Warden, who may order the holder of the mining tenement causing the injury to bail and keep it continuously free from any injurious accumulation of water whilst occupied by him.

(3) The Warden may also assess and determine the amount of injury suffered from such accumulation of water by any person complaining, and order the holder of the tenement causing the injury to pay the amount.

158. Drainage.

(1) Subject to Subsection (2), where the holder of a claim or mining leasehold proves to the satisfaction of the Warden that by the erection and working of any appliance for drainage a saving of labour has been effected in the working of any adjoining claim or mining leasehold, the holder of the claim or leasehold in which such saving has been effected shall be liable to pay in respect of the saving such reasonable sum of money, and at such times, as the Warden orders.

(2) The Warden may subsequently, on application being made by either party and a rehearing of the case, revoke or vary an order under Subsection (1) so as to meet any altered circumstances.

159. Application fees, rents and survey fees.

Subject to the provisions of the Act and this Regulation, the following provisions shall apply to application fees, rents, and survey fees paid or lodged with applications under Parts III., IV. and V. :—

- (a) money deposited for rent shall be forfeited if the application is withdrawn, abandoned, or is not proceeded with; and
- (b) if an application is refused, the money deposited for rent shall be returned; and
- (c) if an application is refused, withdrawn, or abandoned or if rights under an application are forfeited, before the commencement of the survey of the land applied for, the survey fee shall be returned, if and when the rent due by the applicant has been paid; and
- (d) the application fee shall not be returned under any circumstances; and
- (e) where a surveyor certifies that—

- (i) the land applied for under an application has been surveyed; and
- (ii) further survey is unnecessary,

the survey fee, after deducting from it such amount as is approved by the Minister for the cost of any necessary inquiries made by the surveyor giving the certificate, shall be returned.

160. Power of Head of State to refund portion of survey fee.

Notwithstanding this Regulation, where a surveyor certifies that—

- (a) the whole or portion of the land applied for as a mining tenement forms portion of an area which has formerly been surveyed; or
- (b) portion of the land applied for as a mining tenement has formerly been surveyed; or
- (c) portion of the boundary of the land applied for as a mining tenement has formerly been surveyed, and that only further survey of portion of the land applied for or portion of the boundary of the land applied for is necessary,

the Head of State, acting on advice, may direct that a portion of any survey fee lodged in connexion with the mining tenement shall be returned.

161. Compensation in certain cases.

(1) Subject to this Regulation, any mining tenement that is in actual occupation under the provisions of the Act or this Regulation may be mined on, provided that the person intending to mine shall, before commencing work, give security to the satisfaction of the Warden by bond with a surety or sureties or by deposit to compensate the holder of it for any loss or injury to the improvements on it, or to the beneficial enjoyment of it, that may be sustained by him in consequence of such mining.

(2) The holder of a miner's right intending to mine on a tenement referred to in Subsection (1) shall not commence work until security under that subsection has been given and on the giving of the security the Warden may remove the occupant.

(3) This section does not apply to the land comprised in a mining lease or an application for a mining lease.

162. Compensation generally.

(1) Where, by the Act or this Regulation, compensation is required to be paid and no other method of determining the amount of compensation is prescribed, it shall be determined by the Warden, who may call two competent persons to assist him in determining the amount.

(2) The Warden shall give notice to all persons interested in the matter of compensation.

(3) If either of the parties is dissatisfied with the Warden's decision either party may require that the question shall be referred to arbitration, and one arbitrator shall be appointed by the party by whom, and one by the party to whom, compensation is payable, and the arbitrators shall appoint an umpire, and the decision of the arbitrators or of the umpire, as the case may be, is final¹.

(4) Unless an application for arbitration under this section is made within seven days after the decision of the case by the Warden, it will not be entertained.

(5) Every application under this section shall be addressed to the Warden and a copy shall be served by the applicant on the other party concerned, and unless the applicant sets down the hearing of the arbitration for a date not later than 14 days after the application for arbitration has been made, the application lapses and is of no effect.

¹But, *see*, Constitution, Section 155.

163. Declaration of loss of miner's right, etc.

(1) Where a person has lost his miner's right, certificate of registration, transfer certificate, or lien ticket—

- (a) he may make a declaration of the loss in Form 39; and
- (b) on payment of the prescribed fee, he is entitled to receive a certificate of the loss in Form 40.

(2) A certificate under this section shall be accepted, in place of the lost document, for all purposes.

164. False representation.

A person who—

- (a) by false representation, fraudulent concealment of fact, or collusion, obtains registration or forfeiture of any mining tenement or interest in a tenement or of any transfer; or
- (b) by such means obtains a certificate of exemption from labour conditions or occupation,

shall be liable to forfeit his interest in the property in respect of which the registration, forfeiture, transfer, or certificate has been so obtained.

165. Form of certificate.

(1) A certificate of registration shall be in Form 41.

(2) A certificate of registration—

- (a) shall be issued to each shareholder in the mining tenement; and
- (b) shall specify the interest or share held; and
- (c) shall be produced at the Warden's Office when a transfer of the interest is required.

(3) On the devolution of any mining tenement on the death or insolvency of the holder of the tenement, the person on whom it has devolved shall, on application to the Warden, be entitled to be registered as the holder and to receive a certificate to that effect in Form 42.

166. Form of objection.

An objection to any registration shall be in Form 43.

167. Powers of Mining Registrar in absence of Warden.

In the absence of the Warden through sickness or other cause, the Mining Registrar may, if no objection is lodged within the prescribed time, grant and register prospecting areas, agreements, claims or shares in them, business and residence and other areas, and exemptions from work or occupation, in the same manner as the Warden may grant and register them.

168. Charging order.

Where any sum of money has been awarded by a Warden's Court by way of debt, damages, or costs or otherwise, and the person liable to pay is the holder of a share or interest in a mining tenement, the Warden may—

- (a) on the application of the judgement creditor—make an order charging the share or interest, and also the shareholder's interest in any gold or other

mineral, the produce of the mining tenement, with the payment of the amount of the judgement debt; and

(b) by the same or a subsequent order—direct the share or interest to be sold, and the other shareholder or shareholders in such tenement or mineral shall, in the event of a sale being directed, be at liberty to purchase it.

169. Declarations of Trust.

- (1) Declarations of trust may be lodged at the Warden's Office and registered.
- (2) Declarations of trust shall be in Form 44.

PART X.—PROSPECTING AND MINING ON PRIVATE LAND.

170. Form of permit.

A permit under Section 100 of the Act shall be in Form 45.

171. Form of application for mining tenement.

An applicant for a mining tenement on private land shall—

- (a) in the case of a mining lease or lease for mining purposes—advertise in a manner specified by the Warden the fact that he has so applied in a newspaper or newspapers so specified; and
- (b) in any other case comply with such directions as the Warden gives in relation to the publication of notice of his application.

172. Prescribed notice of hearing.

The Warden shall, by notice in the National Gazette, fix a time and place for the hearing of an application for a mining tenement on private land, not being earlier than 30 days after the publication of the notice under Section 101(3) of the Act.

PART XI.—JUDICIAL PROCEEDINGS.

173. Plaintiff.

In all civil cases the proceedings shall, unless with the consent of both parties as provided by Section 134 of the Act, be commenced by a plaintiff in Form 46, or as near to it as circumstances will permit.

174. Nature of plaintiff.

The plaintiff shall set out—

- (a) the name and address of the plaintiff; and
- (b) a sufficient cause of action or complaint; and
- (c) a prayer for the relief to which the plaintiff believes himself to be entitled.

