



LAWS OF SARAWAK

LAND CODE

CHAPTER 81

(1958 EDITION)

Incorporating all amendments and modifications
up to 1.1.1999

Compiled in the

STATE ATTORNEY-GENERAL'S CHAMBERS,
KUCHING



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Native customary rights

5.—(1) As from the 1st day of January, 1958, native customary rights may be created in accordance with the native customary law of the community or communities concerned by any of the methods specified in subsection (2), if a permit is obtained under section 10, upon Interior Area Land. Save as aforesaid, but without prejudice to the provisions hereinafter contained in respect of Native Communal Reserves and rights of way, no recognition shall be given to any native customary rights over any land in Sarawak created after the 1st day of January, 1958, and if the land is State land any person in occupation thereof shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

(2) The methods by which native customary rights may be acquired are—

- (a) the felling of virgin jungle and the occupation of the land thereby cleared;
- (b) the planting of land with fruit trees;
- (c) the occupation or cultivation of land;
- (d) the use of land for a burial ground or shrine;
- (e) the use of land of any class for rights of way; or
- (f) any other lawful method:

Provided that—

(i) until a document of title has been issued in respect thereof, such land shall continue to be State land and any native lawfully in occupation thereof shall be deemed to hold by licence from the Government and shall not be required to pay any rent in respect thereof unless and until a document of title is issued to him; and

(ii) the question whether any such right has been acquired or has been lost or extinguished shall, save in so far as this Code makes contrary provision, be determined by the law in force immediately prior to the 1st day of January, 1958.

(3) (a) Any native customary rights may be extinguished by direction issued by the Minister which shall be—

(i) published in the *Gazette* and one newspaper circulating in Sarawak; and

(ii) exhibited at the notice board of the District Office for the area where the land, over which such rights are to be extinguished is situate,

and on the date specified in the direction, the native customary rights shall be extinguished and the land held under such rights shall revert to the Government:

Provided that where such rights are extinguished in pursuance of this section compensation shall be paid to any person who can establish his claims to such rights in accordance with paragraphs (b) and (c); or other land over which such rights may be exercised may be made available to him with or without the payment of additional compensation whether for disturbance, or for the costs of removal, or otherwise.

(b) Any person who desires to make any claim for compensation must submit his claim with evidence in support thereof to the Superintendent, in a form to be prescribed by him, within such period as may be stipulated in the direction issued by the Minister under paragraph (a), provided that the period so stipulated shall not be less than sixty days from the date of publication or exhibition thereof.

(c) No claim for compensation for extinguishment of native customary rights shall be entertained by the Superintendent unless such claim is submitted within the period stipulated in paragraph (b).

[Sub. Cap. A42].

(4) (a) Any person who is dissatisfied with any decision made by the Superintendent under subsection (3) on the ground that—

(i) his claim to native customary rights has been rejected or not recognised by the Superintendent;

(ii) the allocation of land over which such rights are to be exercised, is inadequate or inequitable; or

(iii) the amount or apportionment of compensation is inadequate, unfair or unreasonable,

may within twenty-one days from the date of receipt of the decision of the Superintendent, by notice in writing addressed to the Superintendent, require the matter to be referred to arbitration in accordance with section 212.

(b) Upon receipt of the notice of arbitration, the Superintendent shall direct that any compensation payable to the person who desires to have his claim or matter referred to arbitration, to be deposited in the High Court, pending the outcome of such arbitration proceedings.

[Sub. Cap. A42].

(5) Subsection (3) shall apply whether the land over which the customary rights are exercised is required for a public purpose or the extinction of such rights is expedient for the purpose of facilitating alienation, but shall have no application to cases in which the Forests Ordinance [*Cap. 126 (1958 Ed.)*], the National Parks and Nature Reserves Ordinance, 1998 [*Cap. 27*] or any other written law, including Part V, makes other provision for the extinguishment thereof.

[Ins. Ord. No. 2/74].

(6) The Majlis Mesyuarat Kerajaan Negeri may make rules for the assessment of compensation payable for extinguishment of native customary rights under this section and section 15.

[Am. Cap. A59].

(7) Whenever any dispute shall arise as to whether any native customary rights exists or subsists over any State land, it shall be presumed until the contrary is proved, that such State land is free of and not encumbered by any such rights.

[Ins. Cap. A42; Am. Cap. A59].

Native Communal Reserves

6.—(1) The Minister may by order signified in the *Gazette* declare any area of State land to be a Native Communal Reserve for the use of any community having a native system of personal law and may, by such order or by subsequent order, declare that the customary law of such community in relation to the acquisition, transfer and transmission of rights and privileges in or over land, and in any building or other structure erected therein, shall apply with such modifications as may be specified or provided for in any such order.

