

MINERAL DEVELOPMENT ACT 1994

ACT 525

Preamble

An Act to provide for the inspection and regulation of the exploration and mining of minerals and mineral ores and for other matters connected therewith.

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. Short title, commencement and application.

(1) This Act may be cited as the Mineral Development Act 1994 and shall come into force on such date as the Minister may, by notification in the Gazette, appoint.

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

2. Application to fossicking, panning, etc.

This Act shall apply to the fossicking, panning, prospecting, exploring, mining and processing of minerals and mineral ores and to mines, minerals and mineral ores generally.

3. Interpretation.

(1) In this Act, unless the context otherwise requires-

"analysis" means the determination of the composition of a specimen or sample by physical or chemical method or by a combination of both methods;

"Assistant Director" means an Assistant Director of Mines appointed under section 4;

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

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

"Director" means a Director of Mines appointed under section 4 and includes any Deputy Director of Mines.

"Director General" means the Director General of Mines appointed under section 4 and includes any Deputy Director General of Mines;

"Director General of Geological Survey" means the Director General of Geological Survey appointed under the Geological Survey Act 1974;

"dulang licence" means a dulang licence for the time being in force issued under any written law relating to panning;

"exploration licence" means an exploration licence for the time being in force issued under any written law relating to exploration;

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

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

"fossicking licence" means a fossicking licence for the time being in force issued under any written law relating to fossicking;

mining licence: "individual mining licence" means an individual mining licence for the time being in force issued under any written law relating to mining;

"manager" means the person appointed as manager under section 14 ;

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

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

(a) naturally;

(b) as a result of mining in or on the earth; or

(c) as a result of mining in or under the sea or seabed, formed by or subject to a geological process, but excludes water, "rock material" as defined in the National Land Code and "petroleum" as defined in the Petroleum Mining Act 1966;

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

"mineral processing" means any activity whereby minerals or mineral ores are treated for the beneficiation thereof but excludes smelting and refining;

"mineral tenement" means a fossicking licence, dulang licence, individual mining licence, prospecting licence, exploration licence, proprietary mining licence, mining lease, or any of them for the purpose of exploration or mining of minerals or mineral ores, as the case may be, issued under any Federal or State law regulating mineral tenements;

"mines officer" means the Director General of Mines, any Director of Mines, Assistant Director of Mines, Senior Mining Assistant, Mining Assistant or any other officer duly authorized in writing by the Director General;

mining land: "mining land" means any land in respect of which a proprietary mining lease or mining lease issued or granted under any written law relating to mining is for the time being in force;

mining lease: "mining lease" means a mining lease for the time being in force granted under any written law regulating mining;

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

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

mining scheme: "operational mining scheme" means an operational mining scheme approved under section 10;

"police officer" has the meaning assigned to it in the Police Act 1967'

"prescribed" means prescribed by regulations;

mining licence: "proprietary mining licence" means a proprietary mining licence for the time being in force issued under any written law relating to mining;

"prospecting licence" means a prospecting licence for the time being in force issued under any written law relating to prospecting;

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

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

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

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

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

"waste" includes any discarded overburden material, tailing, any intermediate product from mining or mineral processing stockpiled for further operations, water treated or stored in mining

or mineral processing, and any chemical substance temporarily or permanently withdrawn from such operations;

"waste retention area" means any area defined for the retention of waste and includes any area where works are employed for the purification of water contained in such waste.

(2) Subject to subsection (1) and unless the context otherwise requires, all words and expressions used in this Act which are defined in the National Land Code shall be deemed to have the meaning assigned to them by that Code.

PART II ADMINISTRATION

4. Appointment of the Director General of Mines, Deputy Director General, etc.,

(1) The Minister shall appoint a public officer to be the Director General of Mines for the purpose of performing the functions and duties assigned to him under this Act.

(2) This minister shall also appoint such numbers of Deputy Director Generals of Mines, Directors of Mines, Deputy Directors of Mines, Assistant Directors of Mines, Senior Mining Assistants, Mining Assistants and such other officers as may be necessary for carrying out the purposes of this Act.

(3) All officers appointed under subsection (2) shall be subject to the control, direction and supervision of the Director General.

(4) All officers appointed under this Act shall be deemed to be public servants within the meaning of the Penal Code.