175. Particulars of demand.

The items or particulars of demand, (if any) shall be annexed to or contained in the plaintiff.

176. Time for filing plaintiff.

The plaintiff shall be lodged at the Warden's Office five days before the return day of the summons.

177. Particulars.

In all cases where particulars of demand are required to be annexed the plaintiff shall lodge at the Warden's Office at the time of lodging the plaint as many copies of the particulars of demand as there are defendants to be served, and an additional copy to be attached to the summons.

178. Abandonment of part of claim and admission of set-off.

Where the plaintiff sues for a debt or damages, but desires to abandon a portion or to admit a set-off and sue for the residue, the abandonment or the admission of a set-off shall be entered on the particulars and copies.

179. Summons.

(1) On the filing of the plaint the Warden or Mining Registrar shall issue a summons in Form 47.

(2) A summons issued under Subsection (1) may be returnable at any time fixed by the Warden and endorsed on it by him provided that the time is at least five days after the lodging of the plaint.

180. Service of summons.

Every summons shall be served at least five days before the return day unless the defendant resides more than 5 km from the Warden's Court, in which case it shall be served at least 10 days before the return day.

181. Successive summonses.

Where a summons has not been served, successive summonses may be issued without entering a fresh plaint, provided that no successive summons shall be issued on the plaint after the expiration of six months from the date of filing the plaint.

182. Notice of defence.

(1) When it is the intention of the defendant to dispute the right of the plaintiff to the relief sought for, or any part of it, the defendant shall, subject to Subsection (3), at least three days before the return day of the summons, lodge at the Warden's Office a notice of defence, containing a statement of the grounds on which he relies.

(2) When a defendant intends to plead that he is not indebted by reason of his not being a shareholder in any mining venture, he shall so specify in his plea.

(3) The Warden may, if he thinks fit, permit any defendant to enter a defence after the expiration of the time limited by Subsection (1) on such terms as to him seem just.

183. Set-off and counter-claim.

(1) The defendant shall be at liberty to include in the grounds of defence all matters of set-off, or to pray for any cross relief to which he believes himself to be entitled as against the plaintiff in respect of the same subject matter.

(2) The items or particulars of set-off, or the grounds on which the cross relief is prayed, shall be set out in the defendant's notice of defence.

184. Form of notice of defence.

The notice of defence shall be in Form 48.

185. Witnesses.

(1) Each party shall be entitled to procure the attendance of witnesses by means of subpoena to be issued by the Warden or Mining Registrar in Form 49.

(2) Every witness subpoenaed shall be entitled to require payment of all necessary expenses of attendance at the hearing and no witness is bound to obey the subpoena unless his expenses have been paid or tendered to him at the time of the service of the subpoena.

186. Non-appearance of plaintiff.

If on the return day of the summons, or at any adjournment of the Warden's Court at which it is returnable, the plaintiff does not appear and the defendant does appear and does not admit the plaintiff's demand, the Warden may dismiss the case or enter a verdict for the defendant as the case requires, and may in his discretion, award the costs in the same manner and to the same amount as if the case had been tried.

187. Default in payment of judgement debt.

Where a defendant has made default in payment of the whole amount awarded by the judgement, or of an instalment, a warrant of execution may issue for the whole amount of judgement and costs then remaining unsatisfied.

188. Warrants of execution.

A warrant of execution shall—

- (a) bear the date on which it is issued, and shall continue in force for 12 months from that date and no longer, but may be renewed before the expiration of 12 months for a further like period on an affidavit being filed that the amount due has not been paid; and
- (b) be in Form 50.

189. Notice and date of sale.

(1) A sale of goods levied under an execution shall not be made sooner than the sixth day after the day on which the goods were levied.

(2) Notice of sale under execution shall be given by the bailiff or his deputy by affixing a notice of the sale on or near the house or place where the sale is to be made four days at least before the day appointed for the sale.

190. Sale in execution.

Any goods sold in execution shall be sold publicly by the bailiff or his deputy for ready money to the highest bidder at or near the place where the goods were levied on, as may be convenient for their sale.

191. Appeal before payment of proceeds.

If before notice of appeal is served on the Warden execution has issued, and the amount of the judgement and costs of execution have been paid into the hands of the bailiff, or levied and not paid over to the successful party, that amount shall remain in court to await the result of the appeal.

192. Entry of judgement on appeal.

When the court of appeal has pronounced judgement, either party may deposit the original order of the court of appeal or an office copy of it, with the Warden, who shall then enter judgement, or otherwise act according to the direction of the court of appeal.

193. Judgement in detinue.

(1) Subject to Subsection (2), judgement in detinue, if for the plaintiff, shall be for the value of the goods detained, together with a sum to be stated in the judgement by way of damages for the detention and costs.

(2) It may be made part of the judgement that on payment of damages for the detention and costs, and return of the goods on or before a day named, satisfaction shall be entered.

194. Form of judgement.

Every judgement shall be drawn up in Form 51.

195. Form of order authorizing entry on adjacent tenement.

Every order authorizing entry on an adjacent mining tenement shall be in Form 52.

196. Form of injunction.

(1) Every notice of application for an injunction shall be in Form 53.

(2) Every injunction shall be in Form 54.

197. Scale of fees.

The fees to be charged for processes issued out of the Warden's Court shall—

(a) be in accordance with the scale prescribed in Schedule 2; and

(b) be entered in a book to be kept for that purpose; and

(c) be remitted monthly to the credit of the Consolidated Revenue Fund.

198. Costs of witnesses.

(1) The Warden shall in each case direct the number of witnesses that are to be allowed on taxation of costs between party and party.

(2) Allowance for witnesses' expenses shall in no case exceed the rates prescribed by the scale in Schedule 2.

199. Taxation of costs.

(1) Where the value of the matter in dispute does not exceed K200.00 the Warden shall be guided in the taxation of costs by the scale of fees in similar cases in District Courts.

(2) In cases in which the subject-matter is of greater value than K200.00 the Warden shall be guided by the scale of fees in the National Court in cases of similar amount.

(3) In all cases where there is no money demand, the Warden's Court shall, for the purposes of taxation, determine what is the value of the matter in dispute.

200. Service.

(1) Subject to this section, the service of any summons, subpoena, process, order, notice, or other document, service of which is prescribed, shall be made—

(a) personally on the defendant or his registered agent; or

(b) by delivering it to some person apparently over 14 years of age at the place of abode or business of the defendant or his registered agent.

(2) If service under Subsection (1) is found to be impossible by reason of the defendant being absent from his usual place of abode for more than 14 days without having

appointed and registered a person as his agent, then it shall be sufficient service if a copy of the document is kept posted—

- (a) for the prescribed period at the Warden's Office; and
- (b) if the cause of action relates to any mining tenement—also on a conspicuous part of the tenement or homestead.

(3) Where the defendant is working in any mine or other works underground, it shall be sufficient service to deliver the document at the mine or works to the engine-driver, bracedman, or other person apparently in charge of the mine or works.

(4) Service of a document may be effected on a mining company or other corporation by delivering it to a secretary, registered manager, agent, or clerk of the defendant.

(5) Where a defendant avoids service, or keeps his house or place of business closed in order to avoid service, it shall be sufficient service to affix the document on the house or place of business, or to leave the document as near to it as possible.

201. Form of affidavit of service.

The affidavit of service of a document shall be in Form 55.

202. Adoption of practice, etc., of District Court.

In all cases where the practice or procedure of the Warden's Court is not sufficiently defined by this Regulation, the practice and procedure of the District Courts shall, as far as possible, be adopted.

