

LAWS OF SARAWAK

LAND CODE

CHAPTER 81
(1958 EDITION)

ARRANGEMENT OF SECTIONS

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LAWS OF SARAWAK
LAND CODE

CHAPTER 81
(1958 EDITION)

An Ordinance to make better provision in the law relating to land.

[1st January, 1958]

PART I

SHORT TITLE, INTERPRETATION AND ADMINISTRATION

Short title

1. This Ordinance may be cited as the **Land Code**.

Interpretation

2. In this Code—

“agricultural purpose” includes the cultivation of any crop (including trees cultivated for the purpose of their produce), market gardening, and the breeding and keeping of livestock and fish but does not include ornamental gardens or ornamental ponds;

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

“alienation” means the sale, lease or other disposal by a document of title of State land by or on behalf of the Government;

“boundary marks” means any survey stone, iron pipe or spike, wooden peg or post, concrete post or pillar or other survey mark;

“building” shall have the same meaning assigned to it in the Buildings Ordinance, 1994 [*Cap. 8*];

[*Ins. Cap. A50.*]

“Certificate of Representation” means—

(a) a grant of probate or letters of administration issued under the provisions of the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*] or a grant of representation in terms of section 14 of that Ordinance;

(b) an adjudication order in bankruptcy; or

(c) an order of the court under which the property of a person mentally disordered becomes vested in the official assignee or any other person;

“charge” means any charge on land created under this Code for securing—

(a) the re-payment of a loan or satisfaction of any existing debt;

(b) the re-payment of future advances or payment or satisfaction of any future or unascertained debt or liability contingent or otherwise;

(c) the payment to the holders for the time being of any bonds, debentures, promissory notes or other securities, negotiable or otherwise, made or issued by the chargor before or after the creation of the charge; or

(d) the payment to any person or persons by yearly or periodical payments or otherwise of any annuity, rent, charge or sum of money other than a debt;

“chargee” means the proprietor of a charge;

“chargor” means the proprietor of any estate or interest subject to a charge;

“communications”, “network facilities” and “transmission” shall have the same meanings assigned to those expressions by the Communications and Multimedia Act 1998 [*Act 588*];

“communication tower” means any tower, pole, structure, facility or equipment used for providing telecommunication services or as part of network facilities for telecommunications or for the transmission or reception of radio, television or satellite signals, broadcast or other media of communications;

[Ins. Cap. A95.]

“community” means a group of persons subject to the same system of personal law :

Provided that if a customary law applies to different groups with divergencies in customary law each group shall constitute a separate community;

“country land” means land other than land declared to be town, suburban or land comprised in a bazaar, whether before or after the 1st day of January, 1958;

“Crown” *see* “Government”;

“Crown land” *see* “State land”;

“customary law” means a custom or body of customs to which the law of Sarawak gives effect;

“dealing” means every transfer, charge, lease or other instrument affecting any estate or interest under this Code;

“Director” means the Director of Lands and Surveys, and includes a Deputy Director appointed under section 3;

“document of title” means a grant, lease of State land, occupation ticket or other document evidencing title to land whenever issued, but does not include a licence, permit or caveat;

“Government”, in respect of acts or things done before the cession of Sarawak, includes any Rajah of Sarawak and any

person lawfully authorized to act on behalf of any such Rajah, and save as aforesaid means the Government of Sarawak;

“grant” means a grant of State land issued by or on behalf of the Government;

“Interior Area Land” means land not falling within any of the definitions of Reserved Land, Native Customary Land, Native Area Land or Mixed Zone Land;

“issue document of title” has the meaning assigned to it by section 117;

“instrument” means any printed or written document relating to the transfer of, or other dealing with, land, or evidencing title thereto, but does not include a caveat;

“Kampung Reserve” means any area designated under section 7(3) to be used as a kampung or extension thereof or any similar purposes, and includes any area which had been declared a Government (kampung) reserve;

“land” includes things attached to the earth or permanently fastened to anything attached to the earth;

“land comprised in a bazaar” means land which is so declared pursuant to section 11;

“lease” means a lease of State land executed by or on behalf of the Government;

“local authority” shall have the same meaning assigned to it in the Local Authorities Ordinance, 1996 [*Cap. 20*];

“Mixed Zone Land” means land which by virtue of the former Land (Classification) Ordinance, 1948 [*Ord. No. 19/1948*], and the former Dealings in Land (Validation) Ordinance, 1952 [*Ord. No. 11/1952*], or either of them, was Mixed Zone Land on the 1st day of January, 1958, and land which becomes Mixed Zone Land by virtue of a declaration under section 4(1), or by virtue of section 4(4)(a), or by virtue of a direction under section 38(5);

“Native Area Land” means land other than Mixed Zone Land—

(a) held by a native under a document of title;

(b) declared to be such under a subsisting declaration made under the former Land (Classification) Ordinance, 1948 [*Ord. No. 19/1948*], or under section 4(2) or (3);

(c) which becomes Native Area Land by virtue of section 4(4)(b); or

(d) which becomes Native Area Land by virtue of a direction under section 38(5);

“Native Customary Land” means—

(a) land in which native customary rights, whether communal or otherwise, have lawfully been created prior to the 1st day of January, 1958, and still subsist as such;

(b) land from time to time comprised in a reserve to which section 6 applies; and

(c) Interior Area Land upon which native customary rights have been lawfully created pursuant to a permit under section 10;

“native rights” means rights described in section 7A(1), created by or belonging to a native over land not issued with a document of title;

“native system of personal law” means the customary law applying to any community, being a community forming the whole or part of any native race specified in the Schedule to the Interpretation Ordinance [*Cap. 1 (1958 Ed.)*];

“non-native” means any person who is not a native of Sarawak as defined by the Interpretation Ordinance;

“permanent forests” and “planted forests” shall have the meanings assigned to these expressions in the Forests Ordinance [*Cap. 126 (1958 Ed.)*];

“person” has the meaning attributed to it by the Interpretation Ordinance [*Cap. 1 (1958 Ed.)*];

Provided that for the purposes of the alienation of State land under Part III, or of being registered as the proprietor of any estate or interest in land under Part VII, or for the purpose of any future dealing in any estate or interest in land which requires to be registered under this Code, but without prejudice to sections 221 to 226 inclusive, a person shall be deemed to include only the persons mentioned in section 13(5);

“previous register” means any register kept under the former Land Ordinance [*Cap. 27 (1948 Ed.)*] or the former Land Settlement Ordinance [*Cap. 28 (1948 Ed.)*] or under any order of the Rajah affecting land;

“proprietor” includes the Government and any person entitled to an estate or interest in alienated land, whether such estate or interest is protected by registration or not, but does not include any person holding or deemed to hold land by licence from the Government;

“Register” means the Register kept under Part VII but does not include a Register of Native Rights kept under 7A(2);

“Representative” means the person to whom a Certificate of Representation has been issued, and includes a Probate Officer under the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*] administering the estate of a deceased person where no grant of probate or letters of administration has been issued;

“reserve” means any area to be used or set aside for a public purpose, including but not limited to, the provision of roads, public parks, open space, drains, sewerage, water, electricity or telecommunication facilities or such other purposes as the Majlis Mesyuarat Kerajaan Negeri may from time to time direct;

[Ins. Cap. A50.]

“Reserved Land” means land—

(a) reserved to the Government under section 38 or under the corresponding section of any Ordinance repealed by this Code*;

*NOTE : The following Ordinances were repealed by the Land Code :—

- (a) the Land Ordinance (Cap. 27, 1948 Ed.);
- (b) the Land Settlement Ordinance (Cap. 28, 1948 Ed.);
- (c) the Land (Classification) Ordinance (No. 19 of 1955);
- (d) the Dealings in Land (Validation) Ordinance (No. 11 of 1952).

(b) comprised within a National Park constituted under the National Parks and Nature Reserves Ordinance, 1998 [**Cap. 27**], or within a Forest Reserve, Protected Forest or Communal Forest constituted under the Forests Ordinance [**Cap. 126 (1958 Ed.)**];

(c) occupied otherwise than under a document of title by the Federal or State Government or by any Department or official in his official capacity of either such Government; or

(d) otherwise lawfully constituted or declared to be reserved land;

“rock material” means any of the substances specified in section 32(1) (d);

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

“sale” includes any sublease, tenancy, gift or exchange and any agreement therefor, but does not include any devise or bequest of land nor any transfer or charge of any undivided share in any land;

[Ins. Cap. A50.]

“State land” means all land for which no document of title has been issued and all land which subsequent to the issue of a document of title may have been or may be forfeited or surrendered to or resumed by the Government, and includes—

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

(a) the bed of any river, stream, lake or watercourse; and

(b) the foreshore and beds of the sea within the boundaries of Sarawak as extended by the Sarawak (Alteration of Boundaries) Order in Council, 1954* *[Vol. VI, p.1025]*;

* *For definition of boundaries see the Sarawak (Definition of Boundaries) Order in Council, 1958 (G.N.S. 145/58) and see also the North Borneo and Sarawak (Alteration of Boundaries) Order in Council, 1962 (G.N.S. 52/62).*

“State Planning Authority” means the Authority constituted under section 228, and includes any person or body to whom the functions of the Authority have been delegated;

[Ins. Cap. A50.]

“system of personal law” means the system of personal law recognised by the general law of Sarawak as being applicable to the members of any racial, religious or other community because they are members of such community, and includes any rules or customary law of such system which may refer the determination of any matter to another system of personal law;

“town land” and “suburban land” mean respectively land which has lawfully been declared to be such prior to the 1st day of January, 1958, or which is so declared pursuant to section 11.

Administration

3.—(1) This Code shall be administered by a Director of Lands and Surveys who shall be assisted by such number of Deputy Directors, Assistant Directors, Superintendents, Assistant Superintendents, Settlement Officers, Assistant Settlement Officers, Registrars and Assistant Registrars and Surveyors as the Minister may appoint.

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

Direction of the Minister

(1A) The Director shall be responsible to the Minister, and the Minister may from time to time give to the Director any general or special direction, not inconsistent with the provisions of this Code, as to the exercise and performance of the Director's functions and powers under this Code, and any such direction shall become binding on the Director who shall forthwith take all steps necessary or expedient to give effect thereto.