(2) Save in so far as the contrary may be specified or provided for in any such order or by this section, rights in any land declared to be a Native Communal Reserve under subsection (1) shall be regulated by the customary law of the community for whose use it was declared to be reserved.

(3) Notwithstanding subsection (2), but without prejudice to subsections (4) to (7) inclusive, any such land shall continue to be State land, and the native community for whose use it was reserved or any member thereof acquiring any rights therein shall hold the same as a licensee from the Government, and if, by virtue of the provisions of this section (including the provisions of any order made under subsection (1)), any individual native customary rights become established, the issue of any document of title in respect thereof shall be in the absolute discretion of the Director:

Provided that the Minister may of his own motion or upon petition review and confirm or amend any exercise of such discretion.

[Mod. Swk. L.N. 68/64].

(4) If the Minister is satisfied that any part of any area comprised in any declaration under subsection (1) is no longer required as a Native Communal Reserve and that this subsection may be applied without causing injustice or oppression, he may by order signified in the *Gazette* declare that such part shall cease to form part of such Native Communal Reserve, and as from such date, if any, as from which such declaration is expressed to come into effect, or, if no such date is expressed, then as from the date of publication in the *Gazette* of any such order, such part shall be at the disposition of the Government as free and unencumbered by any right, privilege or equity in respect thereof as if it has never been declared to be a Native Communal Reserve.

(5) The Minister may, if he considers that the settlement provisions in Part V should be applied to the whole or any part of any Native Communal Reserve, by order signified in the *Gazette* so direct, and the Director shall in such case proceed accordingly.

(6) This section shall apply also to native land reserves constituted under section 91 of the former Land Ordinance [*Cap. 27 (1948 Ed.)*] and Native Communal Areas constituted under rule 19 of the Land Settlement Rules in like manner to all intents and purposes as if they had been constituted by order under this section, save that if the notification issued under that section or that rule, as the case may be, has not specified for which community any reserve was constituted the same shall be deemed to have been reserved for the community which has in fact made use of the same or if any dispute or question arises, for the community for which the Minister may by order issued under subsection (1) subsequently declare it is to be deemed to have been reserved.

[*Mod. Swk. L.N. 68/64*].

(7) In any case in which this section applies, the question as to whether any person, whether or not such person is a member of the native community for whose use the reserve is or is deemed to be constituted, may exercise any rights or privileges within such reserve shall be determined by the customary law of such community and by such orders, if any, as may have been made under this section, and, save to the extent that any such person may be able to justify his occupation of any land comprised within such reserve, he shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

Government Reserves

7.—(1) In any case where an area of State land is required for a Federal or State public purpose, or may be so required in the future, and it is considered that the area should not be available for alienation, the Director may by notification in the *Gazette* declare such area to be a Government Reserve whether the public purpose for which the land may be used is stated in the notification or not. The Director may also by a similar notification specify a public purpose for which a Government Reserve may be used, whether such notification involves the change of a purpose previously notified or the declaration of the purpose for which land, not previously held for any specified public purpose, may henceforth be held.

(2) In any case where any area of State land has been declared to be a Government Reserve under subsection (1) the Director may by notification in the *Gazette* declare that the area is no longer required as a Government Reserve, and the area shall thereupon cease to be a Government Reserve and shall be available for alienation as in the case of other State land.

Illegal for non-native to acquire rights or privileges over land of certain classes

8. Save as provided in section 9—

(a) a person who is not a native of Sarawak may not acquire any rights or privileges whatever over any Native Area Land, Native Customary Land or Interior Area Land;

(b) any agreement, purporting to transfer or confer any such rights or privileges or which would result in such person enjoying any such right or privilege, shall be deemed to have been entered into for an illegal consideration; and, in particular but without prejudice to paragraph (d), any consideration which shall have been paid or furnished shall not be recoverable in any court nor shall any relief be afforded to any person claiming that any consideration promised has not been paid or furnished;

(c) any person purporting to enter into an agreement to which paragraph (b) applies shall be guilty of an offence: Penalty, a fine of one thousand ringgit and, in the case of a native offender, an additional fine of a sum equivalent to the value of any consideration which the court is satisfied has been received by that native offender or has been received by another person on his behalf or by his direction;

(d) in any case in which a person is convicted of an offence under paragraph (b), the court may, if there is reason to believe that such person did not appreciate he was contravening paragraph (a) and had no reason to believe he was entering into a prohibited transaction, impose no fine and may also, if it has imposed an additional fine on a native offender and this paragraph applies to the non-native offender, order the payment to such non-native offender out of such fine of such sum by way of compensation to the non-native offender as it may deem fit in all the circumstances;