203. Method of proof.

(1) Subject to this Regulation, evidence of the doing of anything, which by this Regulation is required to be done, may be given—

- (a) subject to Subsection (3), by the statutory declaration of the person on whom the obligation of doing the thing required to be done has been imposed, and, in addition if the Warden so directs, by the statutory declaration of a witness; or
- (b) by any other means or method of giving evidence of the doing of the thing which, by this Regulation, is required to be done, that the Warden may direct to be used or adopted in each particular case.

(2) When the method of proof to be applied is under Paragraph (a) a copy of the statutory declaration proposed to be used shall be served on all the parties to the case at least three days before the day of hearing.

(3) If the evidence in the statutory declaration is not merely formal and is not admitted by either party to the proceedings, the party wishing to dispute the evidence or any part of it may make application to the Warden for an order requiring the declarant to be present in the Warden's Court for examination on the day of the hearing, and the Warden, if he thinks that under all the circumstances the request is a reasonable one, may make an order requiring the declarant to be present.

PART XII.—MISCELLANEOUS.

204. Examination of Register.

(1) Any registered shareholder, licensee, or mortgagee of a mining tenement or other holding, or his registered agent, may, on application at the Warden's Office, and without fee, examine the Register, so far as it relates to the tenement or holding.

(2) Any person may examine the Register of Mining Tenements or other holdings at the Warden's Office, or the duplicate register at the Mines Office on payment of the prescribed fee.

205. Payment of rent.

For the purposes of Section 172(2) of the Act, the rent on a mining tenement, other than a special mining lease, shall be paid annually in advance on or before 31 December, in each year.

206. Payment of occupation fees.

For the purposes of Section 173(1) of the Act, occupation fees shall be paid in advance on or before 31 December in each year and in a case where a person entitled to that payment cannot be ascertained, shall be paid to the State in trust for that person.

207. Penalties for breach of regulations.

Unless a penalty is expressly provided for any offence, any person who commits a breach of this Regulation, or disobeys a lawful order of the Warden or Warden's Court, is liable to a penalty of a fine not exceeding K100.00 or in default, imprisonment for a term not exceeding three months.

208. Forms.

The forms prescribed by this Regulation, or forms to the like effect, may be used, with such variations or additions as are agreed on by the parties or as circumstances require.

209. Power to waive conditions.

The Minister may waive any conditions imposed by this Regulation if in his opinion, the conditions have been substantially satisfied.

210. Powers of Mining Advisory Board.

The Mining Advisory Board may examine witnesses on oath and may admit such documentary and other evidence as it thinks fit.

SCHEDULES.

SCHEDULE 1.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 2(1).

Form 1.

MINER'S RIGHT.

No.

Fee K3.00 per annum.

Date of issue:

Place of issue:

(For year .)

Issued to (name of holder) under the provisions of the *Mining Act*, to be in force until 19

Not transferable.

Warden.

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Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 2(2).

Form 2.

CONSOLIDATED MINER'S RIGHT.

No.

Fee K3.00 for each person.

Date of issue:

Place of issue:

(For persons for year .)

Issued to (name of company or co-operative body or manager or trustee) under the provisions of the Mining Act to be in force until 19 .

Not transferable.

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 10(1).

Form 3.

APPLICATION FOR CLAIM (OTHER THAN A DREDGING OR SLUICING CLAIM).

I/We, the undersigned, give notice to the Warden at 19 , at a.m./p.m. I/we marked off a piece of ground bearing the following distinguishing mark , situated or thereabouts. And I/we make application to the Warden, and request him to grant to me/us registration of the claim as a under the name of

(Signature of Applicant.)

Dated at ,

19 .

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 10(2).

Form 4.

CERTIFICATE OF APPLICATION.

No.

This is to certify that the undermentioned person, on 19 , at a.m./p.m., made application for a piece of ground measuring situated , to be held under the provisions of the Mining Act and the Mining Regulation as a , and if no valid objection is lodged on or before 19 , I shall grant to that person registration for the ground, to be held as a under the name of

Dated at ,

19 .

Warden.

NOTE: This form must within seven days after its receipt be posted on a conspicuous part of the ground applied for and also at the Warden's Office and be kept posted for 14 days.

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 10(4).

Form 5.

DECLARATION OF POSTING OF CERTIFICATE OF APPLICATION.

I, _____, declare that a copy of the certificate No. _____, granted to me on _____ 19____ was on _____ 19____ posted on a conspicuous part of the ground referred to in the certificate and also at the Warden's Office and remained so posted for 14 days.

Dated at _____, 19____

(Signature of Declarant.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 10(5).

Form 6.

CERTIFICATE OF REGISTRATION OF CLAIM.

I have this day, at _____ a.m./p.m., registered _____ of _____ as the holder of a claim numbered _____ and situated at _____ being the land described below :—

Description:

Dated at _____, 19____

Miner's Right No. _____

Warden (or Mining Registrar.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 13.

Form 7.

APPLICATION FOR EXEMPTION.

I/We, the undersigned, holder of (or shareholder in) the _____ Claim, apply for exemption of the above claim from work for the period of _____ months on the following grounds :—(Insert grounds of application.)

Dated at _____, 19____

(Signature of Applicant.)

The above application will be heard at the Warden's Court at _____ on _____ 19____, and objections to it must be lodged at the Warden's Office before _____ 19____

Warden (or Mining Registrar.)

This application was posted by me at the Warden's Office (or on a conspicuous part of the claim) on _____ 19____, at _____ a.m./p.m.

(Signature of Person Posting Notice.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 17(2).

Form 8.

NOTICES RELATING TO APPLICATION FOR CLAIM OR SHARE IN CLAIM LIABLE TO FORFEITURE.

No.

I, _____, of _____, make application to the Warden at _____ to be registered for _____ claim (or share in the claim), the claim (or share) being liable to forfeiture by _____, who is now the registered holder of it.

Dated at _____, 19 ____.

(Signature of Applicant.)

Miner's right

Name: _____ No.: _____ Date: _____

Warden's Office.

Dated _____, 19 ____.

I give notice that, in pursuance of the above application, I shall register _____ as the first applicant for the claim (or share) alleged to be liable to forfeiture by _____, if no valid objection is lodged with me within seven days from the posting and service of this notice.

Warden.

NOTE: These notices must be posted on a conspicuous part of the claim and at the Warden's Office and a copy served on the registered holder and licensee (if any) at least seven days before the hearing of the application.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 17(2).

Form 9.

DECLARATION, ETC. OF NOTICE RELATING TO APPLICATION FOR REGISTRATION OF CLAIM.

I, _____, declare that copies of notices relating to application for registration of claim (or share in claim) now liable to forfeiture have been posted for seven days on a conspicuous part of the claim, and at the Warden's Office and a copy has been served on the registered holder (and licensee).

Dated at _____, 19 ____.

(Signature of Declarant.)

Mining

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PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 21(3).

Form 10.

CERTIFICATE OF REGISTRATION OF STACK OF EARTH.

No.

Fee K1.50.

Under the provisions of the *Mining Regulation*, I have this day registered as the property of the stack of _____ on the claim known as _____, situated at _____, and, provided the conditions of the Regulation are complied with, no person shall remove the _____, or any part of it, for a period of _____ months from this date without the written permission from _____

Warden.

Dated at _____, 19 _____.

NOTE: A copy of this certificate must be kept posted on the stack.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 34(4).

Form 11.

APPLICATION FOR AMALGAMATION OF CLAIMS.