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

(2) Any person lawfully discharging on the 1st day of January, 1958, the duties of any of the offices mentioned in subsection (1) shall be deemed to have been lawfully appointed thereunder.

(3) Any appointment to be made under subsection (1) shall be notified in the *Gazette*.

(4) Section 27 of the Interpretation Ordinance [*Cap. 1 (1958 Ed.)*] shall apply to this Code in like manner as it would have applied if "Settlement Officer" had been herein defined to include an Assistant Settlement Officer and "Registrar" had been defined to include an Assistant Registrar.

PART II

LAND CLASSIFICATION AND DIVISION

Power to constitute new areas of Mixed Zone, Native or Interior Area Land and consequential provisions

4.—(1) The Minister may, by order signified in the *Gazette*, declare any area of land to be Mixed Zone Land and thereupon any Native Area Land or Interior Area Land within such area shall become Mixed Zone Land.

(2) The Minister may, by order signified in the *Gazette*, declare any area of land to be Native Area Land or Interior Area Land and thereupon such part of such area as consists of unalienated Mixed Zone Land shall become Native Area Land or Interior Area Land, as the case may be.

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

(3) The Director of Lands and Surveys may, with the approval of the Minister, by notification in the *Gazette*, declare that any area of land shall become Native Area Land and thereupon such part of such area as consists of Interior Area Land shall become Native Area Land.

[Am. Cap. A42.]

(4) Where the area in respect of which a declaration has been made under subsection (1), (2) or (3) comprises Native Customary Land, such land shall be unaffected by the declaration, but any part thereof which may subsequently cease for any reason to be Native Customary Land shall—

(a) where the declaration has been made under subsection (1), become Mixed Zone Land; and

(b) where the declaration has been made under subsection (2) or (3), become Native Area Land:

Provided that where the area in question has been declared to be Interior Area Land under subsection (2) and such cessation is effected by the termination in favour of the Government of customary rights, then such part shall become Interior Area Land.

(5) Where the area, in respect of which a declaration has been made under subsection (1), (2) or (3), includes Reserved Land, such land shall be unaffected by the declaration:

Provided that, if such land is subsequently alienated pursuant to section 38, it shall become Mixed Zone Land or Native Area Land as may be directed by the Minister under subsection (5) of that section.

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

(6) The boundaries of any area included within a declaration made under subsection (1), (2) or (3) may be modified by subsequent declaration made in like manner, but such modification shall not affect the rights and conditions appertaining to any document of title issued prior to the publication in the *Gazette* of such declaration.

Native customary rights

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

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

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

Provided that—

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

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

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

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

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

Native Communal Reserves

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

(2) Save in so far as the contrary may be specified or provided for in any such order or by this section, rights in any land declared to be a Native Communal Reserve under subsection (1) shall be

regulated by the customary law of the community for whose use it was declared to be reserved.

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

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

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

(3A) In any case in which this section applies, the question as to whether any person, whether or not such person is a member of the native community for whose use the reserve is or is deemed to be constituted, may exercise any rights or privileges within such reserve shall be determined by the customary law of such community and by such orders, if any, as may have been made under this section, and, save to the extent that any such person may be able to justify his occupation of any land comprised within such reserve, he shall be deemed to be in unlawful occupation of State land and section 209 shall apply thereto.

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

Government Reserves and Kampung Reserves

7.—(1) In any case where an area of State land is required for a Federal or State public purpose, or may be so required in the future, and it is considered that the area should not be available for alienation,

the Director may by notification in the *Gazette* declare such area to be a Government Reserve whether the public purpose for which the land may be used is stated in the notification or not. The Director may also by a similar notification specify a public purpose for which a Government Reserve may be used, whether such notification involves the change of a purpose previously notified or the declaration of the purpose for which land, not previously held for any specified public purpose, may henceforth be held.

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

(3) Where any State land is to be used as a kampung or extension thereof or any similar purpose, the Director may, by notification in the *Gazette*, designate such land as a Kampung Reserve.

(4) Where before the coming into force of subsection (3), any Government Reserve had been declared to be used as a kampung or extension thereof or any similar purpose, the Government Reserve shall be deemed to have been constituted a Kampung Reserve under subsection (3).

(5) Where any Kampung Reserve is required for a public purpose—

(a) the cessation of the area as a Kampung Reserve shall be deemed a resumption of the land by the Government under this Code;

(b) compensation shall be paid to any person lawfully occupying or in occupation of the area within the Kampung Reserve; and

(c) the notice in respect of such resumption and other proceedings including assessment of compensation, shall be in accordance with Part IV.

(6) Without prejudice to subsection (5), where the Government decides to alienate land within a Kampung Reserve to any person in lawful occupation thereof, the Director shall, by notification in the *Gazette*, declare that land shall no longer be a Kampung Reserve or a part thereof.

Registration of native rights

7A.—(1) The following rights belonging to a native over any land in respect of which no document of title has been issued, may be registered with the Registrar in accordance with rules made under section 213—

(a) rights lawfully created pursuant to section 5(1) or (2);

(b) rights and privileges over any land declared as a Native Communal Reserve under section 6(1); and

(c) rights within a Kampung, Reserve.

(2) The Director shall cause to be kept a Register of Native Rights and such a Register shall be maintained and opened for public inspection in accordance with rules made under section 213.

(3) Nothing in this section shall authorize the Registrar to register in the Register of Native Rights kept under subsection (2), any claims by any native over land—

(a) if any rights so claimed have been extinguished prior to the date of coming into force of this section; or

(b) if the claimant fails to prove to the satisfaction of the Registrar that such rights have been lawfully created or that he is lawfully entitled to enjoy or have the benefit of any of the rights referred to in subsection (1); or

(c) if such claims are the subject matter of any dispute or proceedings pending before any Court including a Native Court or of any arbitration proceedings instituted pursuant to the provisions of this Ordinance; or

(d) if a grant or lease has been issued in accordance with section 18 or 96(1) for the land over which such rights are claimed; or

(e) if the land over which such rights are claimed has been resumed by the Government under Part IV.

Transfer, etc., of native rights over land

7B.—(1) Any rights described in section 7A(1) which have been registered in the Register of Native Rights may be transferred or transmitted to, or inherited or acquired by, any native.

(2) The transfer, transmission, inheritance or acquisition of native rights over land under subsection (1) shall be in accordance with the system of personal law applicable to the community to which the native belongs and shall be regulated by rules made under section 213.

Remedies

7C.—(1) Any person—

(a) who is aggrieved by the decision of the Registrar, not to register any of the rights described in section 7A(1) or not to register any transfer, transmission, inheritance or acquisition of such rights in his favour; or

(b) who claims that any rights registered in favour of another person named in the Register belongs to him,

may apply to the High Court for an order that his rights be registered or that the register be rectified, as the case may be.

(2) The Registrar may, if he is satisfied that any entry or particular or right registered in the Register of Native Rights has been procured by fraud, misrepresentation or mistake, amend, rectify or delete the same, provided that—

(a) notice thereof shall be served by the Registrar in accordance with section 208 on any person affected by his decision; and

(b) the person affected may within 60 days from date of receipt thereof apply to the Court to quash or vary the decision of the Registrar.

Effect of registration

7D. Any person whose name appears in the Register of Native Rights as the person lawfully entitled to any such rights shall, until the contrary is proved to the High Court or an order pursuant to section 7C is made against him, or a decision is made by the Registrar under section 7C(2), be deemed to be the lawful owner of such rights.

Protection against the Government

7E. No claim to compensation shall lie and no action whatsoever shall be maintained against the Government or any officer of the Government, except for the remedies sought under section 7C on account of—

(a) the failure or refusal by the Registrar to register any rights described in section 7A(1);

(b) the decision to register any such rights;

(c) any error, discrepancy or inaccuracy contained in the Register maintained under section 7A(2);

(d) any act, omission or default on the part of the Registrar or any officer of the Government pertaining to the making of any entry, record or particular in the said Register; or

(e) the acceptance for the purpose of registration of any rights or transfer, transmission, inheritance or acquisition of such rights in the said Register, any information, data, document or instrument which the Registrar or any officer of the Government reasonably believes to be true or genuine.

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

8. Save as provided in section 9—

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

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

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

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

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

(f) upon any conviction of an offence under paragraph (c), the court shall have power to order the eviction of any person, being a non-native or a person claiming under a non-native in

possession or occupation of any land in relation to which the offence was committed, and may for such purpose by warrant addressed to any police officer order him to remove any such person as aforesaid;

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

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

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

Acquisition of land by non-natives

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

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

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

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

(d) where such non-native has been deemed to be a native, by the Majlis Mesyuarat Kerajaan Negeri, by notification in the

Gazette, in respect of any category of dealing over Native Area Land as stipulated in the notification;

[Sub. Cap. A50.]

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

[Added Ord. 18/71.]

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

Occupation of different classes of land

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

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

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

case of a first offence, a fine of one thousand ringgit and, in the case of a second or subsequent offence, imprisonment for two years and a fine of five thousand ringgit.

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

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

[Am. Cap. A42.]

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

[Am. Cap. A42.]

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

[Am. Cap. A42.]

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

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

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

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

[Sub. Cap. A119.]

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

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

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

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

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

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

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

PART III
STATE LAND AND THE ALIENATION THEREOF

Property in and control of State lands and waterways

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

Discretion to alienate

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

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

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

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

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

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

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

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

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

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

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

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

[Am. Ord. 18/71.]

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

[Sub. Ord. 18/71.]

(a) a natural person;

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

(c) a sovereign or government;

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

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

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

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

(6) Nothing in this section shall authorize the alienation of any State land whereon a planted forest has been established pursuant to a licence issued under section 65B of the Forests Ordinance [*Cap. 126*]

(1958 Ed.)], until and unless such land has been declared by the Minister to have ceased to be part of the permanent forests of the State, but no such declaration shall be made during the period of validity of such licence without the prior written consent of the holder thereof.

[Ins. Cap. A42.]