5. Functions and duties of Director General.

The Director General shall-

(a) be responsible for the administration and enforcement of this Act;

(b) exercise supervision and control on the safety aspects relating to mines and to the fossicking, panning, exploration, mining, possession, movement, storage and processing of minerals and mineral ores in accordance with this Act;

(c) obtain information on and keep records of operations pertaining to the fossicking, panning, exploration, mining, possession, movement, storage, processing, purchase and sale of mineral and mineral ores;

(d) perform such functions in relation to this Act as the Minister may from time to time determine; and

(e) carry on such other activities as may appear to the Director General requisite, advantageous or convenient for the purpose of carrying out the provisions of this Act.

6. Delegation of functions or duties by Director General.

The Director General may, in writing, delegate to any officer under his control, direction and supervision the exercise or performance, subject to such conditions, limitations or restrictions as may be provided in the instrument of delegation, of any of his functions or duties assigned to him under this Act:

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

7. Functions and duties of Director.

(1) A Director shall exercise the functions and duties assigned to the Director General in the geographical locality under his jurisdiction.

(2) A Director shall report to the Director General any matter in respect of which any action on the part of the Director General is necessary.

(3) A Director shall be vested with the functions and duties of an Assistant Director.

8. Functions and duties of Assistant Director.

(1) An Assistant Director shall-

(a) inspect and regulate the storage, transportation and use of toxic, inflammable or other potentially dangerous substances in respect of or in relation to any fossicking, panning, exploration, mining or mineral processing activity;

(b) require the holder of a mineral tenement to provide and maintain within the mineral tenement and mineral processing area such access roads and other routes as are necessary and adequate for the purpose of safe access, exit, escape or removal of any injured person;

(c) give such orders as he considers necessary to discontinue any operation, use of equipment or practice in or about any fossicking, panning, exploration or storage facility area or mine or mineral processing plant which-

(i) affects the safety or health of any person;

(ii) causes damage to property; or

(iii) causes nuisance to or impairs the amenity of any area or place; and

(d) order the immediate cessation of work in, and the immediate departure of all persons from, any fossicking, panning, exploration or storage facility area or mine or mineral processing plant or any part thereof which is deemed unsafe, or allow work to continue after precautions are taken or such things are done as he considers necessary.

(2) An Assistant Director may-

(a) by written notice require a manager to submit plans of the workings of the mines and returns containing information on any mining operation;

Provided that such information shall be deemed, if requested in writing by such manager, confidential information for the purposes of this Act; and

(b) make such orders as he may consider necessary in cases of dispute between occupiers of mining lands in respect of their occupation or use of such land.

PART III

REGULATION OF EXPLORATION AND MINING

9. Holder of mineral tenement to submit copy of mineral tenement and change of address to Director, etc.

(1) Any holder of a prospecting licence, exploration licence, proprietary mining licence or mining lease shall, within thirty days after the registration of such mineral tenement under any written law, send a copy of his mineral tenement to the Director and the Director General of Geological Survey.

(2) Any holder of mineral tenement mentioned in subsection (1) who has changed his address shall, within fourteen days from the date of change of such address, notify the Director and the Director General of Geological Survey in Writing of his new address.

10. Submission of operational mining scheme.

(1) The holder of a proprietary mining licence or mining lease shall be required to submit for approval by the Director an operational mining scheme for development work and mining on the land which is the subject of such mineral tenement before the commencement of any development work or mining within the mineral tenement area.

(2) The operational mining scheme shall include-

(a) the expected date of commencement of production;

- (b) a schedule of estimated annual raw ore production for the term of the mineral tenement;
 - (c) plant of the workings of the mine; and
 - (d) such information as may be prescribed or required in writing by the Director.
- (3) The holder of proprietary mining licence or mining lease may submit a modification to the approved operational mining scheme for approval by the Director and shall not commence any development work or mining which does not comply with the approved operational mining scheme until the modified operational mining scheme has been approved by the Director.
- (4) The Director shall-
- (a) approve the operational mining scheme or modification thereof if execution of the scheme-
 - (i) will provide a reasonably safe work place; and
 - (ii) will not endanger adjoining communities; and
 - (b) notify the holder of the proprietary mining licence or mining lease in writing of his decision.
- (5) Where the Director rejects the operational mining scheme or modification thereof, he shall notify the holder of the proprietary mining licence or mining lease in writing of his decision.
- (6) The holder of a proprietary mining licence or mining lease may submit such number of operational mining schemes or modifications thereof as may be necessary in order to obtain the approval of the Director.
- (7) The holder of a proprietary mining licence or mining lease who is aggrieved by the decision of the Director under this section may, within thirty days from the date he is notified of such decision, appeal in writing to the Director General whose decision shall be final.