We, the undersigned, being the registered holders of at least two-thirds of the interests in the claims named and numbered respectively _____, and situated _____, make application to the Warden to amalgamate the claims as one claim, under the name of _____

(Signatures of Applicants.)

Miners' rights.

Names:

Nos.:

Dates:

shares in amalgamated claim.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 34(5).

Form 12.

CERTIFICATE OF AMALGAMATION OF CLAIMS.

This is to certify that I have on _____ 19 _____ at _____ a.m./p.m. amalgamated as one claim, under the name of _____, the following claims:—

Given under my hand, at _____, 19 _____.

Warden.

Numbers and dates of miners' rights:

Names of shareholders:

shares in amalgamated claim.

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Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 53(1).

Form 13.

APPLICATION FOR DREDGING OR SLUICING CLAIM.

Under the provisions of the *Mining Act* and the *Mining Regulation*, I/we, the undersigned, of
situated , apply for registration of a dredging or sluicing claim of ha
and sketch plan. , more particularly described in the schedule and the attached description

I/We, on 19 , at a.m./p.m., marked off the above men-
tioned ground.

Miner's right No. issued at expiring .

Dated at , 19 .
(Signature of Applicant.)

SCHEDULE.

Situation and boundaries of the ground applied for:

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 53(2).

Form 14.

CERTIFICATE OF APPLICATION.

No.

This is to certify that the undermentioned person on 19 at
a.m./p.m. made application for a dredging or sluicing claim in area
situated , to be held under the provisions of the *Mining Act* and the *Mining*
Regulation.

An objection may be lodged against the application before the expiration of 21 days from the
lodging at the Warden's Office of the declaration referred to in Section 53(5) of the *Mining Regulation*.

Dated at , 19 .
Warden.

NOTE: A copy of this certificate must, within 30 days after its receipt be posted at or near the
datum post on the area applied for, and also at the Warden's Office, and be kept posted for seven days.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 53(5).

Form 15.

DECLARATION OF POSTING OF CERTIFICATE.

I, , declare that a copy of the certificate No. , granted to me
on 19 was on 19 posted at or near to the datum post on
the area referred to in the certificate and at the Warden's Office, and remained so posted for seven
days.

Dated at , 19 .
(Signature of Declarant.)

Mining

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PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 68(1).

Form 16.

APPLICATION FOR A PROSPECTING AUTHORITY.

I/We _____ of _____ apply for a prospecting authority over
_____ ha situated at _____ and more particularly described in the schedule and
sketch plan attached, for the purpose of prospecting for _____

Dated at _____, 19 _____

(Signature of Applicant)

SCHEDULE.

To be completed by the Warden.

Lodged at _____ on _____ 19 _____

Registered No.: _____

Objections may be lodged with the Warden at _____ on or before
19 _____

Hearing set down at _____, on _____ 19 _____
Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 73(1).

Form 17.

NOTICE OF OBJECTION.

To the Warden.

I/We _____ of _____ object to the grant of prospecting authority the
subject of application No. _____ on the following grounds :—

and state that my/our address for the service of notices is _____

Dated at _____, 19 _____

(Signature(s) of Objector(s).)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 77.

Form 18.

PROSPECTING AUTHORITY.

I, _____, the Minister for _____ by virtue of the powers conferred by the
Mining Act and all other powers me enabling, grant to a prospecting authority over
_____ ha situated at _____ and more particularly described in the schedule for
a period of _____ years from this date for the purpose of prospecting for the following
minerals, and subject to the conditions set out below :—

Minerals:

Conditions:

Dated at _____, 19 _____

Minister for _____

SCHEDULE.

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Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 78.

Form 19.

CLAIM FOR COMPENSATION.

I/We of the holders of a primary authority within the meaning of Part VI. of the *Mining Act* being prospecting authority No. claim from of the holder of a secondary authority within the meaning of that Part, compensation in respect of the hinderance or obstruction, particulars of which are set out below, caused by

Dated at

19

(Signature(s) of Claimant(s).)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 84(a).

Form 20.

APPLICATION FOR MINING LEASE.

Under the provisions of the *Mining Act* and the *Mining Regulation*, I/We, the undersigned, apply for a lease of ha situated more particularly described in the schedule and the attached description and sketch plan for the purpose of mining for

Full name of applicant:

Address:

Date on which ground was marked out:

Term for which ground is required: Name of lease:

Dated at

19

(Signature of Applicant.)

SCHEDULE.

Situation and boundaries of the ground applied for:

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec.84(b).

Form 21.

APPLICATION FOR A SPECIAL MINING LEASE.

I/We, of apply for a special mining lease of ha of land situated at and known as and more particularly described in the attached plan and description.

The minerals in respect of which the lease is required are

My/Our full name(s) and address(es) for the service of notices is/are:

(Signature(s) of Applicant(s).)

To be completed by Warden.

Lodged at

on

19

Registered No.:

Objections may be lodged with the Warden at

on or before

19

Hearing set down at

, on

19

Warden.

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 84(c).

Form 22.

APPLICATION FOR A LEASE FOR MINING PURPOSES.

I/We _____ of _____ apply for a lease for mining purposes over an area of
_____ ha situated at _____ and more particularly described in the attached plan
and description.

The purposes for which this lease is required are _____

My/Our full name(s) and address(es) for service of notices is/are: _____

Dated at _____, 19 _____

(Signature(s) of Applicant(s).)

To be completed by Warden.

Lodged at _____ on _____, 19 _____

Registered No.: _____

Objections may be lodged with the Warden at _____ on or before
19 _____

Hearing set down at _____ on _____, 19 _____

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 91(1).

Form 23.

OBJECTION TO GRANT OF LEASE IN CONNEXION WITH MINING.

I/We _____ of _____ object to the grant of the lease Registered No.
_____ on the following grounds :—

My/Our address(es) for service of notices is/are: _____

Dated at _____, 19 _____

(Signature(s) of Objector(s).)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 105(1).

Form 24.

NOTICE OF TAKING POSSESSION OF A MINING LEASE ON FORFEITURE OR OTHER
DETERMINATION OF THE LEASE.

Notice is given that possession on behalf of the Minister has this day been taken of the mining
lease described below under the provisions of Section 67(1) of the *Mining Act*, on the following
ground :—

Dated at _____, 19 _____

Description of Lease.

Gold-field (or Mineral field): _____

Registered No. of lease: _____

Name of late lessees: _____

Date of lease: _____

Area: _____

Ch. No. 195

Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 105(2).

Form 25.

**CERTIFICATE OF DUE POSTING OF NOTICE OF TAKING POSSESSION OF A MINING
LEASE ON FORFEITURE OR OTHER DETERMINATION OF THE LEASE.**

I, the Secretary for Minerals and Energy (*or* Warden), certify that the notice, a copy of which is set out below, was duly posted at the Warden's Office at _____ on _____ 19 ____.

Dated at _____, 19 ____.

Secretary for Minerals and Energy (*or* Warden).

Copy of Notice to which Certificate refers.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 106.

Form 26.

TRANSFER OF MINING LEASE.

Know all men by these presents that _____, holder of (*or* applicant for) Lease No. _____ (*or* _____), known as _____ share in, *or* _____ interest in application for Lease No. _____, known as _____ at _____, commencing at _____ and containing _____ ha, transfers and assigns all right, title, and interest in the lease (*or* application) to _____ and requests that this transfer may be registered at the office of the Secretary for Minerals and Energy, and at the office of the Warden at _____ accordingly. This transfer is subject to the Minister's approval and unless and until approval is obtained shall be void and of no effect.