No acquisition of land by foreigners

13A. Notwithstanding anything in this Code or any other written law relating to land no estate, interest or right in any land may be held or acquired by any of the following:

(a) any person who is not a Malaysian citizen and not permanently resident in Sarawak;

(b) any foreign company, corporation, society, association or other body, which is not registered in Malaysia under any written law applicable thereto; and

(c) any person or body corporate which is a trustee under a trust any beneficiary of which is—

(i) a person who is not a Malaysian citizen and not permanently resident in Sarawak; or

(ii) a foreign company, corporation, society, association or other body which is not registered in Malaysia under any written law applicable thereto.

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

No acquisition of land by foreigners without consent of Minister

13B. Without prejudice to the generality of section 13A, an estate, interest or right in any land may, with the consent of the Minister, be acquired by any of the following:

[Am. Ord. No. 5/90.]

(a) in the case of any company, corporation, society, association, bank or other body—

(i) if it is registered in Malaysia under any written law applicable thereto; and

(ii) if the shares that in aggregate carry the right to exercise or control the exercise of more than fifty per cent of the voting power at any general meeting of the company, corporation, society, association, bank or other body, are held by persons who are non-Malaysian citizens;

(b) any foreign government or sovereign of any foreign country; and

(c) any person or body corporate which is a trustee under a trust, any beneficiary of which is—

(i) a company, corporation, society, association, bank or other body if the shares that in aggregate carry the right to exercise or control the exercise of more than fifty per cent of the voting power at any general meeting of the company, corporation, society, association, bank or other body, are held by persons who are non-Malaysian citizens; or

(ii) any foreign government or sovereign of any foreign country.

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

Prohibitions and restrictions against foreigners to acquire land by way of transfer, sublease, transmission and dealings with land other than a charge

13C. Notwithstanding this Code or any other written law relating to land the prohibitions and restrictions imposed by sections 13A and 13B shall apply to any transfer, sublease or transmission under Part VII or any dealing with land other than a charge: Provided that the Minister may by notification in the *Gazette* exempt any person, company, corporation, society or association referred to in section 13A from this section in relation to the acquisition of interest

in land by way of a sublease subject to such terms and conditions as may be prescribed by the Minister.

[Ins. Ord. No. 2/74; Am. Ord. No. 5/90.]

Sections 13A, 13B and 13C not applicable to interest acquired before the commencement of the Land Code (Amendment) Ordinance, 1974 and to the Federal and State Governments and statutory bodies

13D.—(1) Nothing in sections 13A, 13B and 13C shall apply to—

(a) any estate, interest or right lawfully acquired prior to the commencement of the Land Code (Amendment) Ordinance, 1974 *[Ord. No. 2/74]*;

(b) any estate, interest or right in any land acquired directly from the Government of Sarawak in consideration of the surrender to the State of any land, or in the course of the subdivision or partition of any land:

Provided however that any subsequent dealings by persons other than the Government of Sarawak shall be bound by sections 13A, 13B and 13C;

(c) any land or estate or interest therein acquired by any bank or finance company or institution in Sarawak licensed under the Banking and Financial Institutions Act 1989 *[Act 372]*, where such land, or estate or interest therein has been vested in such bank or finance company or institution pursuant to an Order of the High Court made under section 50 (6)(c) of the said Act.

[Ins. Cap. A17.]

(2) Nothing in sections 13A, 13B and 13C shall apply to the Federal Lands Commissioner or any Federal Government or State Government statutory bodies or agencies.

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

Foreign investment in special development area

13E.—(1) Where it appears to the Majlis Mesyuarat Kerajaan Negeri that—

(a) it would be of economic benefit or an advantage to the State; or

(b) it would encourage or facilitate foreign investment into the State,

that any area of State land or any area of alienated Mixed Zone Land is to be developed or has been developed for any of the following purposes, *viz.*—

(i) holiday resort or such other projects for the promotion of the tourism industry in Sarawak;

(ii) recreational centre;

(iii) high-rise commercial complexes;

(iv) industrial estates, including free zones, established under the Free Zones Act 1990 [*Act 438*], and housing accommodation for such industrial estates and free zones; or

(v) special residential areas for accommodation of foreign investors or foreign workers,

the Majlis Mesyuarat Kerajaan Negeri may, by notification in the *Gazette*, declare such area to be a Special Development (Exemption from Prohibition of Foreign Interests) Area, subject to such terms and conditions as may be stipulated in the notification.

(2) Notwithstanding anything to the contrary in this Code or other written law relating to land, a foreign person, foreign company, foreign corporation or other foreign body may acquire an estate, interest or right in—

(a) any land within a Special Development (Exemption from Prohibition of Foreign Interests) Area;

(b) any of the individual parcels within a building which has been sub-divided pursuant to the Strata Titles Ordinance,

1995 [*Cap. 18*], or the former Strata Titles Ordinance, 1974 [*Ord. No. 3/74*]; and

(c) any land with a building thereon for residential purpose and the market value of such land and building is not less than such amount as may be determined by the Minister by a direction *published in the *Gazette*.

[Sub. Cap. A29; Cap. A61.]

* *Not less than RM300,000 (Ringgit Malaysia three hundred thousand) see Swk. L.N. 114/98.*

Penalties for dealing in contravention of sections 13A, 13B, 13C and 13E

13F.—(1) Any instrument or agreement purporting to transfer or convey any right, interest or estate in land to or to vest or confer any such right, interest or estate on, any foreign person, foreign company, foreign corporation, or other foreign body referred to in section 13A, in contravention of the provisions of section 13A, 13B, 13C or 13E, shall be deemed to have been entered into for an illegal consideration and shall be void, and any consideration provided or furnished pursuant thereto shall not be recoverable in any court nor shall any relief be afforded to any person claiming that any such consideration promised has not been paid or furnished.

(2) Where an instrument executed in contravention of section 13A, 13B, 13C or 13E has been registered under Part VII, the Registrar shall make an endorsement on the appropriate Register cancelling the registration thereof. Upon cancellation, any right, interest or estate acquired by virtue of the registration of that instrument shall cease forthwith.

(3) The registered proprietor of any land and any person who is a party to any instrument or agreement of the nature referred to in subsection (1) shall be guilty of an offence, and, upon conviction, shall be liable to a fine of not exceeding fifty thousand ringgit and, in

the case of a continuing offence, to a further penalty of five hundred ringgit per day for every day during which the offence continues.

[Added Cap. A50.]

14. *[Repealed by Ord. No. 18/71].*

Protection of native customary rights

15.—(1) Without prejudice to sections 18 and 18A, where native customary rights have been lawfully created over State land, such land shall not be alienated or be used for a public purpose until all native customary rights have been surrendered or terminated or provision for compensating the persons entitled thereto have been made.

[Sub. Cap. A95.]

(2) (a) The surrender of native customary rights under subsection (1) shall be effected by way of a deed of surrender, in such form as may be approved by the Director, and shall be signed by the Superintendent and the person whose rights are to be surrendered to the Government for the purposes of subsection (1).

(b) Prior to the signing of the deed referred to in paragraph (a), the Superintendent shall cause a notice to be posted at the District Office and at any other convenient places in the neighbourhood where the land is situated and a copy thereof served on the Headman of the area where the land is located, stating that any person who has any objection to the intended surrender of the native customary rights over the land described in the notice by reason that he had also lawfully created such rights over the said land and ought to be compensated, shall, within 21 days from date of posting of the notice in the *Gazette*, submit his objection in writing to the Superintendent.

(c) Where the Superintendent receives any objection filed pursuant to paragraph (b), he shall determine the validity or otherwise of such objection, and if he overrules the same, he shall notify the objector in writing.

(d) The deed of surrender shall not be signed by the parties referred to in paragraph (a), until a lapse of seven days after the Superintendent has notified the objector of his decision under paragraph (c).

(e) Where the Superintendent upholds the objection and the objector agrees to the surrender of his rights and compensation to be paid to him, the Superintendent shall include the name of the objector as a party to the deed of surrender.

(f) Where the objector whose claim is upheld refuses to surrender his native customary rights, the matter shall be referred to the Minister who may direct that his rights be terminated in accordance with the provisions of this Code and compensation to be paid to him, or that the land over which he had lawfully created native customary rights, be excluded from the process of alienation.

(3) Where the provisions of this section have been complied with in the surrender of native customary rights, the Government shall not be liable—

(a) for any amount of compensation other than that stipulated in the deed of surrender; or

(b) to pay any compensation to any person who fails to raise any objection against the surrender in accordance with the provisions of the section; or

(c) to any person who, subsequent to the execution of the deed of surrender, claims to have rights over the area referred to in the deed of surrender or to any heirs, beneficiaries or successors in title or estate of the persons who are parties to the said deed.

[Ins. Cap. A95.]

(4) The granting of permits to occupy Native Customary Land under rules made under section 213 shall not be deemed to be inconsistent with subsection (1).

Alienation of land surrendered, reverted or resumed to the Government

15A.—(1) Subject to the direction of the Minister and the provisions of Part III, the Director may—

(a) alienate any land which has been reverted to the Government pursuant to section 5(3) and (5); or

(b) re-alienate any alienated land which has been surrendered to or resumed by the Government under Part IV, for any of the purposes specified in section 46,

to any person, corporation or body of persons approved by the Minister.

(2) Whenever any land referred to in subsection (1) is alienated or re-alienated, as the case may be, such land shall not at any time be used for any purpose other than the development or undertaking which in the opinion of the Minister is for the benefit of the State or any part thereof or of the public generally or any class of the public.

[Ins. Cap. A23.]

Special condition in relation to alienation of town building lots

16. Any alienation of town land for building purposes shall be subject to the following special conditions, namely—

(a) that buildings shall within one year from the date of registration of the document of title, or such extended period as may be therein mentioned, be erected on such land;

(b) that, whenever any written law requires that the plans of any such buildings shall be approved by a local authority, such buildings shall be erected in accordance with the approved plans. A breach of this condition may entitle the Government to re-enter, and no claims shall lie for the refund of any premium, rent or other consideration which may have been furnished. For the purpose of any re-entry under this paragraph, section 33 shall, with the necessary modifications, apply.

[Am. Ord. No. 8/88.]