11. Notices of intent to explore or carry out development work.

- (1) The holder of a prospecting licence or exploration licence shall send a written notice at least seven days before commencing exploration to the Director and the Director General of Geological Survey informing them of such intent.
- (2) The holder of a proprietary mining licence or mining lease shall send to the Director and the Director General of Geological Survey a similar notice before commencing any development work.

12. Compliance with operational mining scheme.

- (1) The holder of a proprietary mining licence or mining lease shall comply with the approved operational mining scheme under section 10 and carry out development work and mining in accordance with such approved operational mining scheme.
- (2) Upon failure by the holder of a proprietary mining licence or mining lease to comply with the approved operational mining scheme, the Director shall inquire into the matter and may order the holder of such licence or lease to-
- (a) undertake all necessary measures to ensure compliance with the approved operational mining scheme; or
 - (b) suspend development work or mining until the necessary measures are taken to comply with the approved operational mining scheme.
- (3) Any measures taken to comply with an order issued under subsection (2) shall not operate to relieve any holder of such licence or lease from any liability arising under subsection (1).

13. Good and safe practices and environmental standards.

Fossicking, panning, exploration, mining and mineral processing shall be carried out in accordance with good and safe practices and such environmental standards as may be prescribed under this Act and any written law relating to environment.

14. Manager of mine.

- (1) The holder of a proprietary mining licence or mining lease shall, where-
- (a) there are ten or more persons employed at the mine; or

- (b) the Assistant Director has notified the holder of such licence or lease that a manager is required, appoint a manager of the mine.
- (2) The appointment of a manager under subsection (1) shall be with the approval of the Assistant Director.
- (3) If the manager appointed under subsection (1) ceases to be the manager of the mine, the holder of a proprietary mining licence or mining lease shall within three days from the date of cessation appoint another manager with the approval of the Assistant Director.
- (4) The holder of a proprietary mining licence or mining lease may appoint such number of assistant managers as may be necessary to assist the manager, any such appointment shall be with the approval of the Assistant Director.
- (5) Where the holder of proprietary mining licence or mining lease is a natural person, he may, subject to the approval of the Assistant Director and the provisions of this Act, appoint himself as manager of the mine.
- (6) No person who has been appointed manager of any mine shall, while he holds that appointment, act as the manager of any other mine without the written approval of the Assistant Director.
- (7) A manager appointed under subsection (1) shall-
- (a) be responsible for the control and daily supervision of the mine of which he has been appointed manager; and
- (b) reside in close proximity to such mine unless exempted in writing by the Assistant Director.
- (8) Where a manager is required under this Act, no work shall be carried out at the mine unless-
- (a) the requirements of this section have been complied with; and
- (b) the manager is supervising the working of the mine.
- (9) Where in any mine the workings extend over or are separated by such a distance that control and daily supervision by one manager is, in the opinion of the Assistant Director, inadequate, he may require that a manager be appointed to control and supervise such of those workings as he may specify, and thereupon a manager shall be appointed in accordance with this Act for the workings so specified.
- (10) If a manager appointed under this section is incapacitated from performing his duties or is about to be absent from the mine for more than two days he, or the holder of a proprietary mining licence or mining lease, shall, if no assistant manager has been appointed, appoint, with the approval of the Assistant Director, any other person to act as manager during such incapacity or absence.
- (11) The holder of a proprietary mining licence or mining lease and every manager, assistant manager and person appointed under subsection (10) shall ensure the safety of all operations at the mine and the observance of the provisions of this Act.

15. Directions by manager of mine.

- (1) The manager of any mine may, and if so required by the Assistant Director shall, issue written directions to be observed by any person employed in or about such mine as are necessary under the particular circumstances to ensure their occupational safety and health.
- (2) A copy of the written directions shall be sent to the Assistant Director and if the Assistant Director has not within thirty days from the receipt thereof objected to them in writing to the manager the written directions shall, subject to subsection (8), come into force.
- (3) If the Assistant Director does not approve of any proposed written directions he shall within thirty days after the receipt thereof inform the manager of any alteration, addition or substitution to such directions as he deems fit.
- (4) If the manager objects to any such alteration, addition or substitution he may refer the matter to the Director whose decision shall be final.
- (5) Any written directions coming into force under this section shall continue to be in force until the Assistant Director orders the revocation thereof.