In witness of which _____ have set _____ hand and seal on _____ 19 ____.

(*Signature of Transferor.*)

(*Signature of Transferee.*)

Signed, sealed, and delivered by _____ in my presence.

Witness:

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 112.

Form 27.

PERMIT TO OCCUPY A LOT FOR MINING PURPOSES.

Under the provisions of Part IX. of the *Mining Act*, I grant a permit to _____ of _____, the holder of a miner's right, to occupy for mining purposes lot _____, being the land described below :—

(*Description of Lot.*)

Dated at _____, 19 ____.

Warden.

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 113(2).

Form 28.

LIEN TICKET.

No.

Fee K1.50.

I, _____ of _____, being the holder of numbered _____, situated at _____, in consideration of the sum of K _____, this day (or as the case may be) lent and advanced to me by _____ of _____, the receipt of which sum I acknowledge (and in consideration, etc., state further advances (if any)) and covenant with as follows:—

1. That I will pay to him the above sum of K _____ (and state further advances (if any)) on _____ 19 _____ and also will pay interest on that sum or on so much of it as for the time being remains unpaid at the rate of _____ % per annum from _____ 19 _____ until payment.

2. That (set out any further covenants, stipulations, agreements, and powers as may be agreed on.)

And for the better securing to _____ the payment of the moneys secured, I give to _____ a lien on all my right, title and interest in the property above described. And until the moneys above mentioned have been paid in full, I engage and bind myself not to transfer or assign the property, or any part of it without the written consent of _____

And I, _____, accept the said lien as security for the payment in manner above mentioned of the moneys secured, and on such payment being made to me, I engage and bind myself to release _____ property from the lien.

Dated at _____, 19 _____.

Miner's rights:

Lienor: _____ No.: _____ Date: _____

Lienee: _____ No.: _____ Date: _____

(Signature of Lienor.)

(Signature of Lienee.)

Witness:

The within lien was registered by me on _____ 19 _____ at _____ a.m./p.m. _____ Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 124(2).

Form 29.

MEMORANDUM OF MORTGAGE.

I, _____ of _____, being the registered lessee of (or applicant for) (describe the holding and number of the lease) under the provisions of the Mining Act, in consideration of the sum of K _____ lent to me by (or due by me to) _____ of _____ (and in consideration, etc., state further advances (if any)) mortgage the lease (or application) to him. And I covenant and agree with _____ that I will pay him the sum (and further advances (if any)) on (insert day appointed for payment, covenant for payment of interest, and such other covenants, stipulations, agreements, and powers as may be agreed on). And in default of performance, on my part, of the above covenants, (etc.,) or any of them I authorize _____ to sell the lease (or application) in accordance with the provisions of the Mining Regulation. This mortgage is subject to the Minister's approval and unless and until the approval is obtained shall be void and of no effect.

In witness of which I have signed my name on _____ 19 _____ (Signature of Mortgagor.)

Signed by the abovenamed _____ as mortgagor, on _____ 19 _____, in my presence.

(Signature of Registered Lessee (or Applicant).)

Ch. No. 195

Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 134.

Form 30.

TRANSFER.

I, _____ of _____, being registered as the holder of lien numbered _____ (or mortgage of mining lease numbered _____) in consideration of the sum of K _____ now paid to me, transfer to _____ the benefit of the lien (or mortgage). This transfer is subject to the Minister's approval and unless and until approval is obtained shall be void and of no effect.

Dated at _____, 19 _____.

Witness:

Miners' rights:

Lienec (or Mortgagee):

No.:

Date:

Transferee:

No.:

Date:

(Signature of Lienec (or Mortgagee).)

(Signature of Transferee.)

The above transfer was registered by me on _____ 19 _____ at _____ a.m./p.m.

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 136.

Form 31.

APPLICATION FOR SPECIAL MINING EASEMENT.

Under the provisions of the *Mining Act* and the *Mining Regulation* I/we _____ of _____ apply for authority to construct and maintain _____ over (or on, or across, or through) the land situated more particularly described in the schedule.

Description of mining tenement which applicant holds:

Names and addresses of owner, lessee, and occupier of the land the subject of the application:

Dated at _____, 19 _____.

(Signature of Applicant.)

SCHEDULE.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 138.

Form 32.

NOTICE OF OBJECTION TO APPLICATION FOR SPECIAL MINING EASEMENT.

I, _____, of _____, give notice that I object to the granting of the application of _____ for authority to construct and maintain _____ over (or on, or across, or through) the land situated _____, for the following reasons:—

Dated at _____, 19 _____.

(Signature of Objector.)

Mining

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PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 139.

Form 33.

AUTHORITY FOR SPECIAL MINING EASEMENT.

Subject to the provisions of the *Mining Act* and the *Mining Regulation* I grant to
of , authority to construct and maintain over (or
on, or across, or through) the land situated more particularly described in the
schedule (if the authority is granted subject to any conditions, insert and this authority is granted on the
following conditions :—).

Dated at

19

Minister for

SCHEDULE.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 149.

Form 34.

**MONTHLY RETURN FORM FOR MINING TENEMENTS AND USE OR OCCUPANCY OF
LAND FOR MINING PURPOSES.**

Month of

19

Holder:

Mineral:

Name of Agent, Lawyer, Manager or Secretary:

Postal address of Agent, Lawyer, Manager or Secretary:

NOTES:

1. Separate particulars to be given in respect of each mining tenement unless amalgamated, consolidated or subject of union when the number of the certificate of amalgamation, etc., shall be entered in the first column below.
2. A separate return shall be made for each mineral.
3. To be furnished in duplicate to the Secretary for Minerals and Energy, through the Warden, Mines Office, Konedobu, within ten days after the end of the relevant month.

Kind and registered numbers of mining tenements.	Average number of persons employed each working day.		Material treated*		Mineral won† non-precious minerals (kg) precious metals (g)			No. of exemption certificate (if any).
	Non-citizens. Euro-peans.	Others.	Lode. (t)	Alluvial (m ³)	from dredg-ing.	from other alluvial mining.	from lode min-ing.	

* Insert best approximation where surveyed or measured metres and tonnes are not available.

† In form despatched—raw gold, unrefined bullion, etc.

OUTPUT STATEMENT.

	Form of mineral **	Quantity by weight. ††
On hand at end of preceding month		
Won during month		
Shipped during month		
On hand at end of month		

** State form of mineral—undressed mineral, concentrate, crude gold, unrefined bullion, etc.

†† In form despatched—raw gold, unrefined bullion, etc.

†† Non-precious minerals in tonnes and kilograms. Precious metals in grams.

Rainfall during month (cm) (where rainfall record is kept):

Remarks:

I hereby certify that this is a correct statement of the particulars set out.

Dated 19

(Signature of Holder, Agent, Lawyer,
Manager or Secretary.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 150(1).

Form 35.

MONTHLY RETURN RELATING TO GOLD WON.

To the Warden at

Description of claim, mining lease, etc.	Locality of claim, mining lease, etc.	Name of holder.	Gold won.		Gold exported.		Remarks.
			Weight.	Estimated value.	Date of export.	Royalty paid.	
				K		K	

I, , of , holder (or tributer) of (specify area, claim, mining lease, etc., from which gold won), do declare that the above is a correct return of the gold won from (specify area, claim, mining lease, etc., from which gold won) during the period to

Dated at 19

(Signature.)

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 151(1).

Form 36.

TRANSFER OF CLAIM, ETC.

No.

Fee K1.50.

