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No. 10 of 1980

The Mining  
Ordinance, 1980

Virgin  
Islands

I Assent  
J. A. DAVIDSON,  
Governor.  
28th October, 1980.

**VIRGIN ISLANDS**

No. 10 of 1980

An Ordinance to repeal the mining Ordinance 1972 and to enact more comprehensive legislation governing the exploration for and production of minerals in the British Virgin Islands, and for purposes incidental thereto or connected therewith.

[Gazetted 30th October 1980]

ENACTED by the Legislature of the Virgin Islands.

**PART I**  
**PRELIMINARY**

1. This Ordinance may be cited as the Mining Ordinance, 1980 and shall come into operation on such date as the Minister may, by notice in the Gazette appoint, hereinafter referred to as the appointed date. Short title and Commencement.

2. In this Ordinance, unless the context otherwise requires — Interpretation.

“Building materials” means minerals and rocks commonly used for building, road making or agricultural purposes and includes sand, clay, gravel, latorite, limestone, granite, phyllite and other rock when so used;

“Commence commercial production” means to achieve a rate of production of ore concentrates or other ore derivatives for sale from a mine in excess of 70 percent of the proposed rate of production specified in the programme of mining operations and commercial production is deemed to commence on the last day of the first month during which the holder of a mining licence achieves 70 percent of that proposed rate of production;

“Excavation” means any trench, pit, shaft or other open working;

“Holder” means the holder of a mineral right;

**"In default"** means in breach of any of the provisions of this Ordinance or any of the terms or conditions of a mineral right;

**"Mine"** when used as a noun, means any place, excavation or working wherein or whereon any operation connected with mining is carried on, together with all buildings, premises, erections, facilities, plant and appliances belonging or appertaining thereto above and below the ground for the purpose of winning, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores;

**"Mine"** when used as a verb, means intentionally to win minerals and includes any operations directly or indirectly necessary therefor or incidental thereto and the terms "mining" and "mining operation" shall be construed accordingly;

**"Mineral"** means any substance occurring naturally in or on the earth, or in or under the seabed formed by or subject to a geological process other than petroleum or natural gas, as defined in the Petroleum Mining Ordinance, 1972, or water and includes the product of treating or dressing ores or other substances for marketing or export;

**"Mineral deposit"** means any naturally occurring body of minerals or ore which is or may be of economic value in whole or in part;

**"Mineral Product"** means a substance derived from an ore by mining or processing;

**"Mineral right"** means a reconnaissance licence, prospecting licence or a mining licence;

**"Mining area"** means the land or water subject to a mining licence;

**"Mining licence"** means a licence to mine acquired under Division C of Part IV of this Ordinance;

**"Minister"** means the Minister for the time being responsible for mining and/or mineral development;

**"Ore"** means a natural aggregate of one or more minerals whether whole or part of a mineral deposit which may be mined and sold at a profit or from which some part may be profitably extracted;

**"Programme of mining operations"** means the programme approved by the Minister in accordance with the provisions of this Ordinance on the granting or renewal of a mining licence and includes any amendment thereto made in pursuance of the provisions of this Ordinance;

**"Prospect"** means intentionally to search for minerals and includes any work necessary to determine their extent and economic value;

**"Prospecting area"** means the land or water subject to a prospecting licence;

**"Prospecting licence"** means a right to prospect acquired under Division B of Part I of this Ordinance;

**"Programme of the prospecting operations"** means the programme approved on the granting or renewal of a prospecting licence and includes any amendment thereto made in pursuance of the provisions of this Ordinance;

**"Radioactive mineral"** means a mineral which contains by weight at least one-twentieth of one percent (0.05 percent) of uranium or thorium or any combination thereof, including but not limited to the following:—

(a) monazite sand and other ores containing thorium;

(b) carnotite, pitchblende and other ores containing uranium;

**"Reconnaissance"** means the search for minerals by geophysical surveys, geochemical surveys and photo-geological surveys or other remote sensing techniques and surface geology in connection therewith but does not include:—

(a) drilling, excavation or other subsurface techniques, except where the use of such techniques

has been authorised in a reconnaissance licence issued under Division A of Part IV of this Ordinance; or

- (b) investigation or research into the geology of the British Virgin Islands where such investigation or research has been authorised in writing by the Minister;

“Reconnaissance area” means any area of land or water subject to a reconnaissance licence;

“Reconnaissance licence” means a licence to conduct reconnaissance acquired under Division A of Part IV of this Ordinance;

“Reconnaissance programme” means the programme approved on the granting of a reconnaissance licence and includes any amendment thereto made in pursuance of the provisions of this Ordinance;

“Termination” means the lapse of a mineral right whether by expiry of time, surrender or cancellation, and where any surrender or relinquishment is in respect of part only of the area covered by a mineral right then the mineral licence shall be deemed to have lapsed in respect of that surrendered relinquished area.

Repeal of Mining Ordinance 1972.

3. (1) The Mining Ordinance, 1972 is hereby repealed.

(2) Where a prospecting licence issued under the repealed Ordinance is in force the holder of that licence may apply, within six months following the appointed date but not later than sixty days prior to the date of expiry of the prospecting licence, to the Minister for the conversion of the prospecting licence into a reconnaissance licence issued under Clause 11.

(3) Where the holder of a prospecting licence referred to in subclause (2) is not in default of his obligations under that licence, the Minister may, upon receipt of an application pursuant to subclause (2), issue to the applicant a reconnaissance licence which shall:—

- (a) be for a term ending on the date on which the applicant's prospecting licence under the repealed Ordinance would have expired; and

- (b) including therein a condition that the applicant shall carry out the work programme which had been included as a condition of prospecting licence under the repealed Ordinance.

## PART II

### OWNERSHIP OF MINERALS AND ACQUISITION OF MINERAL RIGHTS

4. It is hereby declared that the entire property in and control over all minerals, under or upon any lands or under any waters within the British Virgin Islands is vested in the Crown, save and so far as such property and control may be limited by any express grant made by the Crown before the commencement of this Ordinance. Ownership of minerals.

5. (1) No person shall in the British Virgin Islands conduct any reconnaissance for, prospect for, or mine any minerals except under the authority of a licence issued under and in accordance with Part IV of this Ordinance. Acquisition of mineral rights.

(2) Nothing in this Ordinance shall prevent:—

(a) any person from taking, subject to such conditions as may be prescribed by the Minister, building materials for the construction of any dwelling house, factory, workshop or store including the outbuildings or appurtenances thereof on land occupied by him under any title over or interest in such land;

(b) any person engaged in construction of tunnels, roads, dams, aerodromes, and similar public works of an engineering nature or for agricultural purposes, from utilising such building materials derived from such other sources as the Commissioner may from time to time approve.

(3) The provisions of subsection (2) shall not extend to any land comprised within the area of a mining licence.

(4) No Mineral right shall be granted under the provisions of this Ordinance:—

(a) to a natural person who is not a citizen of the British Virgin Islands;

(b) to a corporation unless it is incorporated by or

under any law in force in the British Virgin Islands or in the case of a reconnaissance or prospecting licence unless it is a corporation registered under the Companies Ordinance:

Provided that if the Minister is satisfied that there are special reasons which justify his granting a mineral right to a corporation not incorporated as provided in subparagraph (b) of this Section and he is satisfied that it is in the public interest to do so, he may waive the requirement contained therein subject to such conditions as he deems fit.

### PART III

#### ADMINISTRATION

Appointment of Commissioner.

6. (1) The Minister may appoint an officer to be called the Commissioner for Mines (hereinafter referred to as the Commissioner) and such other officers as may be necessary for carrying into effect of the provisions of this Ordinance.

(2) All or any of the powers and duties conferred or imposed on the Commissioner by this or any other Ordinance may, notwithstanding anything contained in any other Ordinance be exercised or performed by any public officer authorised in that behalf by the Commissioner in writing under his hand and any reference in this Ordinance or any other Ordinance to the Commissioner shall be deemed to include any such public officer.

Powers of Commissioner.

7. (1) The Commissioner or any person authorised by him in writing may, at all reasonable times, enter upon any reconnaissance area, prospecting area or mining area, or any vessel, installation, premises or workings thereon or thereunder, other than a dwelling house, for the purpose of:—

- (a) generally inspecting any such area, vessel, installation, premises or workings and examining reconnaissance, prospecting or mining operations or the treatment of minerals being performed or carried out thereon;
- (b) ascertaining whether the provisions of this Ordinance are being complied with;
- (c) ascertaining whether any nuisance exists in such area, such premises or workings;
- (d) giving directions and taking steps to enforce any provisions of this Ordinance or to abate or remove any nuisance;

(e) taking soil samples or specimens of rocks, ores, cores, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;

(f) examining books, accounts, vouchers, documents, maps, drilling logs, or records of any kind; or

(g) obtaining such information as he may deem necessary.

(2) The holder of a mineral right shall provide such reasonable assistance including transport as may be necessary to the Commissioner in the exercise of his functions under subsection (1).

8. The Minister may direct the holder of a mineral right to produce for inspection by the Commissioner any books, accounts, vouchers, documents, or records of any kind concerning the mineral right. Power to require production of records.

9. (1) No core or sample obtained in the course of the exercise of powers conferred by a mineral right shall be destroyed or otherwise disposed of except for the purposes of assay, identification or analysis without the permission in writing of the Commissioner, who may grant such permission subject to such conditions as he may deem fit to impose. Retention of cores and samples.

(2) Where any core or sample is retained for the purpose of complying with subsection (1), there shall be maintained a record in such degree of particularity as the Commissioner may require sufficient for the identification of the core or sample and the location and geological horizon of its origin.

10. (1) The holder of every mineral right shall, the conduct of his operations under such right, and in the purchase, construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to:— Preference for local products etc.

(a) materials and products made in the British Virgin Islands; and

(b) services provided by agencies located in the British Virgin Islands.

(2) The holder of a mineral right shall, in all phases of his operations, give preference in employment to citizens of the British Virgin Islands to the satisfaction of the Minister consistent with safety, efficiency and economy.

(3) The holder of a mineral licence shall, in his operations and, in consultation with the Minister, conduct training programmes in the widest possible range of skills for the benefit of his employees.

#### PART IV

### RECONNAISSANCE, PROSPECTING AND MINING

#### DIVISION A: RECONNAISSANCE

Acquisition and duration of rights to conduct reconnaissance.

11. (1) Subject to the provisions of this Ordinance the Minister may in his discretion grant to any person a reconnaissance licence over any area in the British Virgin Islands.

(2) No reconnaissance licence shall be issued in respect of any area over which a prospecting licence or mining licence has been granted and a reconnaissance licence shall not confer upon the licensee any exclusive right to conduct reconnaissance over the area comprised within the licence.

(3) A reconnaissance licence shall be of such duration not exceeding one year and subject to such conditions as the Minister in his discretion may determine.

(4) Where application is made to the Minister in that behalf not less than three months before the expiration of a reconnaissance licence the Minister may if he considers it would be in the public interest so to do renew the licence for a further period not exceeding one year duration.

Application for reconnaissance licence.

12. An application for a reconnaissance licence shall be in writing and the application shall provide the following information:—

- (a) his full name and nationality, and in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or in the case of an application by a corporate body, the registered name of such body;
- (b) a description of the area for which the application is made, together with a plan thereof to such scale as the Minister may require;
- (c) a proposed reconnaissance programme, with details of the equipment expected to be used in connection therewith, and the names of the persons to be responsible for the conduct thereof;

(b) the period within which the reconnaissance programme is expected to be completed; and

(e) such additional information as the Minister may require.

13. (1) A reconnaissance licence shall be in such form as may be prescribed and shall include:—

Form of reconnaissance licence.

- (a) the date of issue and the period for which it is issued;
- (b) a description and plan of the area covered;
- (c) the terms and conditions (if any) on which the licence is issued which shall be deemed to form part thereof.

(2) There shall be appended to a reconnaissance licence the reconnaissance programme.

14. A reconnaissance licence may not be transferred or assigned.

Reconnaissance licence not transferable.

15. (1) The holder of a reconnaissance licence shall furnish such information in connection with the progress of reconnaissance operations thereunder as the Minister may from time to time require and in any event shall at half-yearly intervals commencing six months after the grant of the licence to the Minister reports on the progress of the reconnaissance and within three months after the expiration of the licence submit a final report setting forth the holder's evaluation of the mineral prospects in the area comprised within the licence; such report shall be accompanied by the negatives of all aerial photographs taken in the course of the reconnaissance programmes together with:—

Obligation of holder of reconnaissance licence.

- (a) all geological, geochemical and geophysical maps, profiles, tapes, diagrams and charts and original records of aeromagnetic surveys, radar analyses, satellite or other remote imagery and other observation of any kind made by or for such holder;
- (b) copies of all tests and analyses made by or for such holder;
- (c) copies of all reports made by or for such holder, including interpretations concerning the mineral prospects in the area covered by such licence; and

- (d) a statement of the costs incurred by the holder in the reconnaissance programme.

(2) The holder of a reconnaissance licence shall not without the written permission of the Minister and subject to such conditions as he may determine remove any mineral from a reconnaissance area except for the purpose of having such mineral analysed determining its value, or conducting tests thereon.

Rights of holder of reconnaissance licence.

16. Subject to the provisions of Part V the holder of a reconnaissance licence may in the exercise of his rights thereunder:—

- (a) in respect of any area of land comprised within the licence enter upon such land with his servants and agents and:—

(i) subject to the conditions on which his licence has been granted, conduct reconnaissance thereon;

(ii) erect camps and put up temporary buildings to house such machinery as may be necessary for the conduct of such reconnaissance.

- (b) in respect of any area of water comprised within his licence, subject to any limitations imposed under the terms of his licence, place vessels or craft on, or erect installations in such waters and with his servants and agents conduct reconnaissance in such area, subject to the Laws of the Territory regarding navigation and safety of vessels.

#### DIVISION B: PROSPECTING

Acquisition of rights to prospect.

17. (1) Subject to the provisions of this Ordinance the Minister may in his discretion grant to any person who makes application in accordance with subsection (2) a prospecting licence over any area in the British Virgin Islands.

(2) An application for a prospecting licence shall be in writing and the applicant shall provide the following information:—

- (a) his full name and nationality and in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of

- (a) an application by a corporate body, the registered name of such body;

(b) in the case of a corporate body, the full names and nationalities of the directors or officers and the full name and nationality of any shareholder who is the beneficial owner of more than five percent of the issued capital;

(c) full information as to his financial status, technical competence and experience;

(d) a description of the area over which a prospecting licence is sought, together with a plan thereof to such specification as the Minister may require or as may be prescribed;

(e) the period for which the prospecting licence is required;

(f) a proposed programme of prospecting operations and the estimated cost thereof;

(g) the applicant's proposals with regard to the employment and training of citizens of the British Virgin Islands;

(h) such further information as the Minister may require.

18. (1) No prospecting licence shall be granted to an applicant unless the Minister is satisfied that:—

(a) the applicant has adequate financial resources, technical competence and experience to carry on effective prospecting operations;

(b) the proposed programme of prospecting operations is adequate;

(c) the applicant's proposals for the employment and training of citizens of the British Virgin Islands are adequate;

(d) the proposed prospecting area does not overlap with the area to which an existing prospecting licence or mining licence extends unless in the case of an existing prospecting licence the application is made only in respect of a mineral to which the existing licence does not relate;

Consideration of application for prospecting licence.

(e) the applicant is not in default; and

(f) the applicant is able and willing to comply with any term or condition applicable to a prospecting licence.

(2) The Minister may cause such investigations to be made or such negotiations or consultations to be carried on as he may deem necessary to enable him to decide whether or not to grant a prospecting licence.

Prospecting licence subject to conditions.

19. Subject to the provisions of this Ordinance a prospecting licence may be issued on such terms and conditions as the Minister may in each case determine and may in particular but without prejudice to the generality of the foregoing include a condition requiring the applicant to agree to the British Virgin Islands or any agency thereof having an option to obtain an interest in any mining venture which might be carried on by the applicant, or by any person to whom he transfers his mining licence, in the proposed prospecting area.

Notification of grant or rejection.

20. The Minister shall cause the applicant to be notified in writing of his decision on the application and, if the grant of a prospecting licence is approved such notification shall include the terms and conditions on which it is granted.

Issue of prospecting licence.

21. If the applicant:—

- (a) notifies the Minister, in writing, within 60 days of the date of notification or within such further period as the Minister may allow, that he accepts the terms and conditions to be attached to the prospecting licence, the Minister shall cause the prospecting licence to be issued.
- (b) fails to notify the Minister in accordance with the provisions of paragraph (a) the application shall lapse.

Form and content of prospecting licence and term of prospecting licence.

22. (1) Every prospecting licence granted under Section 17 shall:—

- (a) include the terms and conditions on which it is granted;
- (b) include a description and plan of the prospecting area and specify the mineral to which it relates; and
- (c) state the period for which it is granted.

(2) There shall be appended to a prosecuting licence the programme of prospecting operations.

23. (1) Subject to the provisions of this Ordinance a prospecting licence shall be valid for such period not exceeding three years as may be specified therein.

Duration and renewal of prospecting licence.

(2) The holder of a prospecting licence may, at any time not later than three months before the expiry of such licence apply to the Minister for the renewal thereof for a further period not exceeding two years.

(3) Any application for renewal of a prospecting licence shall state the period for which renewal is sought and shall be accompanied by:—

- (a) a report on prospecting operations so far carried out and the costs incurred thereby;
- (b) a proposed programme of prospecting operations to be carried out during the period of renewal and the estimated cost thereof; and
- (c) such other information as the Minister may require.

24. (1) The Minister shall consider every application for a renewal of a prospecting licence made pursuant to section 23 and shall, subject to the provisions of subsection (2) of this section, grant the same.

Consideration of application for renewal.

(2) The Minister shall not renew a prospecting licence if:—

- (a) the applicant is in default; or
- (b) he considers that the proposed programme of prospecting operations is inadequate:

Provided that —

(i) before rejecting an application for renewal under paragraph (a), the Minister shall give notice of the default to the applicant and shall call upon the applicant to remedy such default within such time as he may allow; and

(ii) before rejecting an application

for renewal under paragraph (b), he shall give the applicant opportunity to make satisfactory amendments to the proposed programme of prospecting operations upon such terms as the Minister may determine.

Further extensions of prospecting licence.

25. Notwithstanding the provisions of Section 23 (2) the Minister may in his discretion at the expiration of a period of renewal granted pursuant to that section grant a further extension if he considers that it would be in the public interest so to do. The extension of a prospecting licence granted pursuant to this section shall be for such period and on such terms as in the opinion of the Minister the public interest may require.

Amendment of prospecting licence on renewal.

26. On the renewal or extension of a prospecting licence, pursuant to section 24 or section 25, as the case may be, the Minister shall cause the licence to be amended accordingly and there shall be appended thereto the programme of prospecting operations to be undertaken during the period of renewal.

Discovery of mineral not included in prospecting licence.

27. (1) If, in the course of exercising his rights under a prospecting licence, the holder thereof discovers any mineral not included therein, he may apply to the Minister for an amendment of his prospecting licence to include such mineral.

(2) An application for amendment to a prospecting licence under subsection (1) shall specify the mineral discovered, shall give particulars of the situation and the circumstances of the discovery and shall have appended thereto a proposed programme of prospecting operations in connection therewith.

(3) Subject to the provisions of subsection (4), the Minister may, in his discretion, permit the amendment of a prospecting licence to include the mineral concerned.

(4) An amendment of a prospecting licence shall not be permitted if any person other than the applicant is the holder of a prospecting licence or a mining licence in respect of the mineral concerned over the area in which it was discovered.

Discovery of mineral deposit.

28. (1) If in the course of exercising his rights under a prospecting licence, the holder thereof discovers a mineral deposit containing any mineral included in his prospecting licence, he shall, within thirty days from the date of such discovery, notify the Minister of the same and provide the Minister with a full and detailed description of the nature and extent of such deposit.

(2) Where the Minister is satisfied that a mineral deposit has been discovered within a prospecting area he may require the

holder of the prospecting licence to which that area relates to furnish to him proposals within such period as the Minister may allow, setting out the investigations and studies that he proposes to carry out in order to assess the technical and economic feasibility of the construction, establishment and operation of an industry for the recovery of minerals from that area and the date by which he proposes to complete the same.

(3) Where the Minister has required the holder of a prospecting licence to furnish proposals under subsection (2) of this section he may after considering those proposals and after allowing the holder of a full opportunity to consult with him concerning the nature and extent of the proposed investigations and studies, require the holder to furnish to him such further proposals, whether by way of addition to, or variation or modification of any of the proposals already furnished to him under subsection (2) of this section, as the Minister considers will be necessary to enable him to fully assess the most efficient development and operation of the industry, any harmful effects that such an industry will have on the environment and the people of the area and whether such an industry will be in the best interests of the British Virgin Islands.

(4) Any investigations and studies required by the Minister under this section to be carried out by the holder of a prospecting licence shall be appended to the programme of prospecting operations approved under that licence and shall be deemed to be part of that programme for the purpose of this Ordinance.

29. (1) Subject to the provisions of this Ordinance a prospecting licence shall cover such area as may be specified therein.

(2) Subject to the provisions of subsection (4), the prospecting area shall be reduced in size to eliminate therefrom:—

(a) at the end of the initial term of the prospecting licence, any area in excess of half of the area included in the licence when it was granted; and

(b) at the end of any period of renewal or extension granted pursuant to sections 24 or 25, half of the remaining area,

or such lower proportion as the Minister may in any case agree.

(3) The holder of a prospecting licence shall designate, prior to the end of each of the periods referred to in subsection (2), the area or areas to be eliminated from the prospecting area and for that purpose shall so far as practicable designate a single compact area or areas. In the event that the holder of a prospecting licence fails to make a designation pursuant to this section the area or areas to be relinquished shall be designated by the Minister.

Area of prospecting licence and relinquishment.

(4) Where a person holds two or more prospecting licences for the same mineral or minerals the Minister may, for the purpose of the elimination, under subsection (2), or part of the areas thereof, permit the areas covered thereby to be deemed to be one area, the subject of one such prospecting licence.

Rights of holder of prospecting licence.

30. Subject to the provisions of Part V of this Ordinance and subsection (2) of this section the holder of a prospecting licence may in the exercise of his rights thereunder:—

(a) in respect of any area of land comprised within the licence enter upon such land with his servants and agents and may:—

(i) prospect thereon for the minerals to which his prospecting licence relates;

(ii) erect camps and put up temporary buildings for machinery necessary for prospecting purposes.

(b) in respect of any area of waters comprised within the licence may subject to any limitations imposed under the terms of his licence place vessels or craft on, or erect installations in such waters and with his servants or agents prospect for the minerals to which his prospecting licence relates.

(2) The rights of the holder of a prospecting licence hereunder shall not extend to any area held by another person under a mining licence.

Obligations of holder of prospecting licence.

31. (1) The holder of a prospecting licence shall:—

(a) commence prospecting operations within three months, or such further period as the Minister may allow, of the date of issue of his licence;

(b) subject to the provisions of section 32 carry on prospecting operations in accordance with the programme of prospecting operations and any term or condition in his licence;

(c) notify the Minister of the discovery of the mineral to which his prospecting licence relates within a period of 30 days of such discovery;

(d) backfill, plug or otherwise make safe any borehole or excavation made during the course of his prospecting operations;

(e) unless the Minister otherwise stipulates, remove, within 60 days of the expiry of his prospecting licence, any camp, temporary buildings or machinery erected or installed by him, and repair or otherwise make good any damage to the surface of the ground occasioned by such removal, to the satisfaction of the Minister;

(f) subject to the conditions of his prospecting licence and to the provisions of section 32, expend on prospecting, not less than such amount as may be specified in his prospecting licence; and

(g) submit to such persons at such intervals such reports and such affidavits containing such information and supported in such manner as may be prescribed.

(2) Any moneys required to be spent under the provisions of subparagraph (f) of subsection (1) of section 31 and which are not so spent, shall be a debt due to Government recoverable in a court of competent jurisdiction.

(3) The holder of a prospecting licence shall keep, to the satisfaction of the Minister, full and accurate records of his prospecting operations which shall show:—

(a) boreholes drilled;

(b) strata penetrated, with detailed logs of such strata;

(c) minerals discovered;

(d) the results of any seismic survey, geochemical or geophysical analysis;

(e) the results of any analysis or identification of minerals removed under section 34;

(f) the geological interpretation of the records maintained under paragraphs (a) to (e) inclusive;

(g) the number of persons employed;

(h) other work done in connection with the prospecting licence;

(i) costs incurred; and

(j) such other matters as may be prescribed, and shall supply, at least once in every three months, copies

of such records to the Minister, together with any reports prepared as a result of such records:

Provided that the Minister may, in his discretion and on application being made to him in that behalf, dispense with or modify any or all of the requirements of this subsection.

Removal of minerals.

32. The holder of a prospecting licence shall not, without the written permission of the Minister and subject to such conditions as he may determine, remove any mineral from a prospecting area except for the purpose of having such mineral analysed, determining its value or conducting tests thereon.

Amendment of programme of prospecting operations.

33. (1) The holder of a prospecting licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of prospecting operations and such amendments shall, unless the Minister rejects the same within two months after being so notified, have effect after such period.

(2) The Minister may, on application being made to him by the holder of a prospecting licence, limit or suspend the obligation to carry on prospecting as required by section 31 (1)(b), or to expend moneys as required by section 31 (1)(f), for such period and on such terms as he may specify.

#### DIVISION C: MINING

Application for mining licence.

34. (1) Where all the investigations and studies in respect of a prospecting area required under section 28 have been completed to the satisfaction of the Minister, the holder of the prospecting licence to which that area relates may make application to the Minister for the grant of a mining licence. An application for a mining licence shall be made within six months of the satisfactory completion of the said investigations and studies or such longer period as the Minister may in any particular case allow.

(2) The applicant shall in his application provide the following information:—

- (a) his full name and nationality, or in the case of an application by a partnership or other association of persons, the full names and nationalities of all partners or of all such persons, or, in the case of an application by a corporate body, the registered name of such body;
- (b) in the case of a corporate body, the full names and nationalities of the directors or officers and the full name and nationality of any shareholder who is the beneficial owner of 5% or more of the issued capital;

(j) full information as to his financial status, technical competence and experience;

- (d) the number of his prospecting licence;
- (e) the names of the minerals which it is intended to mine;
- (f) details of the mineral deposits and a comprehensive report thereon which shall include details of all known minerals, proved, estimated and inferred, ore reserves and mining conditions;
- (g) details, illustrated by a plan, of the area in respect of which the application is made;
- (h) the period for which the licence is sought;
- (i) a technological report on mining and treatment possibilities and the intention of the applicant in relation thereto;
- (j) a detailed forecast of capital investment, operating costs and sales revenues and the anticipated type and source of financing;
- (k) a full report, including data and analyses on the completed investigations and studies required under section 28 and the results of these investigations and studies;
- (l) such further information as the Minister may require or as may be prescribed.

3.(a) An application for a mining licence under subsection (1) shall be accompanied by detailed proposals by the applicant for a programme of mining operations in respect of the mining area to which the application relates.

(b) The proposals referred to in paragraph (a) shall state:—

- (i) the dates by which the applicant intends to commence construction of the mine proposed, and intends to commence commercial production;
- (ii) the production capacity of the mine, the anticipated rate of

production and the scale of operations;

- (iii) the estimated cost of constructing and establishing the mine;
- (iv) the estimated overall recovery of ore and mineral products; and
- (v) the nature of the product.

(c) The proposals shall include:—

- (i) a detailed programme for the prevention or treatment of pollution, the minimization of the effects of mining on water areas, adjoining land and the environment generally and the progressive reclamation and rehabilitation of lands disturbed by mining;
- (ii) a programme for the employment and training of citizens of the British Virgin Islands;
- (iii) a report on goods and services estimated to be required for the mining operations which could be obtained or manufactured within the British Virgin Islands and any proposal that the applicant may have concerning them;
- (iv) proposals concerning any other matter arising out of any investigations and studies required under section 28.

Consideration of application for Mining Licence.

35. (1) The Minister shall consider every application for a mining licence and may:—

- (a) require the applicant to furnish him with further information and to make such alterations to or furnish such further proposals to the proposals already furnished under section 34 as he considers necessary for him to fully consider the application;
- (b) cause such investigations to be made or such negotiations or consultations to be carried on, as he may deem necessary to enable him to decide

whether in accordance with the provisions of this section a mining licence should be granted.

(2) Where the Minister is satisfied that:—

- (a) the proposed programme of mining operations are generally in the best interest of the British Virgin Islands;
- (b) the proposed mining area is not the same as or does not overlap an area held by another person under a prospecting licence or mining licence unless in the case of a prospecting licence held by another person the Minister is satisfied that the public interest requires that a mining licence should be granted over the proposed mining area or the rights of the holder of such prospecting licence would not be substantially prejudiced thereby;
- (c) the area for which application has been made is not in excess of the area reasonably required to carry out the proposed programme of mining;
- (d) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;
- (e) the applicant is able and willing to comply with any term or condition applicable to a mining licence; and
- (f) the applicant is not in default,

he shall subject to section 36 (1) approve such application.

36. (1) Subject to the provisions of this Ordinance and to the terms of any subsisting agreement between the applicant and the Government of the British Virgin Islands a mining licence shall be issued on such terms and conditions as the Minister may in each case determine including in particular:—

Mining licence subject to terms and conditions and notification of approval.

- (a) conditions concerning the processing, disposal or sale of the minerals to be mined;
- (b) a condition providing for an option by the Government or any agency thereof to obtain an interest in the mining venture carried on by the applicant or by any person to whom he transfers his mining right in the mining area to which the licence relates.

(2) Where the Minister has approved an application in accordance with section 35 he shall by notice to the applicant inform him of his decision and of the terms and conditions upon which he proposes to issue a mining licence.

(3) If the applicant:—

- (a) notifies the Minister in writing within sixty days of the date of the notification referred to in subsection (2) that he accepts the terms and conditions upon which the mining licence is to be granted, the Minister shall issue a mining licence to the applicant containing such terms and conditions;
- (b) fails to notify the Minister in accordance with paragraph (a), his application shall lapse.

Application not satisfactory. 37. (1) If the Minister is not satisfied as to the matters referred to in section 35 he may subject to this section reject the application for a mining licence.

(2) The Minister shall not reject an application on any of the grounds referred to in subsection (2)(a) or (c) of section 35 unless:—

(a) he has by instrument in writing served on the applicant, given not less than one month's notice of his intentions to do so; and he has in that instrument:—

- (i) given particulars of the reasons for his intention; and
- (ii) specified a date on or before which the applicant may submit any matters that the applicant requires the Minister to consider; and

(b) he has given the applicant a full opportunity to consult with him concerning his intention to reject the application.

(3) The Minister shall not reject any application on any of the grounds referred to in subsection (2)(f) unless the applicant has been given details of the default and has failed to remedy the same within such reasonable time as the Minister may allow.

(4) Subject to subsection (4) of this section where an applicant has been served with an instrument referred to in

subsection (2) the application will lapse at the end of the period referred to in that subsection, unless the Minister withdraws the instrument.

(5) Where the Minister has notified the applicant in accordance with subsection (2), of his intention to reject an application for a mining licence on the grounds that he is not satisfied with the applicant's proposed programme of mining operations having regard to matters referred to in section 35 (2)(a), the applicant may make an application to the appropriate court within one month from the date of the order of rejection by the Minister for a review of such order.

38. (1) Every mining licence issued under section 35 shall:— Form and content of Mining Licence.

- (a) include a description and plan of the area and the name of the minerals to which it relates;
- (b) state the period for which it is granted; and
- (c) include the terms and conditions upon which it is granted.

(2) There shall be appended to a mining licence the programme of mining operations.

39. (1) Subject to the provisions of this Ordinance a mining licence shall be valid for such period not exceeding twenty-five years as may be specified therein. Term of Mining Licence and renewal.

(2) The holder of a mining licence may apply to the Minister for a renewal of the licence at any time not later than one year before the licence expires.

(3) An application for renewal of a mining licence shall state the period for which renewal is sought and shall be accompanied by:—

- (a) a proposed programme of mining operations to be carried on in the period of renewal; and
- (b) details of:—

- (i) the latest proved, estimated inferred ore reserves;

- (ii) the capital investment to be made in, and production costs and revenues forecasts in respect of the period of renewal;

(iii) any expected changes in methods of mining and treatment; and

(iv) any expected increase or reduction in mining activities and the estimated life of the mine.

(4) The Minister shall consider every application for a renewal of a mining licence made in accordance with this section and subject to the provisions of subsections (5) and (6) shall grant the application.

(5) The Minister shall reject an application for renewal if:—

(a) the applicant is in default;

(b) the Minister is not satisfied that:—

(i) development of the mining area has proceeded with reasonable diligence;

(ii) minerals in workable quantities remain to be produced; or

(iii) the proposed programme of mining operations provide for and ensure the matters referred to in section 35 (2)(a).

(6) The Minister shall not reject an application on the ground referred to in:—

(a) subsection (5)(a), unless the applicant has been given details of the default and has failed to remedy the same within such reasonable time as the Minister may allow;

(b) subsection (5)(b)(i) or (ii), unless the applicant has been given reasonable opportunity to make written representations thereon to the Minister; or

(c) subsection (5)(b)(iii), unless the applicant has been so notified and has failed to proposed amendments to his proposed programme of mining operations satisfactory to the Minister within such time as the Minister may allow.

(7) The period of renewal of a licence shall be such period not exceeding ten years as may be specified in the application for renewal.

(8) Subject to the provisions of this Ordinance and to the terms of any subsisting agreement between the applicant and the Government of the British Virgin Islands the renewal of a mining licence shall be on such terms and conditions as the Minister may determine.

(9) On the renewal of a mining licence, the Minister shall amend the licence accordingly and append thereto the programme of mining operations to be carried out in the period of renewal, subject to such terms and conditions.

40. (1) The holder of a mining licence may, from time to time, notify the Minister of amendments he wishes to make to his programme of mining operations and the Minister may approve or reject the proposed amendments and may, if he considers that the proposed amendments involve a substantial alteration or expansion of the programme of mining operations, require the holder to furnish him with such investigations or studies or such other information as he considers necessary to fully consider the proposed alteration or expansion. Minor alterations and substantial variations to programme of mining operations.

41. (1) Subject to the provisions of Part V of this Ordinance and any term or condition in his mining licence, or any requirement otherwise prescribed by any other written law, the holder of a mining licence may, in the exercise of his rights thereunder:— Rights under mining licence.

(a) take all reasonable measures in his mining area to mine the mineral to which his mining licence relates including the use of necessary equipment and the erection of necessary installations, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the mineral recovered by him during mining operations;

(b) dispose of any mineral product recovered;

(c) prospect within his mining area for the mineral for which he holds a mining licence and with the approval of the Minister for any other mineral;

(d) stack or dump any mineral or waste products in a manner approved by the Minister.

(2) If, in the course of exercising his rights thereunder, the holder of a mining licence discovers any further deposits of the mineral for which he holds a mining licence or any mineral not included in such licence, he shall, within 31 days after such discovery, notify the Minister thereof, giving particulars of the mineral discovered and the site and circumstances of the discovery, and may apply to the Minister to have the mining of such deposit or such mineral included in his mining licence, giving in his

application a proposed programme of mining operations in respect of that mineral.

(3) If the Minister is satisfied with the proposed programme of mining operations submitted under subsection (2), he may approve such application on such terms and conditions as he thinks fit and shall amend the mining licence accordingly.

(4) The holder of a mining licence may apply to the Minister to have his mining area enlarged and the Minister may, subject to the provisions of subsection (5), approve such application if he is satisfied that such approval will ensure the most efficient and beneficial use of the mineral resources of the British Virgin Islands.

(5) A mining area shall not be enlarged so as to include any area over which a person other than the applicant is the holder of a prospecting licence or a mining licence.

Obligations under mining licence. 42. (1) Subject to the provisions of this Ordinance, the holder of a mining licence shall:—

- (a) commence construction and commence commercial production on or before the dates referred to in the programme of mining operations as the dates by which these events are to commence;
- (b) develop and mine the mineral covered by his licence in accordance with the programme of mining operations and any term or condition in his mining licence:

Provided that the Minister may, on application being made to him by the holder of a mining licence, limit or suspend such programme for such period and on such terms as he may specify if he is satisfied that, in the circumstances, it is fair and reasonable so to do;

- (c) demarcate and keep demarcated the mining area in such manner as may be prescribed;
- (d) keep and maintain an address in the British Virgin Islands, full particulars of which shall be registered with the Minister, to which all communications and notices may be addressed; and
- (e) notify the Minister as soon as he commences commercial production.

(2) The holder of a mining licence shall:—

maintain at the address kept in accordance with subsection (1)(d):—

- (i) complete and accurate technical records of his operations in the mining area in such forms as the Minister may approve;
- (ii) copies of all maps, geological reports including interpretations, mineral analyses, aerial photographs, core logs, analyses and tests and all other data obtained and compiled by the holder in respect of the mining area;
- (iii) accurate and systematic financial records of his operations in the mining area and such other books of accounts and financial records as the Minister may require; if such holder is engaged in any other activity not connected with his operations under the mining licence, he shall maintain separate books of account of his operations under such licence;

- (b) permit an authorised officer at any time to inspect the books and records maintained in pursuance of paragraph (a) and shall deliver to the Minister, without charge, copies of any part of such books and records as the Minister may from time to time require;
- (c) submit to the Minister such reports, records and other information including production and sales records as he may from time to time require concerning the conduct of his operations in the mining area; and
- (d) furnish the Minister with a copy of every annual financial report within three months of the end of each financial year showing the profit or loss for such year and the state of financial affairs of the holder at the end of each financial year.

43. (1) If the Minister considers that the holder of a mining licence is using wasteful mining or treatment practices he may notify such holder accordingly and require him to show cause, within such time as the Minister shall specify, why he should not cease to use such practices. Wasteful mining practices.

(2) If, within the time specified in any notice issued under subsection (1) the holder of a mining licence fails to satisfy the Minister that he is not using wasteful mining or treatment practices, or that the use of such practices is justified, the Minister may order the holder to cease using such practices within such time as he may specify.

(3) If the holder of a mining licence fails, after being ordered so to do, to cease using wasteful mining or treatment practices, the Minister may cancel the mining licence or may suspend such mining licence for such period as he deems fit.

Merger of mining licence.

44. (1) If the Minister considers that the public interest or the interests of the holders of mining licences covering neighbouring or contiguous mining areas would best be served with regard to the efficient and economic exploitation of minerals by the merger or co-ordination of all or part of the mining operations of such holders, he may direct such holders to effect such merger or co-ordination within such time and on such terms as he may specify.

(2) Before giving any directions under subsection (1), the Minister shall afford the holders of the mining licences concerned reasonable opportunity to make representations to him in writing.

Notification of cessation or suspension of production.

45. (1) The holder of a mining licence shall notify the Minister:—

- (a) one year in advance, if he proposes to cease production from his mine;
- (b) six months in advance, if he proposes to suspend production from his mine;
- (c) three months in advance, if he proposes to curtail such production,

and shall, in all cases, give reasons for such cessation, suspension or curtailment.

(2) If, for reasons beyond his control, the holder of a mining licence terminates, suspends or curtails production from his mine, he shall, within 14 days of such termination, suspension or curtailment, notify the Minister thereof.

(3) On receiving notification under subsections (1) and (2), or if he otherwise becomes aware of any cessation, suspension or curtailment of production, the Minister shall cause the matter to be investigated and shall either:—

- (a) give his approval to such cessation, suspension or curtailment; or

Direct the holder of the mining licence to resume full production at the mine by such date as he may specify.

(4) Approval of cessation, suspension or curtailment may be given subject to such conditions as the Minister may impose.

46. (1) The Governor in Council may by notice to the holder of a mining licence prohibit or restrict the disposal, sale or export of any mineral or mineral product to any person where he is of the opinion that such disposal, sale or export could:—

Restrictions on export and sale of mining products.

- (a) prejudice national security; or
- (b) prejudice the relations of the British Virgin Islands by disposal, sale or export of goods to a state with which it may be contrary to the interests of the British Virgin Islands to engage in international trading.

(2) All sales contracts of minerals or mineral products shall be submitted to the Minister for approval within 30 days of execution. Such approval shall not be unreasonably withheld in the case of a contract at prices which are at arms length and which is confined to sale of mineral products of the holder of a mining licence.

(3) No person shall export any radioactive mineral except under and in accordance with the terms and conditions of a permit granted by the Minister.

(4) The grant of a permit under subsection (1) shall be in the discretion of the Minister.

(5) A permit issued under subsection (1) shall be in such form and shall be subject to the payment of such fee and such terms and conditions as the Minister may determine.

## PART V

### MINERAL RIGHTS AND SURFACE RIGHTS

47. (1) Notwithstanding any other provisions of this Ordinance no holder of a mineral right shall exercise any right thereunder without the written consent of the Minister upon:—

Restriction on the exercise of mineral rights.

- (a) any land used as a place of burial;
- (b) any land set aside or used for the purposes of Government.

(2) Where the holder of a mineral right in the exercise of his rights thereunder makes any find of historical or archeological significance or discovers any wreck he shall promptly inform the Minister and the Minister may give such directions for the preservation or disposition of such find or wreck as he may consider to be appropriate having regard to all the relevant circumstances.

(3) No holder of a mineral right shall exercise any right thereunder upon any private land without the written consent of the owner or lawful occupier thereof.

Acquisition of exclusive rights by holder of mining licence.

48. (1) The holder of a mining licence may, if he requires the exclusive use of the whole or any part of the mining area, and shall if so requested by the owner or lawful occupier of any part of such area, obtain a lease thereof upon such terms as to rents and compensation to be paid therefor, the duration thereof or the extent or area of the land to which such lease shall relate as may be agreed between such holder and such owner or lawful occupier, or, failing such agreement as may be determined by arbitration.

(2) In assessing any rent payable under the provisions of this section, an arbitrator shall determine the matter in relation to values at the time of arbitration current in the area in which the mining lease is situate for land of a similar nature to the land concerned but without taking into account any enhanced value due to the presence of minerals.

Compensation or disturbance of rights etc.

49. (1) A person carrying on operations under a mining licence shall:—

- (a) do so in a manner that does not interfere with the existing use of land or the territorial sea or inland waters to any greater extent than is reasonably necessary for the exercise of that right and performance of the duties of that person;
- (b) take no action that in any way interferes with fishing or navigation unless he obtains prior approval from the Commissioner.

(2) The holder of a mineral right shall on demand being made by the owner or lawful occupier of any land subject to such right, pay such owner or occupier fair and reasonable compensation for any disturbance of the rights of such owner or occupier and for any damage done to the land by such operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for such damage provided that:—

- (i) payment of rent under the provisions of section 48

shall be deemed to be adequate compensation for deprivation of the use of land to which such rent relates;

(ii) in assessing compensation payable under this section, account shall be taken of the reasonable expectation of profits in, under or upon the land by the holder of mineral right and any improvement effected by the holder of the mineral right or by his predecessor-in-title, the benefit of which has or will ensure to the owner or lawful occupier thereof;

(iii) the basis upon which compensation shall be payable for damage to any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals.

(3) If the holder of a mineral right fails to pay compensation when demanded under the provisions of this section, or if the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration.

(4) A claim for compensation under the provisions of subsection (1) shall be made within a period of four years from the date when such claim has accrued, failing which, notwithstanding the provisions of any other written law, such claim shall not be enforceable.

50. (1) Where it appears to the Minister, having regard to any representations that may have been made to him or otherwise, that the holder of any mineral right over any area of the territorial sea, or over any lagoon or inland waters or any part of the foreshore has in the exercise of his rights thereunder interfered with or caused substantial damage to fishing, the gathering of crustaceans, shells or plants or to any other activity customarily carried on in such area he shall appoint a Board of Claims to inquire into the matter and where appropriate to award compensation.

Interference or damage to fishing etc.

(2) A Board of Claims appointed under this section shall consist of three persons at least two of whom shall be Virgin Islanders and decisions of the Board shall be by a majority.

(3) A Board of Claims appointed under this section shall have the powers of Commissioners appointed under the Commission of Inquiry Ordinance and sections 3(3), (4), 4, 6, 7, 10, 11, 12,

13, 14, and 16 of that Ordinance shall apply to a Commission of Inquiry.

(4) References to the Governor in the Commission of Inquiry Ordinance shall be read and construed as if they were references to the Minister, and references in that Ordinance to the Commission, and to the Commissioner shall be read and construed as if they were references to a Board of Claims, and to members of that Board.

(5) Where a Board of Claims finds that any person has been adversely affected by such interference or damage as is referred to in subsection (1) the Board may order the holder of the mineral right to pay to such person such compensation as having regard to all the circumstances is fair and reasonable.

(6) Any sum which the holder of a mineral right has been ordered to pay as compensation by a Board of Claims shall subject to the provisions of subsection (7) be recoverable as though the same were a judgement debt due to the person in whose favour such order has been made.

(7) Where the holder of a mineral right or any other person is aggrieved by an order made by a Board of Claims under the provisions of subsection (5) he may appeal to the High Court and the High Court may after hearing the appeal confirm, quash or vary the order of the Board of Claims or make such other order in the matter as the justice of the case may require.

Compulsory purchase of land.

51. (1) Where the Minister considers that any land is required to secure the development or utilisation of the mineral resources of the British Virgin Islands he may compulsorily acquire such land.

(2) Acquisition of land under this section shall be deemed to be for a public purpose in terms of the provisions of the Land Acquisition Ordinance and any acquisition under this section shall be affected in accordance with the provisions of that Ordinance.

## PART VI

### FINANCIAL

Royalties.

52. (1) The holder of a mining licence shall, in accordance with the provisions of this Ordinance, pay royalties on any minerals obtained by him in the exercise of his rights thereunder.

(2) Royalties shall be paid on minerals obtained by the holder of a mining licence at such rate not exceeding ten percent of the gross market value of the minerals as the Minister may prescribe or otherwise such rate as may be agreed between the Minister and the holder of a mining licence:

Provided, however, a higher rate may be prescribed in the case of precious stones and radio active minerals.

(3) For the purpose of this section the "gross market value" of minerals shall mean their gross market value free on board at the port of export from the British Virgin Islands.

53. (1) The Minister may, on behalf of the Government, enter into an agreement concerning royalties with any person who is or may become liable to the payment of royalties under this Ordinance. Agreement concerning royalties.

(2) No agreement entered into under this section shall have effect unless and until it is ratified by the Legislative Council but upon ratification an agreement shall be deemed to have come into operation on the date specified in that agreement.

(3) An agreement entered into under this section may vary the provisions of this Ordinance insofar as such provisions:—

(a) impose liability to royalties; or

(b) regulate the imposition of such liability.

(4) If any agreement entered into under this section imposes any liability to royalties, such liability shall be deemed to be a liability imposed under this Ordinance and the provisions of this Ordinance shall apply thereto.

54. (1) Where, for any reason, it is impracticable to assess the amount of any royalty due, the Minister may assess a provisional royalty. Provisional royalty.

(2) When any royalty due has been ascertained, the holder of the mining licence concerned shall pay any sum which may be required to complete such ascertained royalty or be entitled to be repaid any sum paid in excess of the ascertained royalty as the case may be.

55. (1) If the holder of a mining licence fails to pay any royalty or provisional royalty due in respect of that licence on or before the due date or any extension thereof, the Minister may, by order served on the holder of the mining licence concerned at the address maintained pursuant to section 42(1)(d), prohibit the disposal of any mineral from such mining area, or from any other mining area held by such holder until all outstanding royalties have been paid or until an arrangement has been made, acceptable to the Minister, for the payment of such royalties. Failure to pay royalties etc.

Remissions, exemptions, deferrals in respect of royalties etc.

56. (1) The Minister may after consultation with the Minister of Finance remit, in whole or in part, any royalty payable on any mineral or as any mineral produced from a particular deposit, for such period as he may determine if he considers it expedient in the interests of the production of such mineral so to do.

(2) The Minister may exempt from liability to royalty samples of minerals acquired for the purpose of assay analysis or other examination.

(3) The Minister may, on application being made to him by the holder of a mineral right defer payment of any royalty due from such holder for such period and subject to such conditions as he may determine.

Annual charges for a mineral right.

57. (1) There shall be paid to Government by every holder of a mineral right an annual charge in such amount as the Minister may determine or as may be prescribed.

(2) The annual charge payable under the provisions of subsection (1) shall be paid on the issue of a mineral right and thereafter annually on the anniversary thereof until the termination of such right.

Guarantees for performance etc.

58. The Minister may, from time to time, make such arrangements as to him appear appropriate to secure that the holder of a mineral right, complies with the provisions of this Ordinance, and, without prejudice to the generality of the foregoing, may accept guarantees, whether from shareholders or otherwise, in respect of such compliance.

## PART VII

### WITHDRAWAL OF APPLICATIONS, SURRENDER AND TERMINATION OF MINERAL RIGHTS

Withdrawal of applications.

59. An applicant for a mineral right or any renewal thereof may withdraw his application at any time before such application is approved or rejected by notifying the Minister, in writing, that he withdraws such application.

Surrender of prospecting and mining licence.

60. (1) Subject to the provisions of this section and to any condition in his licence the holder of a mineral right may surrender the area covered by his licence or part thereof.

(2) The holder of a mineral right shall before surrendering the area covered by his licence or part thereof:—

(a) give to the Minister not less than three months' notice of his intention to surrender;

(b) apply to the Minister in the manner hereinafter provided for a certificate of surrender; and

(c) inform the Minister of the results of any reconnaissance or prospecting undertaken in the area to be surrendered and submitting such records or reports in respect thereof as the Minister may require.

(3) If the application for a certificate of surrender is in respect of part only of the area covered by a prospecting licence or mining licence, the holder thereof shall:—

(a) in his application:—

(i) if it relates to a mining area, provide a diagram of the area to be surrendered;

(ii) in the case of a prospecting area or a reconnaissance area, provide a reliable plan, in a form acceptable to the Minister, of the area to be surrendered.

(b) if the application is approved, demarcate the remaining area in the prescribed manner.

(4) Where in accordance with the provisions of this section application has been made for a certificate of surrender and the applicant has complied with the requirements of subsection (2) the Commissioner shall, subject to the provisions of subsection (5), issue a certificate of surrender.

(5) The Commissioner shall not be under obligation to grant a certificate of surrender if:—

(a) at the time when application for a certificate is made the applicant is in default; or

(b) the Commissioner is not satisfied that the applicant will leave the area to be surrendered in a condition which is safe and accords with good mining practice.

(6) No surrender of any area covered by a mineral right shall take effect unless in respect of that area the Minister has issued a certificate of surrender and the surrender of any such area shall not affect any liability which has accrued before the date of the surrender.

(7) On the issue of a certificate of surrender the Minister shall:—

- (a) if the surrender is in relation to the whole area covered by a mineral right, cancel the licence; or
- (b) if the surrender is in respect of part only of the area covered, amend the licence accordingly.

Suspension or cancellation of a mineral right.

61. (1) Subject to the provisions of this section, the Minister may suspend or cancel a mineral right if the holder thereof:—

- (a) fails to make any of the payments required by or under this Ordinance on the due date;
- (b) contravenes any provision of this Ordinance or the conditions of his mineral right or the provisions of any other written law relating to mines and minerals;
- (c) dies or becomes insolvent or commits any act of bankruptcy or enters into any agreement or scheme of composition with his creditors or takes advantage of any written law for the benefit of debtors or, in the case of a company, goes into liquidation, except as part of a scheme for the reconstruction or amalgamation of the holder thereof;
- (d) makes any statement to the Government (including any public officer) in connection with his mineral right which he knows or ought to have known was false in any mineral particular.

(2) Before suspending or cancelling a mineral right under paragraphs (a) and (b) of subsection (1), the Minister shall give the holder thereof notice in writing specifying the particular failure, contravention or default complained of and calling upon the holder to remedy the same within such period, being not less than 30 days, as may be specified in such notice.

(3) If the holder of a mineral right fails to remedy any failure, contravention or default specified in paragraphs (a) and (b) of subsection (1) within the period specified in a notice issued under subsection (2), or if there is an event specified in paragraphs (c) or (d) or subsection (1), the Minister may, by notice to the holder thereof, cancel the mineral right forthwith.

(4) On cancellation of a mineral right under the provision of this section, the rights of the holder thereof shall cease but without prejudice to any liabilities or obligations incurred in relation thereto prior to the date of cancellation.

62. (1) Upon termination of any mineral right whether by reason of surrender pursuant to section 59 and cancellation pursuant to section 60 or expiration of the term for which the right has been granted the holder thereof shall deliver to the Minister:—

Record etc. to be delivered on termination.

- (a) all records which the holder is obliged under the provisions of this Ordinance to maintain;
- (b) all plans or maps of the area covered by the mineral right prepared by the holder or at his instructions; and
- (c) such other documents relating to the mineral right as the Minister may direct.

63. Where:—

- (a) the holder of a reconnaissance licence has made application for a renewal thereof; or
- (b) the holder of a prospecting licence has made application for a renewal thereof or for a mining licence over part of the area covered by his prospecting licence; or
- (c) the holder of a mining licence has made application for a renewal thereof,

Extension of period of prospecting or mining licence.

the Minister may extend the period of validity of such reconnaissance licence, prospecting licence or mining licence, as the case may be, pending his decision on application.

64. (1) Upon termination of any mineral right under the provisions of this Part:—

Consequences of termination.

- (a) the holder shall forthwith pay to the Government all moneys that may have then been payable or may have accrued due under that mineral right or otherwise in respect of the mining operation undertaken by the holder under the authority of that mineral right.
- (b) the holder shall leave the reconnaissance area, prospecting area or mining area, as the case may be, and everything therein in a safe condition and in accordance with good mining practice shall unless otherwise directed by the Minister:—

- (i) fill up or fence and make safe all holes and excavations to the satisfaction of the Commissioner for Mines; and

- (ii) take all reasonable measures to restore the surfaces of the area and all structures thereon not the property of the holder to their original condition.

**(2) Upon termination of a prospecting licence:—**

- (a) the holder may within six months from the date of termination, remove from the prospecting area all structures and installations and all moveable assets owned and placed by him in the area;
- (b) all structures and installations and all moveable assets not so removed shall become the property of the British Virgin Islands free from encumbrances and without cost or any liability on the part of the Government to pay compensation therefor.

**(3) Upon termination of a mining licence:—**

- (a) all plant and equipment and non-moveable assets owned and placed in the mining area by the holder shall become the property of the Government free from encumbrances and without cost or any liability on the part of the Government to pay compensation therefor;
- (b) all materials, supplies, vehicles and other moveable assets of the holder in the mining area which are fully depreciated for tax purposes, shall become the property of the Government free from encumbrances without cost or any liability on the part of the Government to pay compensation therefor;
- (c) all materials, supplies, vehicles and other moveable assets which are not then fully depreciated for tax purposes shall within 30 days from the day of the termination be offered for sale to the Minister at the then depreciated cost;
- (d) the holder may sell, remove or otherwise dispose of any of the property referred to in paragraph (c) of this subsection which has been offered for sale to the Minister in accordance therewith and such offer has not been accepted by the Minister within 30 days from the date thereof;
- (e) all property referred to in section 61 (2)(e) which

has not been sold, removed or otherwise disposed of within three months from the expiry of the period referred to therein shall become the property of the British Virgin Islands free from encumbrances without cost or any liability on the part of the Government to pay compensation therefor.

**PART VIII**

**RECORDS, INFORMATION AND ARBITRATION**

65. (1) The Minister shall maintain records of all mineral rights issued under the Ordinance in sufficient detail to show:—

Records of minerals to be maintained.

- (a) the name of the holder of the mineral right;
- (b) the area subject to the mineral right;
- (c) the date of issue and duration of the mineral right; and
- (d) the mineral for which the right is granted.

(2) Records maintained under subsection (1) shall be open to inspection by members of the public during normal government office hours, and members of the public shall be permitted to take copies thereof.

66. (1) Subject to such further or other provision contained in any agreement to which the Government and the holder of a mineral right are parties, information or records of a commercial nature the disclosure of which may prejudice the holder's position with its competitors supplied to the Minister under any provision of this Ordinance shall so long as the person supplying the same or his successor in title retains a mineral right over the area to which the records relate, be treated as confidential and shall not be divulged without the consent of the person supplying the same or his successor in title, such consent not to be unreasonably withheld.

Information confidential.

Provided that nothing in this section shall prohibit the disclosure of any confidential information:—

- (i) where such disclosure is necessary for the purposes of this Ordinance;
- (ii) for the purposes of a prosecution under this Ordinance;
- (iii) to any person being a consultant to or officer

employed of the Government who approved by the Minister to receive such confidential information.

## PART IX

### MISCELLANEOUS

Arbitration. 67. Where in this Ordinance provision is made for a matter to be referred to arbitration, the matter shall be referred to arbitration in accordance with the provisions of the Arbitration Ordinance 1976.

Restrictions on assignment of prospecting and mining licence. 68. (1) No prospecting licence shall be transferred or assigned or no mining licence or any interest therein shall be transferred, assigned, mortgaged or dealt with in any other way without the approval of the Minister, and any purported transfer, assignment, mortgage or dealing without such approval shall be void and of no effect.

(2) In any application to the Minister for his approval under subsection (1), the applicant shall give such particulars concerning the proposed transferee, assignee, mortgagee or other party concerned as the Minister may require.

(3) Subject to the provisions of subsection (4), the Minister may, in his discretion, grant or refuse his approval to any transfer, assignment or mortgage or other dealing with any mining licence or interest therein, and may impose such conditions as he may deem fit.

(4) The Minister shall give his approval where the proposed transferee or assignee of a prospecting licence is a person controlling, controlled by, or under joint or common control with, the holder of the prospecting licence, provided that such transferee or assignee is not disqualified under any provision of this Ordinance from holding a prospecting licence and the Minister is satisfied in respect of such transferee or assignee of the matters specified in subparagraphs (a), (c), (e) and (f) of section 18 (1).

(5) Where the Minister has given his approval to the transfer or assignment of a prospecting licence, the transferee or assignee shall assume and be responsible for all rights, liabilities and duties incurred by the transferor or assignor under the prospecting licence prior to the transfer or assignment.

Restriction on assignment of shares. 69. (1) Without the prior written approval of the Minister, no person shall dispose of and no person shall acquire, directly or indirectly without the prior written approval of the Minister, any interest in a company which is the holder of a mining licence which

would confer a voting right or other financial interest exceeding 20% of the total of all of such rights or interests or which would confer any right to appoint directors; or which would alter the beneficial ownership or control of the company and, in considering any application for such approval, the Minister may call for and obtain such information as he considers necessary.

(2) A company which is the holder of a mining licence shall notify the Minister of any significant change in the shareholding or control of any company of which it is a subsidiary either directly or indirectly.

## PART X

### OFFENCES AND PENALTIES

70. Any person who:—

Offences.

- (a) conducts reconnaissance, prospects or mines otherwise than in accordance with this Ordinance contrary to section 5(1);
- (b) utilises building materials contrary to section 5(2);
- (c) fails or neglects to comply with any direction given by the Minister under section 8;
- (d) obstructs, hinders or delays an authorised officer in the performance of his duties under this Ordinance;
- (e) destroys or otherwise disposes of any core sample contrary to section 9(1) or fails to maintain a proper record of any core or sample in compliance with section 9(2);
- (f) in making application for any mineral right or renewal of any mineral right under this Ordinance, knowingly makes a statement which is false or misleading in any material particular;
- (g) in any report, return or affidavit submitted in pursuance of the provisions of this Ordinance, knowingly includes any statement which is false or misleading in any material particular;
- (h) fails or neglects to furnish any information required by the Minister or otherwise in accordance with section 15(1);

- (i) removes any mineral from a reconnaissance area contrary to section 15(2) or from a prospecting area contrary to section 32;
- (j) fails or neglects to notify the Minister of the discovery of a mineral deposit in compliance with section 28(1);
- (k) fails or neglects to comply with any requirements by the Minister to furnish proposals under section 28(2) or further proposals required by the Minister in accordance with section 28(3);
- (l) fails or neglects to keep full and accurate records of his prospecting operations in accordance with section 31(3);
- (m) fails or neglects to notify the Minister of the discovery of any further deposits or minerals in accordance with section 41(2);
- (n) fails to:—
  - (i) demarcate and keep demarcated the mining area in accordance with section 42(1)(c);
  - (ii) keep and maintain an address in the British Virgin Islands in accordance with section 42(1)(d);
  - (iii) notify the Minister on commencement of commercial production in accordance with section 42(1)(e);
  - (iv) maintain the technical records required by section 42(2)(a)(i), the documents specified in section 42(2)(a)(ii) and the financial records required by or under section 42(2)(a)(iii) in accordance with those provisions;
  - (v) submit reports required by the Minister under section 42(2)(c);
  - (vi) furnish the Minister with every annual financial report in accordance with section 42(2)(d);
- (o) fails to comply with any order by the Minister

- (p) fails or neglects to notify the Minister of any termination, suspension or curtailment of production contrary to section 45(2);
- (q)
  - (i) fails to comply with any notice issued by the Governor in Council under section 46(1);
  - (ii) fails or neglects to submit any sales contract to the Minister in accordance with section 46(2);
- (r) exports any radioactive mineral contrary to section 46(3) or fails to comply with any of the terms and conditions of a permit under that section;
- (s)
  - (i) exercises any mineral right contrary to section 47(1) or (3);
  - (ii) fails to notify the Minister of any find of historical or archaeological significance in accordance with section 47(2) or fails to comply with any directions given by the Minister under that section;
  - (iii) carries on mining operations contrary to section 49;
- (t) fails to pay any royalty, provisional royalty or charge prescribed or agreed under Part VI before the due date or any extension thereof;
- (u) fails upon termination of any mineral right to deliver to the Minister the documents specified in section 62(1);
- (v) acquires or disposes of any interest in a company which is the holder of a mining licence contrary to section 69(1);
- (w) being a company which is the holder of a mining licence, fails to notify the Minister of any significant change in the shareholding or control of any company of which that company is a subsidiary in accordance with section 69(2);

- (x) (i) places or deposits, or is necessary to the placing or depositing of, any mineral in any place with the intention to mislead any other person as to the mineral potential of such place;
- (ii) mingles or causes to be mingled with any sample of ore, any substance which will enhance the value or in any way change the nature of such ore with intention to cheat, deceive or defraud;
- (iii) is engaged in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting or dealing in ores, metals or minerals and who keeps or uses any false or fraudulent scales or weights, for weighing such ores, metals or minerals, or who uses any false or fraudulent assay scales or weights or enriched fluces used for ascertaining the assay value of minerals, knowing them to be false or fraudulent,

shall be guilty of an offence.

Penalties. 71. (1) Any person guilty of an offence under:—

- (a) paragraphs (a), (e), (f), (g), (i), (j), (k), (o), (p), (q), (s) or (b), (r), (t), (u), or (x) of section 70 shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment not exceeding one year, or to both such fine and such imprisonment;
  - (b) any paragraphs of section 70 other than those referred to in paragraph (a) of this section, shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.
- (2) On a second or subsequent conviction for an offence under section 70 a court may impose a penalty which does not exceed double the applicable penalty referred to in subsection (1).

## PART XI REGULATIONS

72. The Minister may make regulations for the better carrying into effect of this Ordinance and, in particular and without prejudice to the generality of the foregoing, regulations may provide for the following matters or purposes:—

- (a) prescribing anything which in terms of this Ordinance is to or may be prescribed;
- (b) for making of returns of minerals won and for the valuation of such minerals, and the sampling, weighing and testing of any mineral;
- (c) the manner in which applications under this Ordinance shall be made, and any additional information to be supplied by applicants;
- (d) the shape of the areas over which mineral rights may be granted;
- (e) the manner in which areas and boundaries shall be marked, buoyed, beacons and surveyed and the fees payable in respect of such survey;
- (f) the returns to be rendered and the nature of the accounts, books and plans to be kept by the holders of mineral rights;
- (g) the method of calculation of the amount of royalties and the manner and time of payment thereof;
- (h) the fees to be paid in respect of any matter or thing done under this Ordinance;
  - (i) the amalgamation of mineral rights;
  - (j) the defiling or wasting of water, wherever situated and wherever obtained;
  - (k) the nature of any plan or diagram required for the purposes of this Ordinance;
- (l) providing for the examination of mineral consignments and the issue of export permits in respect thereof;

- (m) conferring upon any public officer specified therein such powers of inspection and enquiry as may be reasonably necessary for the proper carrying out of the provisions of this Ordinance;
- (n) ensuring the safety of navigation and shipping and the marking of installations;
- (o) preventing pollution and protecting the living resources of the sea;
- (p) promoting the safety of workmen and notification of accidents;
- (q) preventing damage to or interference with communications.

(2) Regulations made under this section may provide a penalty for the contravention thereof in any amount not exceeding \$500.

Passed the Legislative Council this 16th day of October, 1980.

**I. DAWSON,**  
Speaker.

**M. G. BORDE,**  
Clerk of the Legislative Council.