(6) A copy of the written directions shall be kept posted in one or more conspicuous places at the mine.

(7) A copy of the written directions in force certified as correct by the manager shall be admissible as evidence in any legal proceedings.

(8) Where any written directions under this section is inconsistent with this Act, the provisions of this Act shall prevail to the extent of the inconsistency.

16. Plans to be furnished.

(1) The manager of any mine shall keep at the office of such mine accurate plans of the workings of the mine made from actual survey in such a manner as may be prescribed and, at intervals of not more than six months, any additional working or extension made since the previous survey was effected shall be surveyed and delineated on the plans, and no such working shall be filled up or allowed to fall into disrepair before it has been so surveyed and delineated.

(2) Where a mine plan is updated, the manager shall furnish to the Assistant Director certified copies of such plan showing thereon the workings carried out since the last plan was submitted.

(3) A certified copy of such plan shall be kept by the Assistant Director in his office and no copy or tracing thereof shall be furnished, or information in relation thereto given, nor shall such plans be open to inspection unless the permission of the Assistant Director has been obtained.

(4) If, on receipt of any such plan the Assistant Director is not satisfied with the accuracy or completeness of such plan he may, in his discretion, order that a survey be made under his direction of the workings of the mine by a surveyor licensed under any written law at the expense of the holder of a proprietary mining licence or mining lease.

(5) The manager shall make available such plans at the mine whenever requested by any mines officer and the manager shall, if so requested, mark on such plans the progress of the workings of the mine at the time of production, and shall allow the mines officer to examine and take a copy thereof.

17. Record books on operations.

(1) The manager of a mine shall keep record books, in such form and containing such information as may be prescribed, concerning the operation of the mine.

(2) The record books shall be-

(a) kept solely for the purpose of entering the reports and records required under this Act;

(b) available at all reasonable times for the examination of any mines officer; and

(c) kept up to date and in good order and condition.

(3) Whenever a mines officer has inspected a mine or any works accessory thereto, he shall enter in a record book a summary of his inspection and any requirement that may be necessary.

(4) Notwithstanding anything contained in or omitted from the report of the mines officer, such report shall not be held to limit the responsibility of the holder of a proprietary mining licence or mining lease or manager under this Act.

(5) Nothing in this Act shall be construed as imposing the obligation on the manager to keep record books or copies thereof for more than twelve months after the record books have ceased to be used for making any entry therein unless the Assistant Director has in writing required that any record book be kept for a longer period.

18. Effluent water.

(1) Any holder of a proprietary mining licence or mining lease or manager who uses water in connection with mining shall take such measures as to ensure that the water so used shall, before it leaves the mine or waste retention area in which it has been used, comply with such water quality standards as may be prescribed and where such standards have not been prescribed such water shall be reasonably free of solid matter and from chemicals and other substances deleterious to human, animal or vegetable life.

- (2) The Assistant Director shall, on receipt of a complaint made in writing describing the failure on the part of any person to comply with the provisions of subsection (1), inquire into the matter of such complaint, and may at any time order such person complained of to-
- (a) undertake the necessary measures to ensure that water quality standards are complied with; or
 - (b) suspend mining until such measures are taken to comply with water quality standards.
- (3) Any measures taken to comply with an order issued under subsection (2) shall not operate to relieve any person from any liability arising under subsection (1).

19. Erosion.

- (1) Every person who undertakes fossicking, panning, exploration or mining shall take such measures as are reasonable to prevent or minimise the erosion of the land which is the subject of the mineral tenement and the effects thereof.
- (2) Whenever directed by the Assistant Director, every holder of a mineral tenement and his manager shall provide and maintain such retention works or other place as are necessary and adequate to prevent the products of erosion from being discharged into any river or drainage system.

20. Mine abandonment.

- (1) Before any mining operations is abandoned or discontinued, a written notice shall be given three months before such intended abandonment or discontinuance by the holder or a proprietary mining licence or mining lease or manager to the Assistant Director and to the Director General of Geological Survey.
- (2) Where any mine is to be abandoned, the holder of the proprietary mining licence or mining lease or manager shall cause to be made an accurate plan, to the satisfaction of the Director, showing the workings of such mine up to the time of abandonment and copies of such plan shall be submitted to the Director and the Director General of Geological Survey within one month after the abandonment.
- (3) Where a mine or part of a mine is to be abandoned, the holder of a proprietary mining licence or mining lease or manager shall securely fence or cover every mine shaft or adit and the holder of such licence or lease and the manager shall continue to be personally responsible for the due compliance of this provision until the Director has confirmed in writing that the work has been properly executed, notwithstanding that the mine or part of the mine has been abandoned.
- (4) Abandoned mines and waste retention areas shall be made safe in such manner as may be prescribed.