I, _____, of _____, my _____, for valuable consideration, transfer to _____ situated _____ subject to all and singular the terms and conditions under which _____ has been held by me, and I, _____, of _____, accept the _____, subject to the above mentioned terms and conditions. This transfer is subject to the Minister's approval and unless and until the approval is obtained shall be void and of no effect.

Dated at _____, 19 _____.

(Signature of Transferor.)

(Signature of Transferee.)

(Numbers of miners' rights and dates.)

Witness to signatures:

I have on _____ 19 _____ registered the above transfer in the books of my office at _____ a.m./p.m.

Warden (or Mining Registrar.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 151(2).

Form 37.

TRANSFER CERTIFICATE.

This is to certify that I have this day registered a transfer from _____ to _____ of _____ and _____ is now the registered holder of _____ subject to _____.

Warden (or Mining Registrar.)

Dated at _____, 19 _____.

NOTE: This certificate must be produced at the Warden's Office when this interest is to be again transferred.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 156.

Form 38.

APPOINTMENT OF AGENT.

I, _____, of _____, authorize _____ of _____ to act as my agent to (state special power delegated to agent), and I agree that whatever _____ shall lawfully do under this authority, until revoked by me, I will at all times ratify and confirm as good and valid.

Dated at _____, 19 _____.

(Signature.)

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Mining

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 163(1)(a).

Form 39.

DECLARATION OF LOSS OF DOCUMENT.

I, _____ of _____, declare that I have lost my _____ No. _____
and dated _____ 19 _____.

And I request that a certificate may be granted to me accordingly.

(Signature.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 163(1)(b).

Form 40.

CERTIFICATE IN PLACE OF LOST DOCUMENT.

I, _____, certify that _____ has made a declaration that he has lost his
, No. _____, and dated _____ 19 _____, and this certificate is
issued for all purposes in place of it.

Dated _____ 19 _____.

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 165(1).

Form 41.

CERTIFICATE OF REGISTRATION.

This is to certify that I have this day registered _____ as the holder of
subject to _____.

Dated at _____, 19 _____.

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 165(3).

Form 42.

CERTIFICATE OF REGISTRATION ON DEVOLUTION OF MINING TENEMENT.

This is to certify that in consequence of the death (or insolvency) of _____ the (describe
mining tenement) has devolved on and become vested in his executor (or administrator or assignee or
trustee in insolvency) as appears by (cite evidence of proof, e.g., probate, letters of administration, deed of
assignment, certificate of appointment, or as the case may be) produced to me, and that I have this day
registered the last-mentioned person as the holder of _____, subject to _____.

Dated at _____, 19 _____.

Warden.

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 166.

Form 43.

OBJECTION TO REGISTRATION.

I/We, _____, give notice that I/we object to the registration of _____ for the following reasons :—

And I/we require the Warden to withhold the registration of _____ pending the hearing of my/our objection.

(Signature(s) of Objector(s).)

Received at the Warden's Office on

19 _____, at

a.m./p.m.

Warden (or Mining Registrar.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 169(2).

Form 44.

DECLARATION OF TRUST.

Know all men by these presents that I, _____, of _____ being, now registered at the Warden's Office at _____ (or at the office of the Secretary for Minerals and Energy) as the holder of (insert nature of holding), declare that I stand possessed of and of all right, title and interest in it, and of its produce, on the trusts following (insert trusts and such further declarations as may be necessary.)

In witness I have signed my name on

19 _____

(Signature of Declarant.)

Signed by

in the presence of

Witness:

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 170.

Form 45.

PERMIT TO PROSPECT ON PRIVATE LAND.

Subject to the provisions of the *Mining Act* and the *Mining Regulation* of _____ is authorized to enter on the private land more particularly described in the schedule and to

This permit expires on

19 _____

The holder of this permit has lodged the sum of K _____ with the State against any damage likely to occur on that land arising out of or in connexion with his operations.

Dated at

19 _____

Warden.

Mining
SCHEDULE.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 173.

Form 46.

PLAINT.

On the Warden's Court at

No.

of complains of of that (state
grounds on which plaintiff proceeds, e.g. is indebted to in the sum of K
for goods sold and delivered, items and particulars of which are attached; or
has not for the space of days worked or registered a certain claim
known as , of which he was lately in possession; or is indebted to
in the sum of K on the balance of accounts of a partnership
between and , a statement of which accounts is attached).

therefore prays that (state relief sought by plaintiff, e.g.: may be
ordered to pay the same; or may be declared to have forfeited the claim).

Dated at

19

(Signature of Plaintiff.)

To the defendant.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 179(1).

Form 47.

SUMMONS.

In the Warden's Court at

To (insert defendant's name and address).

You are summoned to appear before the Warden's Court at 10 a.m. to answer the following
complaint of of (set out a copy of plaint).

If you intend to dispute the plaintiff's claim, you must file in this office a notice of defence,
containing the grounds of your defence, at least three days before the day appointed for the hearing.

You may have a summons to compel the attendance of any witness, or for the production of any
books, plans, or documents, on applying at my office.

Dated at

19

Warden (or Mining Registrar.)

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PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 184.

Form 48.

NOTICE OF DEFENCE.

In the Warden's Court at . (Plaintiff) v. (Defendant).

Take notice that I intend to defend the plaintiff's claim in this action on the following grounds:—*(set out the different grounds on which the defendant rests his defence. If the defendant prays for cross relief proceed as follows)*—

And the defendant complains of the plaintiff that the plaintiff *(proceed as in plaint)*. The defendant therefore prays that *(proceed as in plaint)*.

Dated at , 19 .

(Signature of Defendant.)

To the plaintiff.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 185(1).

Form 49.

SUBPOENA.

In the Warden's Court at . Between , plaintiff, and defendant.

To of

You are required to attend before this Court on 19 , at 10 a.m. and at every adjournment of this case, to give evidence on behalf of the (plaintiff or defendant). And you are required to produce to the Court *(state the particular things required to be produced)* and also all other books, papers, documents, plans, or things in your custody, possession or power, relating to the subject matter of this case.

If you neglect to comply with this summons you will be liable to a fine not exceeding K20.00 or in default of payment to imprisonment for a term not exceeding one month.

Dated at , 19 .

Warden (or Mining Registrar.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 188.

Form 50.

WARRANT OF EXECUTION ON A JUDGEMENT.

In the Warden's Court at _____, Between _____, plaintiff, and
 _____, defendant.

To _____, of _____, Bailiff of the Warden's Court and to the
 deputy bailiffs and others duly authorized to execute the processes of this Court.

Whereas, on _____ 19____, the plaintiff obtained a judgement of this Court against the
 defendant for the sum of K _____ for debt (or damages) and costs (or it was ordered by the
 Court that judgement should be entered for the defendant, or that judgement of nonsuit should be
 entered and that the sum of K _____ for costs be paid by the plaintiff to the defendant); and
 whereas default has been made in the payment:

These are therefore to require and order you to immediately levy on the lands, tenements,
 hereditaments, goods, chattels, credits, and effects of the defendant (or plaintiff) wherever they may be
 found, the sum of K _____, besides the costs of this execution, and also to seize and take
 any money or bank notes, and any cheques, bills of exchange, promissory notes, or securities for money
 of the defendant (or plaintiff), or such part or so much of them as may be sufficient to satisfy this
 execution, and the costs of making and executing this execution, and immediately to return the same
 to me, to be paid over to the plaintiff (or defendant) together with this warrant.

Dated at _____, 19____.

By the Court,

Warden (or Mining Registrar.)