(e) subject as aforesaid and to any remedy for the recovery of any fine imposed, the rights and privileges of any native shall not be adversely affected by any agreement to which paragraph (b) applies;

(f) upon any conviction of an offence under paragraph (c), the court shall have power to order the eviction of any person, being a non-native or a person claiming under a non-native in possession or occupation of any land in relation to which the offence was committed, and may for such purpose by warrant addressed to any police officer order him to remove any such person as aforesaid;

(g) a complaint of an offence under paragraph (c) may be made by a District Officer or a Superintendent or by any person generally or specially authorized in that behalf by the Public Prosecutor, but may not be made by any other person; and

(h) notwithstanding anything in any other written law, a court of a Magistrate of the First Class* may exercise without any limitation the jurisdiction conferred on the court by this section.

* Now *see* also sections 3 and 111 of the Subordinate Courts Act 1948 (Act 92).

Acquisition of land by non-natives

9.—(1) Section 8 shall not be deemed to prohibit the acquisition by any non-native of any land to which the provisions of that section apply, or of any rights or interest in or over such land—

(a) under or by virtue of any law for the time being regulating prospecting for minerals, including mineral oils, or the taking of forest produce;

(b) whenever such non-native has become identified with and subject to any native system of personal law;

(c) whenever such non-native has been issued with any permit relating to Native Area Land or Native Customary Land, issued under any rules made under section 8A of the former Land (Classification) Ordinance, 1948 [*Ord. No. 19/1948*], or issued under rules in that behalf under section 213, to the extent of the rights conferred by such permit;

(d) where such non-native has been deemed to be a native, by the Majlis Mesyuarat Kerajaan Negeri, by notification in the *Gazette*, in respect of any category of dealing over Native Area Land as stipulated in the notification;

[Sub. Cap. A50].

(e) whenever such non-native has been issued with any licence under this Code to extract and remove earth, gravel, clay, stone, coral, shell, guano, sand or lime.

[Added Ord. 18/71].

(2) For the purposes of this section, a person shall be deemed to have become identified with and subject to any native system of personal law upon any event upon which any written law provides he shall become so identified and subject or if he is accepted by any native community as being identified with and subject to the system of personal law of such community.

Occupation of different classes of land

10.—(1) Without prejudice to section 5 (2)(e) or to section 29 or to the provisions of any written law, no person may occupy or exercise any rights or privileges over any Mixed Zone Land or Native Area Land save under a valid and subsisting document of title and, if the land in question is unalienated, any occupier thereof shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

(2) No person whether a native or non-native may occupy any Native Customary Land or any Reserved Land save under and in accordance with the conditions applicable thereto by virtue of this or any other written law, and any person in occupation thereof shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

(3) Without prejudice to any law for the time being regulating the prospecting for minerals and mineral oils or the taking of forest produce, any native who, without a prior permit in writing from a Superintendent, occupies any Interior Area Land or fells or attempts to fell virgin jungle upon any such land or attempts to create customary rights upon any such land shall be guilty of an offence: Penalty, in the case of a first offence, a fine of one thousand ringgit and, in the case of a second or subsequent offence, imprisonment for two years and a fine of five thousand ringgit.

[Am. Cap. A42; Cap. A61].

(4) The occupation of Interior Area Land by a native or native community without a permit in writing from a Superintendent shall not, notwithstanding any law or custom to the contrary, confer any right or privilege on such native or native community and, in any such case, such native or native community shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

[Am. Cap. A42].

(5) The consent of a Superintendent for the purposes of any permit shall not be given if he considers either that he would thereby prejudice the individual or communal rights of others or that he would thereby prejudice the interests of Sarawak or its inhabitants in the area where the land applied for is situate.

[Am. Cap. A42].

(6) Any person aggrieved by any decision of the Superintendent may within twenty-one days appeal against such decision to the Director, who may make such order in respect thereof as he may consider just.

[Am. Cap. A42].

(7) Any person aggrieved by any order of the Director under subsection (6) may appeal, by way of petition to the Minister, within thirty days thereafter or within such longer period as the Minister may, in any particular case, permit.

[Mod. Swk. L.N. 68/64; Am. Cap. A42].

Director may classify land and resolve doubts as to classification of any particular area of land

11.—(1) The Director may divide Sarawak into Land Districts and may, for the purpose of giving effect to this or any other written law, by notification in the *Gazette* declare any area of land to be a special development area or to be town, suburban or land comprised in a bazaar or to be land of such class or description as may be provided for under such written law or as may be prescribed by rules under this Code.

[*Am. Cap. A17*].