PART IV

ACCIDENT AND INQUIRY

21. Proceedings upon accident and dangerous occurrence.

- (1) Where-
- (a) any accident resulting in loss of life or serious bodily injury to any person; or
 - (b) any accident resulting in damage to any property,
- has taken place in connection with any work incidental to or connected with a mineral tenement, the manager, any other person in charge of the mine or the holder of the mineral tenement shall forthwith report in writing to the Assistant Director the facts of the matter as far as they are known.
- (2) The Assistant Director shall-
- (a) proceed to visit the place where such accident has taken place;
 - (b) order all workings to cease operation as soon as possible;
 - (c) make an investigation of the circumstances and record the findings of such investigation; and
 - (d) send immediately a report of such investigation to the Director.

- (3) The place where the accident has taken place shall be left as it was immediately after such accident until the investigation has been completed:
Provided that rescue work or any work necessary for the general safety of the persons employed therein or for the recovery of the bodies of deceased persons shall not be delayed.
- (4) No work shall resume until permission in writing has been obtained from the Assistant Director.
- (5) Upon receipt of the report given by the Assistant Director, if it appears to the Director that there is reason to believe that the accident was due to any failure to comply with any written directions issued under section 15 or any order given by any mines officer under this Act and the Director is of the opinion that the accident may have been prevented if proper precautions had been taken and observed, he shall submit the report of the Assistant Director together with his recommendations on the holding of an inquiry to the Director General.
- (6) The Director General shall consider the report submitted under subsection (5) and decide whether or not to hold an inquiry.

22. Procedure for inquiry.

- (1) Where the Director General decides to hold an inquiry, he shall appoint a mines officer and if necessary any person possessing legal or special knowledge to assist him in such inquiry.
- (2) The mines officer may open the inquiry or any part of the inquiry to the public and shall conduct it in such manner as he considers most effective for ascertaining the cause of the accident and he shall subsequently submit a report of the inquiry through the Director General to the Minister.
- (3) In conducting the inquiry, the mines officer shall have the following powers:
- (a) to procure and receive all evidence, written or oral, and to examine any person as witness as the mines officer deems necessary or desirable to procure or examine;
 - (b) to require the evidence, written or oral, of any witness to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he were giving evidence in the High Court) or by statutory declaration; and
 - (c) to summon any person to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession.
- (4) Where the mines officer is satisfied that a person who, under subsection (3)-
- (a) having been summoned to attend any such inquiry, fails to do so;
 - (b) having been required to produce any document or other thing, fails to do so; or
 - (c) having been required to answer any question, refuses to do so,
- he may certify in writing the failure to attend or to produce the document or the refusal to answer questions, as the case may be, and inform the Magistrate accordingly.
- (5) A person giving evidence under this section shall be legally bound to state the truth, whether or not such evidence is made wholly or partly in answer to questions.
- (6) Where a certificate is given under subsection (4), the Magistrate shall inquire into the case and, if he is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or failed or refused to comply with the requirement at mentioned in the certificate he shall order the person to attend or to comply with the requirement at a hearing before the mines officer holding such inquiry to be held at a time and place specified in the order.

PART V

ENFORCEMENT, INVESTIGATION, EVIDENCE, OFFENCES AND PENALTIES Chapter 1-Enforcement and Investigation

23. Enforcement by mines officer.

A mines officer may for the purpose of enforcing this Act-

- (a) call for and examine any book, document, instrument or record and make copies of or take extracts from such book, document, instrument or record which is in the custody or control of any person pertaining to any matter under this Act;
- (b) visit, enter, inspect and examine with or without previous notice any fossicking panning, exploration or storage facility area or mine or mineral processing plant at any time but shall not unnecessarily obstruct or impede any work therein;
- (c) investigate in respect of any fossicking, panning, exploration or storage facility area or mine or mineral processing plant concerning-
 - (i) the state and condition of any such area or plant;
 - (ii) any accident or dangerous occurrence;
 - (iii) any matter or thing connected with or related to the safety or health of any person or which causes or is likely to cause damage to property or is a nuisance;
 - (iv) the effect of any operation or practice upon the amenity of any area or place; or
 - (v) compliance with the provisions of this Act;
- (d) take measures to ensure the use of proper precautions in all fossicking, panning, exploration, mining, storage or mineral processing activities for the prevention of damage or danger to life or property;
- (e) require any person whom he finds in an area where fossicking, panning, exploration, mining, storage or mineral processing is undertaken to reveal his identity and purpose, and give such information as is required by this Act and in such person's power to give; and
- (f) take samples of any material whether solid, liquid or gas in or being discharged in or from any fossicking, panning, exploration or storage facility area or mine or mineral processing plant.

24. Power of investigation.

- (1) Any mines officer shall have the power to investigate the commission of any offence under this Act.
- (2) Every person required by a mines officer to give information or produce any document or other article relating to the commission of any offence which is in the person's power to give shall be legally bound to give the information or to produce the document or other article.

25. Power to require attendance of person acquainted with case.

- (1) A mines officer making an investigation under this Act may by order in writing require the attendance before himself of any person who appears to the mines officer to be acquainted with the facts and circumstances of the case, and such person shall attend as so required.
- (2) If any such person fails to attend as so required, the mines officer may report such failure to a Magistrate who may thereupon in his discretion issue a warrant to secure the attendance of such person.
- (3) A person attending as required under subsection (1) shall be entitled to be paid the reasonable travelling and subsistence expenses incurred by him and it shall be lawful for the Director General to pay such expenses.

26. Power to examine person acquainted with case.

- (1) A mines officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.
- (2) Such person shall be bound to answer all questions relating to the case put to him by the mines officer:

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

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

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

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

27. Power of arrest, seizure and investigation.

(1) A mines officer may without warrant-

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

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

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

28. Search with warrant.

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

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

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

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

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

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

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

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

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

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

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

29. Search without warrant.

If it appears to a mines officer that there is reasonable cause to suspect that in any building or place or on any land there is concealed or deposited any mineral, box, trunk, receptacle, package, conveyance or thing in respect of which an offence under this Act is being or has been committed, and if he has reasonable grounds for believing that by reason of delay in obtaining a search warrant under section 28 such mineral, box, trunk, receptacle, package, conveyance or thing is likely to be removed or destroyed, he may exercise in, upon, and in respect of the building, place or land all the powers mentioned in section 28 in as full and ample a manner as if he was authorised to do so by warrant under that section.

30. Temporary return of seized thing.

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

31. Forfeiture of things seized.

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

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

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

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

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

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

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

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

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

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

(b) in such manner as he deems fit.

(8) Where any thing seized in exercise of the powers conferred under this Act is of a perishable nature or is subject to speedy and natural decay or where the custody of such thing involves unreasonable expense and inconvenience, or is believed to cause obstruction or hazard to the

public, the Director may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

32. Cost of holding seized thing.

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

33. No costs or damages arising from seizure to be recoverable.

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

34. Power to stop and search conveyance.

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

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

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

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

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

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

In any proceedings under this Act a certificate signed by the Director stating-

(a) the value of any mineral or mineral product;

(b) the amount of fee, royalty, premium and other charges payable in respect of any mineral or mineral product; or

(c) the costs of repairing any damage done by an offender,

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

36. Sample.

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

37. Certificate of analysis.

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

(a) by the court; or

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

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

(2) In this section, "analyst" means-

(a) a person for the time being employed wholly or partly in chemical or physical analytical work relating to minerals in the Department of Geological Survey of Malaysia or by the Government; or

(b) a person engaged in chemical or physical analytical work relating to minerals and employed by a laboratory recognised by the Department of Geological Survey of Malaysia.

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

38. Protection of informers.

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

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

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

39. Various offences.

Any person who contravenes or fails to comply with the provisions of section 9, 11, 13, 14, 15, 16, 17, 18, 19 or 20 of this Act shall be guilty of an offence.

40. Penalty for failure to submit or comply with operational mining scheme.

Any holder of a proprietary mining licence or mining lease who fails to submit an operational mining scheme or comply with the approved operational mining scheme shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

41. Offences in relation to protection of abandoned shafts, etc.

(1) Any person who wilfully damages any shaft, level, drive or excavation which has been abandoned or renders it useless by the removal of any timber, fencing, casing, lining, ladder, platform or other appliance provided in or about the same or removes any part of the mound or dump at the mouth of any shaft so as to lessen or destroy its usefulness in protecting persons or animals from falling into such shaft shall be guilty of an offence.

(2) The court may order any person convicted of an offence under this section to repair or replace at his own expense any such timber, fencing, casing, lining, ladder, platform, appliance, mound or dump which has been damaged or removed.

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

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

43. Penalty for failure to comply with lawful order.

Any person who fails to comply with any written order issued by a mines officer shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding forty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

44. Offences with respect to information.

(1) Any person who-

- (a) submits false information in any application, report or other document under this Act;
- (b) furnishes or causes to be furnished to any mines officer any false particular, information or statement in respect of any matter which such officer requires to be given under this Act;
- (c) refuses to answer to gives a false answer to any question put to him by any mines officer for the purpose of obtaining any particular, information or statement required to be given under this Act;
- (d) counterfeits, falsifies or uses when counterfeited or falsified any document required by this Act or any instrument used in the transaction of any business or matter under this Act;
- (e) alters any document or instrument or counterfeits the seal, signature, initials or other marks of or used by any mines officer for the verification of any such document or instrument or any other purpose in the conduct of any business or matter under this Act;
- (f) deceives any mines officer, by fraud or otherwise, by issuing any document or making or causing to be made any entry in any book, document or instrument kept for the purpose of this Act to enable any person to move, transport, deliver or export mineral ore in any manner other than such manner as may be prescribed;
- (g) makes or attempts to make or causes to be made any incorrect entry in any book, document or instrument kept for the purposes of this Act;
- (h) uses or attempts to use any error in any book, document or instrument, or any incorrect entry in any book, document or instrument kept for the purposes of this Act; or
- (i) fails or refuses to produce any document as may be required by any mines officer, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

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

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

45. Disappearance or destruction of any thing seized.

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

46. Negligent conduct.

Any person who-

- (a) when employed in or about a mine or exploration site does any act in such manner as to be likely to cause danger or damage to any person in or about such mine or exploration site or fails to take such precautions as may be necessary to ensure the safety of any person in or about such place; or

(b) unless properly authorised in that behalf removes, alters or renders ineffective any thing in or about a mine or exploration site provided for the safety, health or well-being of any person, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both

47. Obstruction of mines officer.

Any person who obstructs, impedes, assaults or interferes with any mines officer in the execution of his function under this Act shall be guilty of an offence.

48. Use of confidential information.

Any person who makes use of any confidential information in contravention of section 58 or 59 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

49. Abuse of power.

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

50. Attempt and abetment.

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

51. Offences committed by body corporate.

Where a person charged with an offence under this Act is a body corporate, every person who, at the time of the commission of such offence, is a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he took reasonable precautions to prevent its commission.

52. Offences committed by partner, agent or servant.

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

53. Penalty for continuing offences.

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

54. General penalty.

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

55. Compounding of offences.

(1) The Director General or the Deputy Director General may compound any offence committed by any person under this Act, which is prescribed to be a compoundable offence, by making a written offer to such person to compound the offence upon payment to the Director General or the Deputy Director General such amount not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in the offer.

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

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

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

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

(4) The power to compound offences under subsection (1) shall be exercised by the Director General or the Deputy Director General personally.

56. Institution of proceedings and conduct of prosecution.

(1) No proceedings for, or in relation to, any offence under this Act shall be instituted without the written consent of the Public Prosecutor.

(2) Any mines officer authorised in writing by the Public Prosecutor may conduct the prosecution for any offence under this Act.

57. Recovery of money due to Government.

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

PART VI

MISCELLANEOUS

58. Prohibition against disclosure of information.

(1) Subject to subsection (4), no information contained in any report submitted as required by any office or officer of the Government regarding any prospecting licence or exploration licence shall be disclosed by such office or officer-

(a) for a period of three years from the date of submission of the report; or

(b) for a period of one year from the date of expiry of the licence,

whichever period shall so first expire, except with the written consent of the holder of the prospecting licence or exploration licence.

(2) Subject to subsection (4), no information contained in any report submitted as required by any office or officer of the Government regarding any proprietary mining licence or mining lease shall be disclosed by such office or officer for a period of one year from the date of expiry of the licence or lease except with the written consent of the holder of such proprietary mining licence or mining lease.

(3) All information submitted in support of an application for a mineral tenement or for the renewal thereof and supplied to any office or officer of the Government shall be kept confidential by such office or officer-

(a) where the application is refused, for a period of six months from the date of such refusal; or

(b) where the application is approved, for a period of six months from the date of expiry of the licence or lease.

(4) Nothing in subsection (1), (2) or (3) shall operate to prevent the disclosure of information where the disclosure is made-

- (a) for or in connection with the due administration of this Act;
- (b) for the purpose of any legal proceedings;
- (c) for the purpose of any investigation or inquiry conducted under this Act;
- (d) to any consultant to the Government or to any officer who is approved in writing by the Minister as the proper person to receive the information; or
- (e) for or in connection with the preparation by the Government of statistics in respect of exploration or mining operations.

59. Prohibition on abuse of information obtained in official capacity.

(1) Any mines officer responsible for the administration of this Act who has any information which if generally known might reasonably be expected to affect materially an exploration or mining activity which-

- (a) he holds by virtue of his official capacity or former official capacity; and
- (b) it would be reasonable to expect a person in his official capacity or former official capacity not to disclose except for the proper performance of the functions attached to that official capacity, shall not make improper use of such information to gain, directly or indirectly, an advantage for himself or for any other person.

60. Authority card.

(1) Every mines officer empowered to act under this Act shall, on request, declare his office and produce to the person against whom the mines officer is acting or from whom the mines officer seeks any information his authority card as is officially issued to him by the Director General.

(2) Any person may refuse to comply with any request, demand or order by any mines officer acting under this Act if the mines officer refuses to declare his office and produce his authority card on demand being made by such person.

61. Protection of officers.

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

62. Service of notice.

(1) Any notice required to be given or served under this Act may, unless some other form of service is prescribed, be sent by registered post to the person affected thereby.

(2) Where a notice is served by registered post, it shall be deemed to have been served on the day succeeding the day on which the notice would have been received, in the ordinary course of post, if the notice is addressed-

- (a) in the case of a company incorporated in Malaysia, to the registered office of the company;
- (b) in the case of company incorporated outside Malaysia, either to the individual authorised to accept service of process under the Companies Act 1965, at the address filed with the Registrar of Companies or to the registered office of the company, wherever it may be situated;
- (c) in the case of an individual or a body or persons, to the last known business or private address of such individual or body of persons.

(3) Where the person to whom there has been addressed a registered letter containing any notice which may be given under this Act is informed of the fact that there is a registered letter awaiting him at a post office, and such person refuses or neglects to take delivery of such registered letter, such notice shall be deemed to have been served upon him on the date on which he was so informed.

PART VII

REGULATIONS

63. Regulations.

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

(2) In particular and without prejudice to the generality of subsection (1), such regulations may-

(a) subject to the rights of the holder of a mineral tenement, determine certain minerals and mineral ores to be subjected to licensing requirements for possession, purchase, sale, movement, transport, storage and mineral processing;

(b) Control and regulate the production, possession, purchase, sale, delivery and export of minerals and mineral ores in order to meet the obligations imposed by international organizations of which Malaysia is a member, without prejudice however to the provisions of any other written law on the matter;

(c) prescribe environmental protection measures, effluent standards, noise standards, vibration standards and other standards and means to protect the environment:

Provided that such prescribed measures, standards or means shall not conflict with any provision of the Environmental Quality Act 1974;

(d) prescribe requirements and standards for the use of explosives and blasting agents, dangerous and toxic materials, ventilation, sanitary conditions and hygiene in exploration and mining areas;

(e) generally prescribe and provide for fees under this Act and the manner for collecting and disbursing such fees;

(f) prescribe the submission by any owner or manager of any mine of statistical returns and the keeping and production by them of books and plans;

(g) prescribe the required content of any operational mining scheme, plan, report or record book as may be required under this Act;

(h) prescribe the procedure of any proceedings for the conduct of any inquiry under this Act;

(i) provide for the safety of employees in fossicking panning, exploration and mining area;

(j) prescribe the offences under this Act which may be compounded and the method and procedure for compounding such offences;

(k) provide for any other matter generally to give effect to the provisions of this Act.

PART VIII

TRANSITIONAL AND SAVING PROVISIONS, ETC.

64. Transitional and saving provisions.

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

(2) Nothing in this Act shall affect the previous operation of, or anything done under, any previous law so far as they relate to the inspection and regulation of the exploration and mining of minerals or mineral ores and other matters connected therewith;

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall be subject to the provisions of this Act.

65. Conflict of laws.

In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any written law, the provisions of this Act shall prevail and the provisions of such written law shall, to the extent of such conflict or inconsistency, be void.