K

Judgement

Costs

Execution

Alias

K

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 194.

Form 51.

JUDGEMENT.

In the Warden's Court at _____, (Plaintiff) v. (Defendant).

The Court finds on the verdict of the Warden (or the Warden and assessors, as the case may be)
 that (insert decision), and the Court orders (set out the order in full).

Dated _____, 19____.

Warden.

Mining

Ch. No. 195

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 195.

Form 52.

ORDER AUTHORIZING ENTRY ON ADJACENT MINING TENEMENT.

Whereas of , claims to be interested in a claim (or in certain land) comprised in a lease dated 19 , in favour of , granted under the *Mining Act* which claim (or land) adjoins the claim (or land) mentioned below and has applied to me for authority to enter on and inspect the claim (or land) mentioned below for the purpose of ascertaining whether the owner or occupier of it is encroaching on the claim (or land) of . Now, therefore, I authorize together with , a mining surveyor, and and , his assistants (or with , an experienced miner), to enter on the claim (or land) known as for the purpose of ascertaining whether the owner or occupier of it is encroaching on the claim (or land) of

Given under the seal of the Court on 19

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 196(1).

Form 53.

NOTICE OF APPLICATION FOR INJUNCTION.

To of

Take notice that I intend to apply to the Warden's Court at 19 , at 10 a.m. that an injunction may be granted by the Warden restraining you from (state acts required to be prevented, e.g.: working the claim known as) on the following grounds, namely:— (state the grounds in separate paragraphs).

Dated at , 19

(Signature of Applicant.)

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 196(2).

Form 54.

INJUNCTION.

In the Warden's Court at

On the application of of of which due notice has been given by the parties interested in opposing the application (or to such of the parties interested in opposing the application) as appear to me sufficient to represent the parties so interested, and on hearing and , interested parties, and the evidence adduced by them, in opposition to the application, I order and enjoin that and and each of them, their and each of their servants, workmen, and agents, be restrained from (state terms of injunction granted) until 19

(In cases of appeal, if manager is to be appointed, add: and I appoint of as manager of the claim (or lease, etc.) to carry on the works on it and to pay the expenses of it out of the receipts from it, and to pay the unexpended balance on such receipts into this Court weekly.)

Given under the seal of the Court on 19

Warden.

PAPUA NEW GUINEA.

Mining Act.

Reg., Sec. 201.

Form 55.

AFFIDAVIT OF SERVICE.

In the Warden's Court at _____, Between _____, plaintiff and
 _____, defendant.

I, _____ of _____, make oath and say that on _____ 19____, I
 duly served the defendant, _____ (or as the case may be) with a (state the nature of the document)
 a copy of which is attached, marked A, at _____, by delivering it personally to the
 defendant (or as the case may be).

Signed and sworn at _____ on _____ 19____, before me.

Bailiff.

(Endorse the copy of the document with the following certificate to be signed by the person before whom the
 affidavit is sworn.) This is the paper writing marked "A" referred to in the attached affidavit of

Sworn before me at _____, _____ 19____.

(Signature.)

SCHEDULE 2.

FEES.

Scale of Fees for—

Exemption of—

	K
(a) claim—from labour—for a period exceeding one month	3.00
(b) machine area or area for the erection of furnaces—from use—for a period exceeding one month	3.00
(c) water-right—from use	3.00
(d) mining leasehold—from labour—for a period not exceeding one month	3.15
and for a period exceeding one month	9.45

Transfer of—

(a) claim or share in a claim, machine area, area for the erection of furnaces, area for stacking tailings, water-right, and all other mining tenements except leaseholds or shares in leaseholds	1.50
(b) mining lease, lease for mining purposes or a granted application for a lease or a share of that lease or application	3.00
(c) lien or mortgage	1.50

Union of mining leaseholds

30.00

Registration of—

Appointment of agent, power of attorney, or other authority or declaration of trust	0.75
Amalgamation of claims, consolidation of dredging claims, lien, mortgage, rules and agreements, or stacked earth	1.50
Cancellation of lien or mortgage	0.75

Declaration of loss of—

Any document other than a miner's right	0.75
---	------

Examination of Registers—

For each entry examined	0.75
-------------------------	------

Judicial Proceedings—	
For every information or plaint	0.38
For every summons	0.15
For every copy	0.08
For every notice of defence	0.30
For every order of Warden	0.30
For every execution	0.38
For every declaration filed	0.30
For every injunction	0.75
Bailiff's Services—	
For every service of summons subpoena	0.38
Possession money, per day, if in actual possession	1.50
Mileage one way on all processes served by bailiff (exclusive of first mile) per mile ¹	0.45
For every levy	0.75
Witnesses' Expenses—	
Professional men, per day	2.10
All others, per day	1.50
Mileage for every mile after first two miles, one way only ¹	0.30
Examination Fee—	
Mine manager—	
First-class certificate of competency	6.30
Second-class certificate of competency	3.15

SCALE OF FEES FOR SURVEY.

(a) Land applied for as a mining lease or other tenement other than a dredging claim—	K
If not more than 2 ha	21.00
If more than 2 ha and not more than 4 ha	36.00
If more than 4 ha and not more than 6 ha	42.00
If more than 6 ha and not more than 8 ha	48.00
If more than 8 ha and not more than 10 ha	54.00
If more than 10 ha and not more than 12 ha	60.00
If more than 12 ha and not more than 16 ha	69.00
If more than 16 ha and not more than 20 ha	78.00
If more than 20 ha and not more than 24 ha	87.00
If more than 24 ha and not more than 32 ha	99.00
If more than 32 ha and not more than 40 ha	111.00
If more than 40 ha and not more than 48 ha	123.00
If more than 48 ha and not more than 56 ha	135.00
If more than 56 ha and not more than 64 ha	147.00
If more than 64 ha and not more than 72 ha	156.00
If more than 72 ha and not more than 80 ha	165.00
If more than 80 ha and not more than 88 ha	174.00
If more than 88 ha and not more than 96 ha	183.00
If more than 96 ha and not more than 104 ha	192.00
If more than 104 ha and not more than 112 ha	201.00
If more than 112 ha and not more than 120 ha	210.00

¹Because of the nature of this conversion no attempt has been made to metricate editorially.

- | | |
|--|--------|
| If more than 120 ha and not more than 128 ha | 219.00 |
| If more than 128 ha and not more than 144 ha | 228.00 |
| If more than 144 ha and not more than 160 ha | 237.00 |
| If more than 160 ha and not more than 176 ha | 246.00 |
| If more than 176 ha and not more than 192 ha | 255.00 |
| If more than 192 ha and not more than 208 ha | 264.00 |
| If more than 208 ha and not more than 224 ha | 273.00 |
| If more than 224 ha and not more than 240 ha | 282.00 |
| If more than 240 ha and not more than 256 ha | 291.00 |
- (b) Land applied for as a dredging claim—K60.00 per kilometre of the perimeter of the area applied for.
- (c) In addition to the fees set out in Paragraphs (a) and (b) the following charges for travelling, one way only and the distance to be measured from the Warden's Office or the last mining tenement surveyed whichever is the nearer :—
- By sea—K0.52 per kilometre or fraction of a kilometre.
- By land—K1.50 per kilometre or fraction of a kilometre.
- (d) Where an aeroplane is used for the purpose of transporting the survey party to the site of a survey or to the aerodrome nearest to the site, the amount paid in respect of transport of the survey party by aeroplane.
- The charges set out in Paragraph (c) shall not be payable in respect of the distance travelled by aeroplane.
- (e) Where the benefit of any travelling by sea or land, or transport by air, is shared by more than one survey, the Warden, or the Secretary for Minerals and Energy, may, in his discretion, apportion the charges imposed by Paragraphs (c) and (d) equally between the surveys.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining.

SUBSIDIARY LEGISLATION¹.

1. Act, Section 3—Proclamation.

Water catchment area—Wau.

2. Act, Section 6—Appointment of Director.

Secretary for Department of Minerals and Energy. (Office as at 17 August 1978).

3. Act, Section 8(2)(b)—Appointment of members of Mining Advisory Board.

Assistant Secretary (Mines Division), Department of Minerals and Energy (Deputy Chairman).

First Assistant Secretary, Development Administration, Department of Decentralization.

Assistant Secretary, General Financial Policy, Department of Finance.

Executive Director, National Investment and Development Authority.

(Offices as at 17 August 1978).

¹Owing to the difficulty of ascertaining subsidiary legislation under the Acts applying to the former Territory of Papua and the former Territory of New Guinea, the limitation of time and also the necessity to notify different matters under the new Act and the repealed Acts, the subsidiary legislation is limited to proclamations under the new Act.

It is hoped that research can be made to enable a full list of subsidiary legislation to be included under the next up-dating of the Revised Edition.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 195.

Mining.

APPENDIXES.

APPENDIX 1.

SOURCE OF THE MINING ACT.

Part A.—Previous Legislation.

Mining Act (Amalgamated) 1977 (No. 8 of 1978).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	1	30	30
2	3	31	31
3	4	32	32
4	5	33	33
5	6	34	34
6	7	35	35
7	198	36	36
8	8	37	37
9	9	38	38
10	10	39	39
11	11	40	40
12	12	41	41
13	13	42	42
14	14	43	43
15	15	44	44
16	16	45	45
17	17	46	46
18	18	47	47
19	19	48	48
20	20	49	49
21	21	50	50
22	22	51	51
23	23	52	52
24	24	53	53
25	25	54	54
26	26	55	55
27	27	56	56
28	28	57	57
29	29	58	58

¹Unless otherwise indicated, references are to the Act set out in Part A.

Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
59	59	115	115
60	60	116	116
61	61	117	117
62	62	118	118
63	63	119	119
64	64	120	120
65	65	121	121
66	66	122	122
67	67	123	123
68	68	124	124
69	69	125	125
70	70	126	126
71	71	127	127
72	72	128	128
73	73	129	129
74	74	130	130
75	75	131	131
76	76	132	132
77	77	133	133
78	78	134	134
79	79	135	135
80	80	136	136
81	81	137	137
82	82	138	138
83	83	139	139
84	84	140	140
85	85	141	141
86	86	142	142
87	87	143	143
88	88	144	144
89	89	145	145
90	90	146	146
91	91	147	147
92	92	148	148
93	93	149	149
94	94	150	150
95	95	151	151
96	96	152	152
97	97	153	153
98	98	154	154
99	99	155	155
100	100	156	156
101	101	157	157
102	102	158	158
103	103	159	159
104	104	160	160
105	105	161	161
106	106	162	162
107	107	163	163
108	108	164	164
109	109	165	165
110	110	166	166
111	111	167	167
112	112	168	168
113	113	169	169
114	114	170	170

Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
171	171	188	188
172	172	189	189
173	173	190	190
174	174	191	191
175	175	192	192
176	176	193	193
177	177	194	194
178	178	195	195
179	179	196	196
180	180	197	197
181	181		
182	182	198	199
183	183	199	200
184	184	200	201
185	185	201	202
186	186	202	203
187	187	203	204

APPENDIX 2.

SOURCE OF THE MINING REGULATION.

Part A.—Previous Legislation.

Mining Regulations for the former Territory of New Guinea as shown in *Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. III. p.3295 as amended by:

Amending Regulations (No. 4 of 1947)
 Amending Regulations (No. 15 of 1955)
 Amending Regulations (No. 22 of 1956)
 Amending Regulations (No. 44 of 1956)
 Amending Regulations (No. 17 of 1958)
 Amending Regulations (No. 3 of 1960)
 Amending Regulations (No. 46 of 1960)
 Amending Regulations (No. 24 of 1966)
 Currency Conversion Order No. 5 of 1966
 Amending Regulations (No. 14 of 1968)
 Amending Regulations (No. 29 of 1982).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	3	5	8
2	4	6	9
3	5	7	10
4	7	8	11

¹Unless otherwise indicated, references are to the regulation set out in Part A.

Part B.—Cross References—*continued.*

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13	16	69	76B
14	17	70	76C
15	18	71	76D
		72	76E
16	19	73	76F
17	20	74	76G
18	21	75	76H
19	22	76	76I
20	23	77	76J
21	24	78	76K
22	27	79	76L
23	28	80	76M
24	29	80A	76P
25	30	81	76N
26	31	82	76O
27	32	83	97
28	33	84	98
29	34	85	99
30	35	86	100
31	36	87	101
32	37	88	102
33	38	89	103
34	39	90	104
35	40	91	105
36	41	92	106
37	42	93	107
38	43	94	108
39	44	95	109
40	46	96	110
41	47	97	111
42	50	98	112
43	51	99	113
44	52	100	114
45	53	101	115
46	54	102	116
47	55	103	117
48	56	104	118
49	57	105	119
50	58	106	120
51	59	107	120A
52	60	108	120B
53	61	109	120C
54	61A	110	120D
55	62	111	120E
56	63	112	120F
57	64	113	121
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60	66A	116	124
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129	137	185	184
130	138	186	185
131	139	187	186
132	140	188	187
133	141	189	188
134	142	190	189
135	143	191	190
136	143A	192	191
137	143B	193	192
138	143C	194	193
139	143D	195	194
140	143E	196	195
141	144	197	196
142	145	198	197
143	145A	199	198
144	145B	200	199
145	146	201	200
146	146A	202	201
147	147	203	202
148	148	204	210
149	150	205	210A
150	150A	206	210B
151	151	207	212
152	154	208	213
153	155	209	214
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155	157	Schedule 1	Schedule 1
156	158	Form 1	Form 1
157	159	Form 2	Form 2
158	160	Form 3	Form 3
159	162A	Form 4	Form 4
160	162B	Form 5	Form 5
161	163	Form 6	Form 6
162	164	Form 7	Form 7
163	165	Form 8	Form 8
164	166	Form 9	Form 9
165	167	Form 10	Form 10
166	168	Form 11	Form 12
167	169	Form 12	Form 13
168	170	Form 13	Form 15
169	171	Form 14	Form 16
170	171A	Form 15	Form 17
171	171B	Form 16	Form 18A
172	171C	Form 17	Form 18B
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174	173	Form 19	Form 18D
175	174	Form 20	Form 21
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Part B.—Cross References—*continued.*

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
Form 22	Form 21B	Form 40	Form 32
Form 23	Form 22A	Form 41	Form 33
Form 24	Form 22B	Form 42	Form 34
Form 25	Form 22C	Form 43	Form 35
Form 26	Form 23	Form 44	Form 36
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Form 30	Form 27	Form 48	Form 39
Form 31	Form 27A	Form 49	Form 40
Form 32	Form 27B	Form 50	Form 41
Form 33	Form 27C	Form 51	Form 42
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Form 35	Form 27D	Form 53	Form 44
Form 36	Form 28	Form 54	Form 45
Form 37	Form 29	Form 55	Form 46
Form 38	Form 30	Schedule 2	Schedule 2
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