(2) The Director may, if he is satisfied that any parcel of land is Mixed Zone Land or Native Area Land within the meaning of section 2 as read with this Part and that it is expedient that this section shall apply thereto, by notification in the *Gazette* declare that such parcel is Mixed Zone Land or Native Area Land, as the case may be.

(3) Such declaration shall, unless revoked or varied by the Court under subsection (4) or unless the classification of the said land is subsequently altered by virtue of anything in this Part, be sufficient authority for the Registrar, any proprietor thereof and any other person to register and deal with such land as Mixed Zone Land or Native Area Land, as the case may be.

(4) Any person aggrieved by any declaration under subsection (2) may by notice in writing require the Director to state a case for the opinion of the High Court, and the Director shall comply with such requirement.

(5) The High Court shall have power upon any case being stated under subsection (4) to determine the matter and for such purpose to amend the case stated in any manner it thinks fit.

(6) The Court's determination under subsection (5) shall for the purpose of any appeal be deemed to be made in a civil proceeding.

(7) The expression "any person aggrieved" shall include any person having a right or interest in the land concerned and also the State Attorney-General acting on behalf of the public or of any class of the public.

[*Mod. Swk. L.N. 68/64*].

PART III

STATE LAND AND THE ALIENATION THEREOF

Property in and control of State lands and waterways

12. The entire property in and control of State land and of all rivers, streams, canals, creeks and water courses and the bed thereof is and shall be vested solely in the Government.

Discretion to alienate

13.—(1) Subject to the direction of the Minister under section 3(1A), the Director may alienate State land, other than Native Customary Land—

[Sub. Ord. No. 8/84].

(a) in perpetuity or for such terms as may be fixed by rules made under this Code for the respective classes of land referred to in such rules;

(b) in consideration of the payment of an annual rent;

(c) in consideration, unless the Majlis Mesyuarat Kerajaan Negeri thinks fit to exempt therefrom in any particular case, of the payment of a premium, and where the alienation has been made in consideration of the payment of a premium, the amount of the premium shall be stated. The payment of the premium, if any, may be made either by a single payment or by instalments over a period not exceeding ten years as may be determined by the Superintendent;

[Am. Ord. No. 9/76; Cap. A28].

(d) subject, unless the Director otherwise directs, to a category of land use being endorsed on the document of title; and

(e) subject to any such other conditions and restrictions as may be imposed by the Director.

(2) Subsection (1) shall apply with such modifications as may be necessary to the issue of licences or permits in respect of State land.

(3) The powers hereby vested in the Director may be exercised by a Superintendent, subject to the Director's instructions and the Minister's directions.

[Am. Ord. No. 18/71; Ord. No. 8/84].

(4) The powers hereinbefore conferred shall include power to consent to modification of any conditions imposed by or on behalf of the Government, whether before or after the 1st day of January, 1958.

[Am. Ord. 18/71].

(5) Notwithstanding the powers conferred by this section, State land shall not be alienated to any person except—

[Sub. Ord. 18/71].

(a) a natural person;

(b) a corporation having power under its constitution to hold land;

(c) a sovereign or government;

(d) an organisation or other person authorized to hold land under the provisions of any law for the time being in force relating to diplomatic and consular privileges;

(e) a body expressly empowered to hold land under any other written law; and

(f) any person or body, not referred to in paragraphs (a) to (e), approved by the Majlis Mesyuarat Kerajaan Negeri as a person or body who may be registered as the proprietor of land.

[Am. Ord. No. 9/76; Cap. A28].

Amendment of section 5

3. Section 5 of the Code is amended—

(a) in subsection (2):

(i) by substituting the word “acquired” wherever it appears in the subsection with the word “created”;

(ii) by adding the word “or” to the end of paragraph (d);

(iii) by substituting the semi-colon and the word “or” at the end of paragraph (e) with a colon; and

(iv) by deleting paragraph (f);

(b) by deleting subsections (3), (4), (5) and (6);

(c) by renumbering subsection (7) as subsection (3); and

(d) by adding immediately after the new subsection (3) the following new subsection (4):

“(4) Any native customary rights lawfully created under subsection (1) or (2) may be terminated and the State land over which such rights have been created, shall be resumed by the Government and compensation shall be paid to any person lawfully having such rights, in accordance with Part IV.”.

Amendment of section 6

4. Section 6 of the Code is amended by substituting subsection (4) with the following new subsection (4):

“(4) If the Minister is satisfied that any area or part thereof comprised in any declaration under subsection (1) is required for any public purpose, as stipulated in section 46, he may direct such area or any part thereof to be resumed by the Government and compensation to be paid to any person lawfully having rights or privileges over such area or part thereof in accordance with Part IV.”.

Amendment of section 7

5. Section 7 of the Code is amended—

(a) by adding after subsection (2) the following new subsections: