

Mines and Minerals (Amendment) Act 1996

SOLOMON ISLANDS

THE MINES AND MINERAL (AMENDMENT) ACT 1996

(NO. 6 OF 1996)

ARRANGEMENT OF SECTIONS

Section:

1. SHORT TITLE AND COMMENCEMENT.
2. AMENDMENT OF SECTION 3 OF ACT NO. 3 OF 1990.
3. AMENDMENT OF SECTION 30.
4. AMENDMENT OF SECTION 43.
5. AMENDMENT OF SECTION 45.
6. INSERTION OF NEW SECTIONS 49A, 49B, 49C, 49D AND 49E.
7. INSERTION OF NEW SECTION 71A.

THE MINES AND MINERALS (AMENDMENT) ACT 1996

No. 6 of 1996

Passed by the National Parliament this twenty-sixth day of November 1996.

Assented to in Her Majesty's name and on Her Majesty's behalf this thirtieth day of January 1997.

Date of commencement: see section 1

AN ACT To Amend the Mines and Mineral Act 1990.

ENACTED by the National Parliament of Solomon Islands.

Short title and Commencement

1. This Act may be cited as the Mines and Minerals (Amendment) Act, 1996, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Amendment of section 3 of Act No. 3 of 1990.

2. Section 3 of the Mines and Minerals Act 1990 (hereinafter referred to as the "principal Act") is hereby amended by inserting therein immediately after the definition of "mineral" the following new definition -

""mineral licence" means a prospecting licence or mining lease or both;".

Amendment of section 30.

3. Section 30 of the principal Act is hereby amended by inserting therein immediately after subsection (5) the following new subsections as subsections (6) and (7) respectively -

"(6) Where an agreement has been negotiated pursuant to subsections (3) and (4), the Minister may on behalf of the Government enter into an agreement with the negotiating parties.

(7)The Minister may establish appropriate modalities to coordinate and procedures the issue and grant, subject to the relevant law, by the relevant agencies of requisite licences, permits, orders d notices to the holder of a mining lease to enable him to conduct activities and operations under his mining lease."

Amendment of Section 43.

4. Section 43 of the principal Act is hereby amended the following respects -

(a) by renumbering the existing section as subsection thereof; and

(b) by adding immediately after the subsection renumbered the following as subsection (2) thereof -

"(2) Subject to the provisions of this Act and to any other law relating to buildings, drainage, land, protection of the natural environment and the control of natural water supplies, including river waters, the mining company shall have the exclusive right to mine on or under the area covered by its mining lease for the minerals specified in the mining lease and to remove or dispose of any such mineral as its own property upon extraction of the mineral from the mineral or body mined under the mining lease."

Amendment of section 45.

5. Section 45 of the principal Act is hereby amended in the following respects -

(a) by adding at the end of subsection (3) the words "or, where the relevant mining agreement provides for the valuation of the mineral, in accordance with the relevant mining agreement.";

(b) by deleting subsection (4) and substituting therefor the following new subsection -

"(4) For the purposes of this section a special fund to be known as the Mining Royalty Special Fund is hereby established in accordance with section 100 of the Constitution and all royalties paid in pursuance of this section shall be credited to the Fund so established and the Minister may from the fund , so established authorise payment, not exceeding one hundred per cent to be paid to the owner of the land from or under which the minerals are obtained and to such other beneficiaries as may be determined by the Minister.";

(c) by inserting immediately after subsection (4) the following as subsection (5) -

"(5) The Minister may by regulations prescribe -

(a) the manner and procedure for the making of payments to the Fund and payments out of the Fund to the beneficiaries referred to in subsection (4);

(b) the maintenance of a separate account in respect of each holder of a mining lease or building materials permit;

- (c) the division of any account referred to in paragraph (b) to sub-accounts in respect of the owners and beneficiaries referred to in subsection (4);
- (d) the manner and procedure for the control and management of the Fund and the accounts referred to in paragraphs (b) and (c); and
- (e) such other terms and conditions as may be necessary for the proper administration of the Fund and the accounts".

Insertion of new sections 49A, 49B, 49C, 49D and 49E

6. The principal Act is hereby amended by inserting immediately after section 49, the following new sections as sections 49A, 49B, 49C, 49D and 49E respectively -

"Grant of special site right.

49A. (1) Subject to the provisions of this Act and to any terms and conditions not inconsistent therewith that he may think fit, the Director may grant a special site right to the holder of a mineral licence.

(2) An application for a special site right shall be in the prescribed form and shall be accompanied by the prescribed fees, together with a deposit as may be prescribed.

(3) Special site rights may be granted for such purposes, for such period and in such manner as may be prescribed, in respect of the following acts or things -

- (a) the construction and use of passageways other than roads;
- (b) water rights;
- (c) installation of machinery;
- (d) disposal of earth and tailings; and
- (e) installation of furnaces:

Provided that -

(i) the Director may issue special site rights for such other purposes in respect of water or land as may, in his opinion, be necessary or advisable for the conduct of prospecting or mining operations or for any other purposes connected with mining;

(ii) water rights for the generation of electric power shall not be granted under this section unless such electric power is to be used by the holder of the mineral licence for the purpose of prospect or mining operations conducted under such licence;

(iii) nothing in this Act shall affect the right of any person to divert water under a permit issued under the provisions of the River Waters Act.

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(4) Land which is the subject of a special site right shall not exceed dimensions as may be prescribed.

(5) A special site right may be extended by renewal for such periods as the Director may determine.

(6) The Director shall notify the Registrar of Titles of every grant, renewal, surrender, determination or variation of the term or area of a special site right and shall furnish the requisite details for the purpose of noting the grant, renewal, surrender, determination or variation.

Road access licence.

49B. (1) No person shall, in the exercise of any rights conferred on him under this Act, construct any road on or over any land not being the subject of a mineral licence held by him without first obtaining a road access licence empowering him to do so:

Provided that the holder of the mineral licence shall have the right of access for himself, his servants and agents to and from a licence area and for that purpose may pass without hindrance over any unimproved land.

(2) Subject to the provisions of this Act and to any terms and conditions not inconsistent therewith that he may think fit, the Director may with the concurrence of the Commissioner of Lands, grant a road access licence to the holder of a mineral licence.

(3) A road access licence shall authorise the holder, his servants and agents, with or without vehicles, to pass over the land the subject of such licence and to construct the roads thereon.

(4) Every application for a road access licence shall be in the prescribed form and shall be accompanied by the prescribed fees together with a deposit as may be prescribed.

(5) A road access licence may be granted for such period as may be prescribed and may be renewed for such periods as the Director may determine.

(6) The Director may require the applicant for a road access licence to adjust the plans and makings in respect of any proposed road as he considers reasonable bearing in mind the convenience of all parties that may be affected by the road.

(7) All rights under any road access licence conferred upon the holder of a mining licence under this Act shall expire when such licence is terminated or abandoned for any reason whatsoever and thereupon the holder shall, if required by the owner or occupier, restore the surface of the land to its former state so far as is practicable, and the provisions of sections 25(3) and 34 shall apply in relation to determination of compensation for damages:

Provided that the holder of any other mineral licence in the same vicinity who wishes to use such road may apply for a road access licence over the whole or any part of the land, the subject of the expiring licence, and if such licence is granted the obligations of the holder of the expiring road access licence under this subsection shall cease in respect of the land, the subject of the licence so granted.

(8) The holder of a road access licence shall not hinder or prevent any other person from passing over the land the subject of that licence:

Provided that -

(a) where any person uses such road in such manner as to do appreciable damage thereto or to enhance substantially the cost of upkeep thereof, the holder of the licence may require him to contribute to the cost of making good such damage or to the cost of upkeep; and

(b) where any person uses such road in such manner as to interfere materially with the free use and enjoyment thereof by the holder of the mineral licence, the holder of the licence may require him to limit his use of the road so as to remove such interference.

(9) If any dispute arises in connection with damage, upkeep or interference under subsection (8), any person affected by such dispute may lodge a complaint with the Director who shall decide the matter at issue.

(10) If any mineral licence is granted in respect of any part of the land, the subject of a road access licence, the holder of such licence may require, the holder of the road access licence to deviate the road, and the cost of such deviation shall be borne by the holder of such other mineral licence:

Provided that prior approval of the Director is required for such deviation, and if he approves the deviation the Director shall amend the road access licence accordingly.

(11) The Director shall notify the Registrar of Titles of every grant, renewal, surrender, determination and variation of the term or area of a road access licence and shall furnish the requisite details for the purpose of noting that grant, renewal, surrender, determination or variation.

Payment into Court.

49C. (1) Where any compensation or surface rent is payable or ordered to be paid under this Act and the identity of the person or persons entitled to such compensation is not known, or is

in doubt or is disputed, the compensation or rent may be paid where it does not exceed one thousand dollars into a Magistrate's Court, and in all other cases into the High Court.

(2) Upon being so paid the compensation or rent shall be presumed to have been paid to the person or persons thereto entitled, and such presumption shall not be questioned in any proceedings whatsoever.

(3) Any person claiming to be entitled to payment of the whole or any part of compensation or rent so paid into court may, within twelve years of the payment into court, make application to the court for the payment to him of the compensation or part thereof.

(4) The Court may of its own motion or upon application by a claimant, order the whole or part of any sum paid into court under this section, to be paid to any person or persons.

(5) Where any compensation or rent paid into court under this section has not been paid out within twelve years, it shall be credited to and form part of the Consolidated Fund.

Director may suspend and cancel.

49D. If, in any case where the holder of a mineral licence is required to pay rent or other compensation under this Act, payment is in arrears or the amount deposited is insufficient, the Director may suspend such mineral licence until the amount payable has been paid and until such holder has deposited with him such further sums as may be demanded as security for further payments, and, if such payment and deposit is not made within such time as the Director may consider reasonable, the mineral licence may be cancelled in accordance with the provisions of section 71.

Restoration of the land.

49E. (1) Where the surface of the land, the subject of a mineral licence has been disturbed by prospecting or mining operations during the term of the licence, the Director may order the holder thereof to restore the surface of the land. Such requirements of restoration shall be embodied in an appendix to such mineral licence before issue or thereafter by due service of such order.

(2) Where any mineral licence is terminated or abandoned for any reason whatsoever, the person whose mineral licence has been terminated or abandoned shall, not later than thirty days from the date of termination of the mineral licence, fill up all shafts, pits, holes and other excavations or when the Director so permits, in an appropriate case, otherwise secure them in a permanent manner to the satisfaction of the Director so as to prevent persons or livestock inadvertently entering therein, and shall within such period furnish a certificate to the Director that he has complied with the provisions of this section as to the fencing or filling up of shafts, pits, holes and other excavations and the removal of posts:

Provided that no such person shall be liable for filling up or securing any excavations made by other persons on the land, the subject of his mineral licence, prior to the grant thereof, if, on application for the mineral licence, he has shown on the plans submitted with his application, the position of these excavations in relation to the boundaries of the land, or if he submits within a period of one month from the date of grant of the mineral licence, a plan showing the position of such excavations.

(3) If any person whose mineral licence has been terminated or abandoned neglects to fill up or secure any excavations or to notify the Director in accordance with subsection (2) within the prescribed time, the Director shall have the right to cause such excavations to be filled up may charge such person such sum as the Director considers reasonable, and such charge shall be a lawful deduction from any amount deposited by such person with the Director under this Act and may be recovered as a civil debt at the suit of the Director:

Provided that such filling up or securing by the Director and the payment of such charge shall not exempt such person from his liability under this Act or any other law for his failure to fill up or secure such excavations.

(4) Where a mineral licence is renewed in respect of a reduced area only, subsections (2) and (3) shall apply to the land not included in such renewal.
(5) This section shall be in addition to and not in derogation of any other provision of this Act."

Insertion of new section 71A.

7. The principal Act is hereby amended immediately after section 71 the following new section 71A:

"Force majeure.

71A. (1) Subject to a mining agreement entered into with the holder of a mineral licence where the holder of such licence is prevented from carrying out his operations under the mineral licence due to *force majeure*, the period during which the *force majeure* event subsisted shall be added on to the term of the mineral licence.

(2) In this section -

"mineral licence" includes a prospecting licence deemed to be granted under section 81(2).

"*force majeure*" means any cause beyond the reasonable control of the holder of the mineral licence prescribed in the mining agreement as constituting *force majeure*; and

"mining agreement" means the agreement entered into by the Minister with the holder of a mineral licence pursuant to section 30(6)."