Reversion to Government of unimproved suburban land

17. In the absence of any special conditions to the contrary contained in the document of title, the Government may re-enter and resume possession of lots of suburban land which remain unoccupied and unimproved for two years from the date of registration of the document of title, and no claims shall lie for the refund of any premium, rent or other consideration which may have been furnished. For the purposes of any re-entry and recovery of possession under this section, section 33 shall, with the necessary modifications, apply.

Penalties in respect of offences under section 16 or 17

17A. Any person who contravenes or neglects or fails to comply with section 16 or 17 shall be guilty of an offence : Penalty, a fine of two thousand ringgit and, in the case of a continuing offence, to a further fine of one hundred ringgit in respect of each day on which the offence continues.

[Ins. Ord. No. 8/88.]

Grants to natives

18.—(1) Where the Director, subject to any direction from the Minister, is satisfied that a native has occupied and used any area of unalienated State land in accordance with rights acquired by customary tenure amounting to ownership of the land for residential or agricultural purposes, he may, subject to section 18A, issue to the native a grant in perpetuity of that area of land free of premium rent and other charges.

[Am. Ord. No. 20/63; Ord. No. 2/74; Cap. A50.]

(2) A grant in perpetuity under this section shall be made for residential or agricultural purposes, as the case may be, subject to such conditions, obligations and restrictions, as the Director on the direction of the Minister, may impose.

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

(3) Where land granted under this section is transferred or subleased to a person other than a person who, if the proprietor had died intestate immediately prior to the date of the transfer or sublease, would have inherited the land, or where the use of such land is changed from residential or agricultural purposes to any other purpose, the appropriate premium, if any, rent and other charges under this Code shall be payable as if the land had been first alienated on the date of transfer or sublease or change of use, as the case may be.

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

(4) All land which immediately prior to the commencement of the Land Code (Amendment) Ordinance, 1963 [**Ord. No. 20/63**], was held under a lease issued under section 41, or under any similar provision of any Ordinance repealed by the Principal Ordinance or of any Order of the Rajah, shall, on the commencement of that Ordinance, be deemed to be held under a grant issued under this section :

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

Provided that this subsection shall not apply to any land held or deemed to be held under a grant issued under this section the use of which prior to the commencement of the Land Code (Amendment) Ordinance, 1974 [*Ord. No. 2/74*], has been changed from agricultural purposes to any other purpose pursuant to the former section 18(3) as enacted by the Land Code (Amendment) Ordinance, 1963 [*Ord. No. 20/63*].

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

Issue of leases in Development Areas

18A.—(1) Where unalienated State land, over which a native who had acquired ownership thereof by the exercise of native customary rights under section 5, is within—

(a) a Development Area declared under section 11(1) of the Land Custody and Development Authority Ordinance, 1981 [*Ord. No. 4/81*]; or

(b) an area designated as a Sarawak Land Development Area under the Schedule to the Lembaga Kemajuan Tanah Sarawak (Sarawak Land Development Board) Order, 1972 [*Swk. L.N. 17/72*],

the Superintendent may issue a lease over such land for a term of not more than sixty years, on such terms and conditions as he may impose, to a body corporate approved by the Minister.

(2) The Superintendent may amalgamate all land, within a Development Area referred to in subsection (1), over which natives have acquired ownership, or over such land and any adjoining State land, into one parcel of land, for the purpose of granting a single document of title to the body corporate approved by the Minister.

(3) On the expiry of a lease issued to the body corporate under subsection (1), any native whose land had been included in such a lease may apply to the Superintendent for the issue to him of a grant over his land or any part thereof. The Superintendent may, subject to the direction of the Director, issue such grant to the native upon such terms and conditions as he deems fit to impose.

(4) For the purpose of this section, “body corporate” shall mean a body corporate established under State law or a company incorporated under the Companies Act 1965 [**Act 125**], and which has been deemed, pursuant to section 9(1)(d), to be a native for the purpose of or relating to a dealing under this Code, in or over Native Area Land.

[Added Cap. A50.]

Prohibition against the owning of more than *5,000 acres

19.—(1) No document of title may be issued for an area exceeding five thousand acres, nor may any person either alone or jointly with another or others, hold more than a total area of *five thousand acres without the permission in writing of the Minister.

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

(2) Where in any particular case an area exceeding five thousand acres is held in contravention of the provisions of subsection (1), the Government may re-enter and resume possession of so much of the excess area as may be considered necessary, and no claims shall lie for the refund of any premium, rent or other consideration which may have been furnished.

* Roughly 2023.43 hectares see the Weights and Measures Act 1972 (Act 71).

Form of grant and lease

20.—(1) Every grant or lease of State land shall be substantially in such one of the Forms in the First Schedule as may be appropriate and shall be sealed and signed by the Superintendent or by the Director, as the case may require. Every such grant or lease shall be prepared in duplicate and a diagram of the land shall be annexed to the part intended to become the issue document of title.

(2) Where an applicant for a grant, lease or provisional lease of State land has died prior to the issue of a document of title in his

favour, the document of title may be issued either in the name of the applicant or in the names of those entitled to a grant of probate or letters of administration of his estate under the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*].

(3) Both parts of every grant or lease of State land shall, after completion in accordance with subsection (1), be sent to the Registrar and registered by him in the Register in accordance with Part VII.

(4) [*Repealed by Ord. No. 2/74*].

21. [*Repealed by Ord. No. 18/72*].

Rent for Land alienated before 1st January, 1958

[Sub. Cap. A50.]

22.—(1) [*Deleted Ord. No. 18/71*].

(2) Every alienation of State land for a term made prior to the 1st day of January, 1958, not being an alienation made in pursuance of any written law which provided that no rent should be payable, which either failed to provide for the payment of any rent or provided for a rent which was not expressed by reference either to a sum of money or a peppercorn shall be deemed for all purposes to have contained a provision that as from the 1st day of January, 1958, rent expressed in terms of one peppercorn per year should be payable to the Government.

Liability for rent

23. When land is held by co-proprietors they shall be jointly and severally liable to pay the rent.

Payment of annual rent and premium

24.—(1) Annual rent payable in respect of any lease, and in cases where instalments of premium are to be paid, the amount of

such instalments, shall be paid on or before the due date, as stipulated in subsection (2), for the payment thereof.

(2) The due date for payment of rent or instalment of premium, as the case may be, shall be the anniversary date of the registration of the lease or the date stipulated by the Superintendent as the annual due date for payment of rent or instalment of premium.

(3) If payment of rent or instalment of premium is not received by the due date for payment thereof, such surcharge of the annual rent or instalment of premium, as the case may be, as may be prescribed by rules made under this Code shall be imposed.

(4) Where rent or any surcharge thereon imposed under subsection (3) is not paid by the registered proprietor, without prejudice to section 33 or 122, the Superintendent shall be entitled to recover such rent or surcharge by way of civil proceedings.

(5) Notwithstanding anything herein contained, a proprietor of land may pay his rent or instalment of premium before the due date for payment thereof:

Provided that the Superintendent shall not be obliged to accept payment of rent or instalment of premium for more than three years in advance.

(6) For the purpose of this section “lease” includes a grant.

[Sub. Cap. A50.]

Sub-division

25. No proprietor of land may sub-divide his land and transfer or sublease any sub-division thereof except in accordance with Part X and any rules made thereunder and subject to such terms and conditions as may be imposed by the State Planning Authority for such sub-division.

[Sub. Cap. A50.]

Renewals

26. No person claiming under a document of title shall, in the absence of contrary provision contained in that document of title, have any right, upon the expiration of the term secured thereunder, to any renewal, whether upon the same conditions or otherwise, of the estate or interest thereby secured:

Provided that, subject to any rules which may be prescribed, nothing in this section shall be deemed to prohibit a re-alienation by the Director on such terms and conditions as he may think fit of the estate or interest aforesaid.

No compensation for improvements

27. No outgoing proprietor or other person shall have any right or claim against the Government in respect of the value of any improvements that may be in existence on the land at the date of the expiration of the estate or interest under which that land was held.

Survey required before alienation

28.—(1) No State land shall be alienated under this Code unless and until the survey of the land has been completed to the satisfaction of the Superintendent:

Provided that, when the immediate survey of any State land is impracticable, the Superintendent may order that a provisional lease in Form C in the First Schedule be executed in favour of the person entitled.

(2) Every provisional lease shall specify the approximate extent and area of the land included therein but shall not entitle the holder to a grant or lease of the whole of the area specified.

(3) Notwithstanding the payment by him of any rent in respect of the area stated, the registered proprietor of any provisional lease shall have no right to registration of a lease in Form B in the First Schedule for an area equal to the area stated to be alienated if on survey such area is found not to be available.

(4) Save where the context otherwise requires, this Code in connection with leases shall apply to provisional leases and references to a lease shall include a provisional lease.

Temporary licences

29.—(1) Subject to this Code and any rules made hereunder, the Superintendent may permit the temporary occupation of State land under licence.

(2) No such licence shall, notwithstanding anything contained in any written law to the contrary, be registerable in the Register nor be transmissible or transferable by operation of law or otherwise.

(3) Every such licence shall be substantially in the form and subject to the terms and conditions prescribed by rules made under this Code and shall be subject to such other terms and conditions, not inconsistent with this Code and the rules made hereunder, as the Superintendent may deem fit to impose.

Revision of rent

30.—(1) Subject to subsection (5), the Director may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, from time to time revise in accordance with the following provisions of this section the rents payable in respect of alienated lands within the State.

(2) Any revision under this section shall extend to all alienated lands within the State except land of any class or description which the Majlis Mesyuarat Kerajaan Negeri may think fit to exempt therefrom.

(3) On any revision under this section, the Director may—

(a) increase or reduce the rents of all lands to which the revision extends; and

(b) make different provision for different classes or descriptions of such lands.

(4) In the exercise of the powers conferred by this section the Director shall take no account of increases in land values attributable to improvements.

(5) Revisions of rent under this section shall be made at such times as the Director may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, determine, but—

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

(a) in the case of the first such revision, not so as to have effect earlier than the beginning of the year 1974; and

(b) in the case of any subsequent revision, not so as to have effect before the expiry of a period of fifteen years beginning with the most recent date as from which any rents in the State were revised under this section.

(6) Whenever a revision is proposed pursuant to this section, the Superintendent shall by notice in the *Gazette* or by notice to the registered proprietor given not less than six months prior to such 1st of January as from which it is proposed that it shall become effective, give notice of the proposed revision. Any such notice shall specify the revised rent proposed.

(7) The acceptance by or on behalf of the Government of any rent payable under a document of title in which the rent is liable for revision or any failure by the Superintendent to give notice of a proposed revision shall not be held to have operated or to operate hereafter as a waiver by the Government of its right to have such rent revised.

Restriction on transfer

31.—(1) No land exceeding one hundred acres* in area whether contained in one document of title or not shall be transferred, subleased, charged or otherwise disposed of without the consent of the Superintendent.

(2) Any person aggrieved by any decision of the Superintendent under subsection (1) may, in accordance with the

Administrative Appeals Rules [*Vol. VII (1958 Ed.) p.5.*] appeal to the Minister within twenty-one days after the date when such instrument was refused registration.

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

* Roughly 40.4686 hectares—See *Weights and Measures Act 1972 (Act 71)*.

Implied conditions and obligations affecting land

32.—(1) In the absence of any express provision to the contrary in the document of title to any land whether alienated before or after the 1st day of January, 1958, there shall, by virtue of this section, be implied in such document of title the following conditions, obligations and restrictions—

(a) that the rent, if any, and all rates, taxes and other dues payable to Government in respect of the land shall be a first charge on the land and shall be duly paid to the person and at the time and place prescribed for that purpose;

(b) that all boundary marks by which the boundaries of the land are defined shall be duly maintained by the proprietor or occupier;

(c) that no portion of the land shall be used for the burial of a human body or any part thereof without the authority of the Resident;

(d) that the Government has the right at all reasonable times to enter upon the land for the purpose of extracting therefrom and taking away any earth, gravel, clay, stone, coral, shell, guano, sand or lime upon payment to the proprietor or occupier of reasonable compensation for any damage caused to property;

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

(e) that any person, holding the right to do so under a valid document of title or licence granted by the Government under any written law relating to mining, may—

(i) enter on the land for the purpose of extracting therefrom mineral oil and such other commodities required for such purpose; and

(ii) do on the land such acts incidental to such purpose as may be authorized by such lease or licence,

upon payment to the owner or occupier thereof of reasonable compensation for any damage done to the property;

(f) that all land which was alienated for agricultural purposes shall be cultivated in accordance with section 39;

(g) that the land shall be subject to all the rights of the Government specified in Part IV;

(h) that the land shall be subject to the rights and conditions more particularly set forth in sections 33 to 37 inclusive;

(i) that the land shall not at any time be used for any purpose or in any manner prohibited by or under any written law; and

[Am. Cap. A50.]

(j) that the proprietor shall not cause or permit any right, interest or estate in the land to be held or acquired or enjoyed by a foreign person, foreign company or foreign corporation or foreign body in contravention of sections 13A, 13B, 13C, 13D and 13E.

[Added Cap. A50.]

(2) All the aforesaid conditions, obligations and restrictions shall run with the land and shall bind the proprietors or occupiers thereof for the time being.

(3) If any dispute should arise as to what is reasonable compensation within the meaning of subsection (1), the person

entitled thereto may require the Superintendent to refer the matter to arbitration under section 212.

Rock material not to be removed from land except under licence

32A.—(1) No person, whether or not he is the lawful proprietor or occupier of the land, may remove any rock material or any commodities manufactured therefrom on such land, except under and in accordance with a licence issued to him by the Superintendent.

(2) Licences issued under subsection (1) shall be subject to such terms and conditions as may be imposed including the payment of such royalties as the Minister may approve.

[Am. Ord. No. 3/79.]

(3) Any person removing any rock material or any commodities manufactured therefrom from any land without a licence or contrary to any of the terms or conditions of a licence issued under this section shall be guilty of an offence: Penalty, a fine of five thousand ringgit.

[Ins. Ord. No. 2/74; Am. Ord. No. 3/79 & Cap. A50.]

Re-entry in case of breach or default

33.—(1) There shall, by virtue of this section, be implied in every document of title the condition that in every case of a breach of, or a default in, the observance or compliance with any of the conditions, restrictions or other obligations in the said document of title, whether expressed therein or contained in or implied by this Code, and such breach or default is not remedied in accordance with subsection (2), the Director or any other officer authorized by him may, subject to this section, and with the approval of the Minister, on behalf of the Government, declare the estate or interest secured by that document of title to be forfeited and re-enter the land or the portion thereof in respect of which the breach or default has occurred.

(2) Where there is any breach or default in the observation of or compliance with any condition, restriction or other obligation expressed in a document of title or contained in or implied by this

Code, the Superintendent, with the concurrence of the Director, may serve on the registered proprietor of the said land and any person having a registered interest in the land, a written notice requiring him to remedy the breach or default within a period of not less than ninety days from the date of service of the notice thereof and to pay a penalty for such breach or default of not exceeding ten thousand ringgit and, in the case of a continuing breach or default, to pay a further penalty not exceeding five hundred ringgit per day from the date of service of notice thereof till the date when the breach or default is remedied.

(3) (a) The registered proprietor and any person having a registered interest in the land may, within twenty-eight days from date of service on him of a notice referred to in subsection (2), appeal in writing to the Director either on the ground that there was no breach or default committed by him or that the penalty imposed was excessive, or on such other grounds as would entitle the Director to direct a withdrawal of the notice.

(b) Upon consideration of the appeal, the Director may reaffirm the decision of the Superintendent, modify or vary that decision or the penalty imposed or direct a withdrawal of the notice.

(c) Where the Director decides to reaffirm the decision of the Superintendent, or to modify or vary the decision, the registered proprietor and any person having a registered interest in the land shall, within sixty days from the date of receipt of the decision of the Director, remedy the breach or default as specified in the notice issued by the Superintendent under subsection (2) or with such modification or variation thereto as may be directed by the Director.

(4) (a) Upon service of the notice under subsection (2), the Superintendent shall cause to be made an endorsement on the Register to the effect that the said land is subject to action taken under this section for breach of, or a default in, the observance or compliance with any of the conditions, restrictions or other obligations in the document of title, and until and unless the endorsement is cancelled, the same shall operate as a caveat against any dealing affecting the land.

(b) Where the breach or default has been remedied in compliance with the notice issued by the Superintendent under

subsection (2), he shall cancel or cause to be cancelled the endorsement made pursuant to paragraph (a).

(5) Where the registered proprietor or the person having a registered interest in the land:

(a) fails or refuses or neglects to remedy the breach or default within the period stipulated in subsection (2) or (3) or within such extended period as the Director may permit; or

(b) fails to pay the full penalty imposed under subsection (2),

the Director, after consulting the Minister, may make an Order declaring that the land is forfeited to the Government, and shall cause a copy of the said Order to be served on the registered proprietor and any other person having a registered interest in the land and shall further cause a copy of the said Order to be registered under this Code.

(6)(a) Any person who was the proprietor of the land immediately before its forfeiture under this section may, within six months from the date thereof, apply in writing to the Minister for the annulment of the forfeiture.

(b) The Minister may, in his absolute discretion, refuse such application or if he approves it, the approval shall be subject to the payment by the applicant—

(i) if the forfeiture was for non-payment of rent, of such penalty not exceeding ten times the sum which he was required to pay under the notice served upon him by the Superintendent under subsection (2), as the Minister may impose; or

(ii) if the forfeiture was for breach or default in the observance of or compliance with any condition, restriction or other obligation in the document of title, of such amount as the Minister may determine in respect of the expenses occasioned by the forfeiture and having regard to any gain derived from the breach or default and the nature thereof; or

(iii) if the breach or default is consequent upon the construction or erection of an unauthorized building or structure on the land, the full costs and expenses estimated by the Minister for the demolition of the building or structure, unless the person applying for the annulment of the forfeiture demolishes the building or structure at his own costs and expenses.

(7) The acceptance of any rent or premium by or on behalf of the Government shall not operate or be deemed to have operated as a waiver of the right of forfeiture and re-entry of the land, under this section.

[Sub. Cap. A50.]

Re-entry of land within special development area

33A.—(1) Where the proprietor of any land, within an area which has been declared to be a special development area pursuant to section 11—

(a) had obtained approval under the Buildings Ordinance, 1994 [*Cap. 8*], for the erection of a building on his land, but—

(i) fails, within a period of two years from date of such approval, to commence the construction of the building; or

(ii) after having commenced the construction thereof, abandons, ceases or discontinues works necessary for the completion of the construction of the building; or

(b) has on his land a building which has been left in a state of ruin, disrepair or collapse so as to cause nuisance, danger or inconvenience to the public,

the Superintendent may, with the approval of the Director, by notice served on the proprietor, require him within such period (being not less than sixty days) as may be stipulated in the notice—

(A) to commence the construction of the building;

(B) to resume works for the construction thereof;

(C) to continue such works until the due completion of the building; or

(D) to demolish any building which has been left in a state of ruin, disrepair or collapse.

(2) In the event that the proprietor fails to comply with the requirements of the notice issued pursuant to subsection (1), the Superintendent shall be entitled to—

(a) enter into possession of the land;

(b) demolish any structure, including the uncompleted building thereon or to take such steps as may be necessary to beautify, landscap or improve the land; or

(c) carry on such works on the said land as the Superintendent deems necessary to remove any nuisance, health or fire hazards, annoyance or inconvenience that may be caused to the public by reason of any structure, uncompleted building or vegetation thereon,

and the Superintendent shall recover the cost and expenses thereby incurred from the proprietor as a civil debt.

(3) If the proprietor shall fail to pay the cost and expenses referred to in subsection (2) within thirty days from date of the notice being served on him by the Superintendent, the Superintendent shall be entitled to forthwith re-enter the land in accordance with this section.

(4) On the date of re-entry of the land, the Superintendent shall cause to be entered on the Register a memorial that the land had been re-entered by him on behalf of the Government, and upon the entry of such memorial, the interest and estate of the proprietor and any other interest registered against the land, shall be terminated, and the issue of document of title for the land shall be deemed to have been cancelled and no claims shall lie against the Government for the refund of any rents or other moneys paid in respect thereof.

(5) The Superintendent shall, upon the entry of the memorial on the Register, forthwith issue the certificate of re-entry which shall be served upon the proprietor and published in the *Gazette*.

(6) The proprietor and any person having an interest registered against the land at the date of the re-entry and resumption of possession by the Government, may within a period of sixty days from the date of the publication of the certificate in the *Gazette* pursuant to subsection (5), petition to the Majlis Mesyuarat Kerajaan Negeri to grant him or them relief against forfeiture.

[Am. Cap. A28.]

(7) Section 33 (7) shall, with the necessary modifications, apply in regard to any petition presented pursuant to subsection (6).

[Ins. Cap. A17.]

Right of way

34.—(1) All land shall be held subject to an implied right—

(a) that the proprietor or occupier of land adjoining or in the neighbourhood who has no other reasonable means of access from his land to a public road, way, river, creek or foreshore;

(b) that the holder of a licence or permit to take rock material or forest produce who has no other reasonable means of access from a public road, way, river, creek or foreshore to such rock material or forest produce; and

(c) that the holder of a mining lease or prospecting licence who has no other reasonable means of access from a public road, way, river, creek or foreshore to land over which mining or prospecting rights have been granted to him under such lease or licence,

shall have a right of way for all reasonable purposes over such land and to pass and repass with or without boats or vehicles.

[Sub. Ord. No. 18/71.]

(2) If the persons concerned cannot agree among themselves to the location of the path or track which will constitute a right of way, the matter shall be referred to the Superintendent by the person or persons requiring the right of way, and the Superintendent shall have power to decide the matter.

(3) The Superintendent shall have power to declare the terms upon which a right of way shall be granted under this section and may impose such conditions as to formation and maintenance as may be considered necessary. Where the right of way is granted over an existing path or track which has been formed or maintained at the expense of the person over whose land it passes, the Superintendent may require the person to whom the right of way is granted to pay to such other person such reasonable sum as may be assessed by way of compensation.

(4) In any case where a right of way for the benefit of the proprietors or occupiers of adjoining land has been created under this section, the Superintendent may issue a right of way certificate which shall—

(a) specify the land served by the right of way and the land over which it exists;

(b) have endorsed thereon or refer to a diagram showing the land served by the right of way and the land over which it exists; and

(c) be noted on the appropriate maps and plans in the Land and Survey Office and be registered in the Register in accordance with section 112.

(5) Compensation for damage, if any, to trees or other property belonging to the person or persons through whose land a right of way is made shall be primarily assessed by mutual agreement between the parties concerned and, in the absence of agreement, the matter shall be referred to the Superintendent and the compensation assessed by him.

(6) Any person aggrieved by any decision of the Superintendent under this section may, within thirty days of being informed of such decision, appeal to the High Court and for the

purpose of further appeal any decision of the High Court shall be deemed to be made in a civil proceeding.

Right of neighbouring owners to drainage and irrigation

35.—(1) All land shall be held subject to an implied right of the proprietors or occupiers of neighbouring land to drainage and irrigation.

(2) Every proprietor or occupier of land shall be jointly responsible with the neighbouring proprietors or occupiers for the proper maintenance of any party drains or irrigation ditches which are upon his land or are constructed after the 1st day of January, 1958, and which such proprietor or occupier uses or from which he derives some benefit.

(3) If such proprietor or occupier refuses or fails to maintain any such party drain or ditch, a neighbouring proprietor or occupier may, after giving reasonable notice when practicable of his intentions so to do, enter upon the land and, at the joint expense of the proprietors or occupiers referred to in subsection (2), do such maintenance work as may be necessary.

(4) If a proprietor or an occupier of any land cannot efficiently drain his land by any existing party drain or irrigation ditch, and any neighbouring proprietors or occupiers refuse to allow him to construct suitable drains or ditches on their land, the Superintendent may order such neighbouring proprietors or occupiers to permit the construction, at the expense of the person requiring them, of such drains or ditches as may be necessary.

(5) In any case where a party drain or irrigation ditch has been constructed under the provisions of this section, the Superintendent may issue a certificate in similar form to that provided for the right of way certificate under section 34, with the necessary modifications, and such certificate shall be noted on the appropriate maps and plans and duly registered in the Register.

(6) The maintenance of, or construction of, drains or ditches under subsections (3) and (4) shall be carried out without any more damage to property and crops than is unavoidable, and compensation shall be payable to the proprietor or occupier of the land whose

property or crops are damaged, except where he has refused or neglected to repair a ditch or drain which it is his duty to maintain.

(7) Any dispute between the parties concerned, in relation to this section, shall be referred to the Superintendent for his consideration and decision.

(8) Any person aggrieved by an order under subsection (4), or by any decision under subsection (7), may, within thirty days of being informed of such decision, appeal to the High Court and for the purpose of further appeal any decision of the High Court shall be deemed to be made in a civil proceeding.

Right to prospect for minerals

36.—(1) All land shall be subject to the right of the Government to prospect for minerals and to the right conferred on any person, by licence issued under any written law for the time being relating to mining, to prospect for minerals upon payment to the proprietor or occupier of compensation for disturbance or any damage caused to property.

(2) No person may remove from any land whether or not he is the proprietor or occupier thereof any metals, minerals or other substances in respect of which a lease or licence is required under any written law for the time being relating to mining, except in accordance with such law.

Government's right of drainage, etc.

37. All land shall be subject to the following implied rights reserved to the Government—

(a) the right, without payment of compensation therefor, of making upon all land, drains, sewers and ditches, of laying down pipes and cables for water, gas or electricity, of erecting poles and wires for electric power communication towers, and of using, repairing and maintaining the same:

[Am. Cap. A95.]

Provided that if such works interfere with improvements, permanent buildings or cultivated ground, such compensation shall be allowed for disturbance or damage as shall be determined by the Superintendent;

(b) the right of the Government exercisable through the Superintendent to cause any tree or trees to be felled, trimmed or removed. Compensation shall be assessed and awarded by the Superintendent for any such felling, trimming or removal :

Provided that no compensation shall be paid in respect of any tree not in existence before the 1st day of January, 1958, and standing within *thirty-three feet of the centre line of any road maintained by the Government or a local authority;

(c) the right of the Government, exercisable through all officials, contractors and workmen who are duly authorized, to free access at all reasonable times for any of the purposes specified in paragraphs (a) and (b) or for any other authorized purpose.

* Roughly 10.0584 metres — see the *Weights and Measures Act 1972 (Act 71)*.

Margin of land along all rivers, sea coasts, roads, borders, etc., reserved to the Government

[Ins. Cap. A119.]

38.—(1) Save where express provision is made to the contrary in any document of title by any general or special direction of the Minister, all unalienated land situate within the limits stated below shall be reserved to the Government, and no one may acquire a title to the same or any part thereof—

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

(a) all land adjoining the sea coast within *sixty-six feet of mean high water mark;

(b) all land within *sixty-six feet on each side along the banks of all navigable rivers, streams, canals or creeks:

Provided that, where the width of any such stream, canal or creek is less than *thirty-three feet, the reserve on each bank shall be twice the width of the stream, canal or creek;

(c) all land within *thirty-three feet on either side of the centre of all roads maintained by the Government, or a local authority, to which the public has access as of right;

(d) all land within five hundred metres of the borders of the State,

[Ins. Cap. A119.]

* Roughly 20.1168 and 10.0584 metres respectively — *see the Weights and Measures Act 1972 (Act 71).*

(2) Any grant, lease or other alienation made after the 1st day of January, 1932, shall, where the land adjoins the seashore, **or border of the State**, a navigable river, stream, canal, creek or existing road, be deemed to have reserved to the Government the areas of land stated in subsection (1), and the boundary of the land in such grant, lease or other alienation shall be determined accordingly, notwithstanding that the seashore, **or border of the State**, or a navigable river, stream, canal, creek or road is stated to be the boundary.

[Ins. Cap. A119.]

(3) Any owner of land adjoining an area of land reserved to the Government under subsections (1) and (2) may be permitted to use so much of the land reserved to the Government as may be reasonably necessary for the purpose of landing stages or rights of way, and a licence or right to use any such area for the purpose of erecting and using a wharf or landing stage may also be granted to any person whether an owner of adjoining land or not. The permission to use any

such area in the manner so provided for shall be at the pleasure of the Majlis Mesyuarat Kerajaan Negeri and may be at any time withdrawn.

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

(4) Any building erected, or crop planted, upon the land reserved to the Government under subsections (1) and (2) shall **without prejudice to subsection (6)** be liable to be removed by order of the Director without payment of any compensation.

[Ins. Cap. A119.]

(5) In any case in which the Minister has given a direction for the alienation of land reserved under subsection (1), he shall also direct whether such land shall become Mixed Zone Land or Native Area Land and, in any such case, such land shall immediately prior to the alienation thereof become Mixed Zone Land or Native Area Land, as the case may be. No such direction need be published in the *Gazette* but, upon registration of any alienation under this section, the Registrar shall make an appropriate entry in the Register denoting whether such land is Mixed Zone Land or Native Area Land.

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

(6) Any person who-

(a) builds, constructs or maintains any building, road, path or any structure; or

(b) occupies or attempts to create any right,

over any land reserved to the Government under subsections (1) and (2) without permission or licence granted under subsection (3), shall be guilty of an offence: Penalty, a fine not exceeding fifty thousand ringgit or an imprisonment not exceeding three years or both such fine and imprisonment, and in the case of continuing offence, a fine not exceeding two thousand ringgit for each day the offence continues.

[Ins. Cap. A119.]

Cultivation

39.—(1) (a) Land alienated for agricultural purposes shall be subject to the implied condition that within nine months from the date of the issue of the document of title and, subject to the special conditions, if any, expressed therein, the proprietor shall take all reasonable steps preparatory to bringing such land under cultivation.

(b) Where the area is not more than *one hundred acres, the whole shall be brought into cultivation within three years.

(c) In cases where the area exceeds *one hundred acres, one-fifth of the total area shall be brought under cultivation during each successive year until the whole have been brought under cultivation.

* Roughly 40.4686 hectares — *see Weights and Measures Act 1972 (Act 71)*.

(2) There shall be implied in every document of title to land alienated for agricultural purposes that the land shall be managed in a husbandlike manner according to the principles of good husbandry and that due regard shall be had to the conservation of natural resources.

Special conditions implied on alienation for agricultural purposes

39A.—(1) Whenever any land is alienated for agricultural purposes, the following implied conditions shall apply thereto—

(a) that the land shall not at any time be used for any purpose other than agriculture; and

(b) that no building shall be erected on the land other than a building or buildings to be used for one or more of the purposes specified or referred to in subsection (2).

(2) The purposes referred to in subsection (1) (b) are the following:

(a) agriculture;

(b) (i) one dwelling house for the proprietor of the land or, where he is not resident thereon, his agricultural tenant;

(ii) such other buildings as may be necessary for accommodating any domestic servants of the proprietor or of his agricultural tenant, or persons employed on the land in connection with the use of the land for agricultural purposes; and

(iii) such non-resident buildings as may reasonably be required by the proprietor or his agricultural tenant for purposes connected with land used by them for agricultural purposes as may be approved by the Superintendent:

Provided that the land shall be used predominantly for agricultural purposes.

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

Replacement of Occupation Tickets

40.—(1) Where land which has been included in a provisional lease issued under section 28, or in an Occupation Ticket issued under section 21 of the former Land Ordinance [*Cap. 27 (1948 Ed.)*] has been surveyed to the satisfaction of the Superintendent, then, upon application being made to him by the person rightfully entitled to the land in the provisional lease or Occupation Ticket, as the case may be, or at his discretion if no such application is made, the Superintendent may issue a lease in the prescribed form in place of the provisional lease or Occupation Ticket.

(2) A lease issued pursuant to subsection (1) shall be for the balance of the term, if any, stated in the provisional lease or Occupation Ticket or, where no term is stated, for a term in accordance with prescribed rules, and shall be deemed to be subject to all charges and other interests to which the provisional lease or Occupation Ticket was subject at the time of the issue of the lease.

(3) Where a lease has been issued pursuant to subsection (1), the rent payable in respect of the land shall be liable to revision if there has been an alteration in area, but the holder of a provisional lease or Occupation Ticket shall not be entitled to any compensation because of any reduction in area which may have resulted from the survey.

(4) Any Occupation Ticket issued before the 1st day of January, 1958, in respect of land which was not immediately prior to that date either town or suburban land under the former Land Ordinance shall, in the absence of any contrary intention either contained in such Occupation Ticket expressly or by necessary implication or expressed by any entry in the register kept under the former Land Ordinance [*Cap. 27 (1948 Ed.)*], be deemed to have been issued subject to a special condition that the land to which it relates should be used for agricultural purposes only.

41. [*Repealed Ord. No. 20/63*].

Sago land

42.—(1) The Superintendent may in his discretion grant a lease to any native, or to any other person who has been ordinarily resident in Sarawak for a period of five years out of the seven years immediately preceding the grant, of an area of land suitable for the cultivation of sago and not suitable for the cultivation of wet padi.

(2) So long as the person in beneficial occupation by way of lease or sublease of any area of land to which this section applies is a native, no rent, premium or other charges shall become or be payable to the Government save in respect of any area in excess of *fifteen acres held under the same title:

* Roughly 6.0702 hectares—*see Weights and Measures Act 1972 (Act 71)*.

Provided that any person, other than a native in beneficial occupation as aforesaid, shall be liable to the Government for such rent, premium and other charges as the Superintendent may, having regard to any rules applicable made under section 213, assess.

(3) Subject to subsections (1) and (2) and to the implied condition imposed by virtue of this subsection that any area of land alienated under this section shall not be used for any purpose except the cultivation of sago, and that it shall not be cultivated except in accordance with the usual methods for cultivating sago in a proper and

efficient manner, and that upon breach the Government may re-enter in accordance with section 33, such land may be freely re-alienated by way of transfer, sublease, charge or other disposition, other than such a licence or other disposition to a person who is not a native as would enable such person to cultivate and take the produce of such land without becoming liable for the rent and other charges due to the Government.

43. [*Deleted Ord. No. 3/79*].

No title or right to be acquired against the Government save such right or title as may be granted under this Code

44. No person shall acquire any right or title against the Government by virtue of any adverse possession, unlawful occupation or occupation under temporary licence, and no right or title shall be acquired against the Government, save such right or title as may be lawfully granted under this Code.

PART IV

RESUMPTION OF LAND

Surrender

45.—(1) Any registered proprietor of land holding directly from the Government may, with the approval of the Superintendent, given in such terms and subject to such conditions as he thinks fit, and with the written consent of every person having a registered interest therein, surrender his estate or interest in the whole or any part of the land comprised in the appropriate document of title. Upon registration of such surrender, the interest of the proprietor in the estate or interest surrendered by him shall revert to the Government.

(2) Where only part of an estate or interest has been surrendered, the necessary adjustment in any rent payable shall be made.

(3) A surrender in accordance with subsection (1) may, with the approval of the Superintendent, be made by the proprietor during the currency of any term for which the land has been alienated and a new document of title may be issued to him for the balance of such term, or for such other term as may be in accordance with rules made hereunder, subject to such conditions as may be imposed by the Superintendent and subject to such registered charges and other interests as may affect the estate or interest surrendered on the date of the surrender.

Purposes for which land may be resumed

46. Land may be resumed by the Government whenever it is required for any of the following purposes—

(a) the planning, establishment, extension, improvement, development and re-development of towns, bazaars, growth centres, housing estates, sites for industries, factories, trade and commerce, or the provision of accommodation for workers employed by factories and in industrial estates, the provision and establishment of public parks and greens, open spaces, public amenities or recreational facilities;

(b) the provision of residential accommodation for any section or class of the community including the officers, servants or employees of the Federal or State Government and the families and employees thereof;

(c) the provision or improvement and development of roads and means of communications and any public utility or public service, whether undertaken or managed, or to be undertaken or managed, by the Federal or State Government or by a public body or by private enterprise or otherwise howsoever;

(d) slum clearance or the resumption, with the object of improving the condition thereof, of property which is or renders other property unfit for human habitation or dangerous or injurious to health;

(e) the provision of land for aquaculture or the cultivation of agricultural crops or for research or experimental purposes in connection therewith;

[Sub. Cap. A23.]

(f) the settlement or re-settlement of any community or of any section or class of the public;

(g) any work or undertaking by any person, corporation or statutory body, which in the opinion of the Minister is beneficial to the economic or social development of the State or any part thereof or to the public generally or any class of the public;

[Sub. Cap. A23.]

(h) any purpose declared to be a public purpose by or under any written law either for the purpose of this Code or for the purpose of any written law repealed by this Code*;

* *See footnote to definition of "Reserved Land".*

†(i) any purpose which the Majlis Mesyuarat Kerajaan Negeri by order signified in the *Gazette* may declare to be a public purpose, whether in addition, in lieu or by way of modification of any of the foregoing; and

† *See Swk. L.N. 158/65 & 36/75.*

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

(j) any combination of the above purposes.

Power to enter and survey

47.—(1) Whenever the Minister decides that any alienated land or Native Customary Land or Kampung Reserve is likely to be needed for any of the purposes specified in section 46, the Superintendent

shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorized by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose.

[Mod. Swk. L.N. 68/64; Am. Reprint Commissioner.]

(2) As soon as conveniently may be after such entry, the Superintendent shall assess the compensation for damage resulting therefrom.

(3) Such compensation shall not become payable so far as it relates to any land which is resumed under section 48 and, if paid, shall be refunded to the Government on demand by the Superintendent.

(4) If there is any dispute as to the amount of any compensation which has become payable, the persons to whom it is payable or the apportionment of the compensation, such dispute shall, if any person interested so requires, be referred to arbitration in accordance with section 212.

Declaration that land is required for a public purpose

48.—(1) Whenever it appears to the Minister that any alienated land or Native Customary Land or Kampung Reserve is needed for any of the purposes specified in section 46, the Minister shall make a declaration to that effect.

(2) (a) The declaration shall state the location of the land, the particular public purpose for which it is needed, its approximate area and such other details or information as may be required to identify the land, and the place where a plan thereof, prepared by the Superintendent, could be inspected.

(b) In the case of Native Customary Land or Kampung Reserve, the declaration shall also state that any native customary rights or other rights to occupy the same under section 5, 6, or 7, shall

be deemed to have been terminated on the date of the publication of the declaration in the *Gazette*; and that claims for compensation consequent upon the termination of such rights may be made in accordance with section 49.

(c) The declaration shall be published in the *Gazette* and posted on the notice board of the offices of the Superintendent and District Officer for the area where the land is located, and if it affects Native Customary Land or Kampung Reserve, the declaration shall also be published in at least one newspaper circulating in the State.

(3) Upon the posting of such declaration an entry thereof shall be made in the Register in respect of the land affected.

Notices and claims

49.—(1) The Superintendent shall cause notices to be posted at the District Office where the land to be resumed is situated or at such other places and in such manner as he deems fit, stating that the Government intends to take possession thereof and that claims to compensation for all interests therein or rights created over such land, may be made to him in the manner prescribed in subsections (2) and (3). Such notices shall also state the particulars of the land as appears in the declaration published under section 48.

(2) Every notice issued under subsection (1) shall require the person desirous to make any claim for compensation for interests or rights over the land resumed, to submit his claim in the prescribed form to the Superintendent within such period as may be stipulated in the notice, provided that such period shall not be less than fifteen days and not more than fortyfive days from the date of the posting of the notice.

(3) Every person interested in the land or claiming to have rights created over the land, shall state precisely the nature of his interests or rights together with all particulars and evidence in support of his claim, and if such rights are registered in the Register of Native Rights, the particulars of registration thereof; and in regard to compensation, he shall support his claim in respect thereof with a valuation report provided by a professional valuer or any other person

qualified to give valuation for land, or with such written statements to justify his claim to compensation or any rights over the land resumed.

(4) The Superintendent, if he deems necessary, shall also serve notices issued under subsection (1) on all persons known or believed to be interested in the land resumed or who have created any rights over the land, or who may be entitled to act or represent for the person so interested or having such rights. Service of such notices may be effected in such manner as may be provided under section 208.

(5) Notwithstanding any provisions to the contrary in this section, service of a notice on any person whom the Superintendent believes to have rights created over any land under section 5, 6 or 7 shall not be deemed to be an admission or an acknowledgement on the part of the Government that the person to whom the notice is addressed has any rights over such land.

Power to require further information and particulars

50.—(1) The Superintendent may, after receiving any claim made by any person to whom a notice has been issued under section 49(1), require such person to furnish him additional information or particulars relating to his claim or in support thereof within such period as may be stipulated in the notice.

(2) Without prejudice to the provisions of subsection (1), the Superintendent may require such person to furnish particulars of the names of all other persons having or entitled to any interests or claiming any right in the land or any part thereof, and of the nature of such interests or rights, and of the rents or profits, if any, received or receivable on account thereof for up to seven years next preceding the date of the notice, and the names of all persons occupying or residing on the land or any part thereof, and the details of all crops and buildings on such land.

Proceedings and award by Superintendent

51.—(1) Upon receipt of any claim for compensation, interests and rights over any land the Superintendent shall, as soon as reasonably practicable, make a determination of such claim based on

the information, particulars and evidence submitted to him under section 49 or 50 and make an award under his hand in respect of—

(a) where the land has been surveyed to the satisfaction of the Superintendent, the precise area thereof, or where the land has not been so surveyed, its approximate area;

(b) in the case of claims with regard to rights created under section 5, 6 or 7, the persons lawfully entitled to or having or enjoying such rights on the date of the publication of the declaration under section 48;

(c) the amount of compensation, which in his opinion, to be arrived at in accordance with sections 60 and 61, should be paid by the Government for the rights and interests in the land resumed or for rights which have been terminated; and

(d) the apportionment of the compensation awarded in paragraph (c) amongst all persons lawfully interested in the land or having rights lawfully created over such land, provided that in the case of alienated land the apportionment of such compensation shall only be amongst persons whose interests are protected by registration under Part VII.

(2) In the event that the Superintendent deems it necessary to enquire into any claim submitted to him in accordance with section 49, he may issue a summons requiring the persons making such claims and their witnesses to attend an enquiry before him, to be held on such date as may be stipulated in the notice.

(3) In the conduct of such enquiry, the Superintendent shall have the same powers, privileges and immunities as may be enjoyed by a Magistrate in civil proceedings, including powers to enforce the attendance of witnesses and to hold any person appearing before him for contempt.

(4) At the conclusion of an enquiry conducted under subsection (2), the Superintendent shall make a determination and award in respect of the matters specified subsection (1).

(5) Where the amount of compensation has been determined and awarded in accordance with this section, if any dispute shall arise-

(a) as to the apportionment of the compensation or any part thereof, or as to the persons to whom the compensation or any part thereof is payable, the Superintendent may refer such dispute for a decision of the Court; and

(b) as to the rights under section 5, 6 or 7 which have been lawfully created or enjoyed by a person, the Superintendent may refer such dispute to a Native Court for determination or ruling.

When award of Superintendent to be final

52.—(1) The award under section 51 shall be filed in the office of the Superintendent and shall, except as provided hereinafter, be final and conclusive evidence as between the Superintendent and the persons interested or persons making claims to rights over the land resumed, whether or not they have respectively appeared before the Superintendent at an enquiry conducted under section 51(2), of:

(a) the true area and value of the land or any rights lawfully created over the same;

(b) the lawful claimants to the rights lawfully created over the land resumed or the names of the persons whose claims to such rights have been rejected;

(c) the apportionment of the compensation amongst the persons interested or persons having established their claims to rights lawfully created over the land resumed.

(2) The Superintendent shall serve a copy of his award on all persons interested or who have been served with a notice under section 49(2) to appear before the Superintendent provided that their addresses can be ascertained after reasonable inquiry when the award is made.

Power to take possession

53.—(1) When the Superintendent has made an award under section 51 he may take possession of the land.

(2) In cases of urgency, whenever the Minister so directs, the Superintendent, though no such award has been made, may, on the expiration of fifteen days from the date of the posting of the notices mentioned in section 49, take possession of any land, needed for any of the purposes specified in section 46. The Superintendent shall offer to the persons interested compensation for the loss of standing crops and fruit or any building. If such offer is not accepted, the value of such crops and fruit or any building shall be allowed for in awarding compensation for the land under the provisions hereinafter contained.

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

[Am. Cap. A95.]

Entries to be made in Register

54.—(1) When the Superintendent has taken possession of alienated land under section 53, the Registrar shall make an entry in the Register in respect of such land declaring that possession has been taken of the whole or, if a part only, the approximate area thereof and, after such entry has been made, shall serve a notice in writing on the person in possession of the document of title relating to such land requiring him to deliver up the same to the Registrar, and such person shall deliver up the issue document of title in accordance with the terms of such notice.

(2) Any person failing to comply with a notice served upon him under this section shall be guilty of an offence: Penalty, a fine of two thousand ringgit.

(3) Upon such entry being made as in this section provided, the whole of the land or part thereof, as the case may be, shall vest in the Government.

(4) The Superintendent shall, in cases where part only of the land has been acquired, cause to be prepared documents of title for the unacquired part or parts of the land and shall, after cancellation of the existing documents of title, issue such documents of title to the persons entitled thereto.

Resumption of non-titled land

54A. Where the Superintendent has taken possession of any Native Customary Land or Kampung Reserve, such land shall be vested in the Government free of and unencumbered by any native customary rights and shall revert to the Government and if any rights over such land are registered under section 7A, an entry be made in the Register of Native Rights of the termination of such rights and the land may be alienated in accordance with section 13.

Adjustment of compensation

55.—(1) Whenever, on final survey of the land, a difference is found to exist between the area as surveyed and the area as found by the Superintendent under section 51, such difference shall be valued at the same rate as that at which the land has been valued for compensation in the final award, and the amount so arrived at with interest at six per cent per year from the date at which possession was taken or compensation paid shall, as the case may be, be either paid by the Superintendent or refunded by the person to whom compensation has been paid:

Provided that, where the difference found to exist on final survey does not exceed or fall short of the area, as found by the Superintendent under section 51, by more than one per cent, there shall be no further payment or refund under this section.

(2) Every refund due under this section shall be an arrear and shall be recoverable in the manner prescribed by law for the collection of arrears of rent.

Reference to Court

56.—(1) Any person interested who has not accepted the award may, by written application to the Superintendent and on payment of the prescribed fee, require that the matter be referred by the Superintendent for the determination of the Court, whether his

objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested or the acceptance or rejection of any claims to any rights in the land or any part thereof resumed by the Government under this Part.

(2) The application shall state the grounds on which objection to the award is taken and at the hearing of the reference, no other grounds shall be taken in argument or consideration except with special leave of the Court.

(3) Every such application shall be made—

(a) if the person making it was present or represented before the Superintendent at the time when he made his award, within six weeks from the date of the Superintendent's award; and

(b) in other cases, within six weeks of the receipt of the copy of the award from the Superintendent under section 52 (2) or within six months from the date of the Superintendent's award, whichever period shall first expire.

Superintendent's statement to the Court

57.—(1) In making the reference the Superintendent shall state for the information of the Court in writing under his hand—

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to believe to have any interest or rights in or have made any claims to such rights in such land and the addresses of such persons;

(c) the amount awarded for damages and paid or tendered under sections 47 and 53, or either of them, and the amount of compensation awarded under section 51;

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined; and

(e) the grounds for admitting or rejecting any claim to rights created under section 5, 6 or 7 over such land.

(2) To the said statement shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested or making claims to rights over the land respectively.

Service of notice

58. The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection and directing their appearance before the Court on that day, to be served on the following persons:

(a) the applicant;

(b) all persons interested in the objection or having made claims to rights over the land except such if any of them as have consented without protest to receive payment of the compensation awarded;

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the acceptance or rejection of any claim to rights over the land the Superintendent.

Appointment of assessors

59.—(1) The Court shall appoint two persons for the purpose of aiding the Court in determining the objection. Every person so appointed shall be legally bound to attend and serve as an assessor unless excused for some reason to be approved by the Court.

(2) If an assessor dies or becomes incapable of acting or is excused by the Court, some other person shall be appointed in his stead.

Matters to be considered in determining compensation

60.—(1) In determining the amount of compensation to be awarded for land resumed under this Part or for the termination of rights lawfully created over such land, the Court shall take into consideration the following matters and no others—

[Am. Cap. A59.]

(a) the market value at the date of the publication of the notification under section 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under section 48;

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land resumed will be put;

(c) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of severing such land from his other land;

(d) the damage, if any, sustained by the person interested, at the time of the Superintendent's taking possession of the land, by reason of the resumption injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings;

(e) if in consequence of the resumption he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;

(f) any improvements to the land made with the prior consent of the Superintendent after the publication of the notification under section 47 (1) or the posting of the declaration under section 48 (2), whichever is the date in respect of which the market value is taken in accordance with the provisions of paragraph (a); and

(g) in the case where rights over Native Customary Land or Kampung Reserve, have been terminated, any agreement by

the Government to resettle or relocate the persons affected to any other land or buildings, if any, provided by the Government, and any costs of resettlement or relocation which the Government has agreed to bear and pay.

(2) For the purposes of subsection (1)(a)—

(a) if the market value has been increased by means of any improvement made by the, proprietor or persons in occupation of the land or his predecessor in interest within two years before the notification was published under section 47 (1) or, if no such notification was published, within two years before the declaration under section 48 was published, such increase shall be disregarded unless it be proved that the improvement was made in good faith and not in contemplation of proceedings for resumption of the land being taken under this Part;

(b) when the value of the land is increased by reason of the use thereof, or of any premises thereon, in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account;

(c) the market value of the land resumed shall be deemed not to exceed the price which a *bona fide* purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land—

(i) for the purpose stipulated in the document of title for the land; or

(ii) having regard to category of land use endorsed on the document of title for the land under section 13(1)(d); or

(iii) in conformity with any conditions or requirements imposed by the State Planning Authority under Part X regarding the use of the land;

whichever is the lower category of use; and no account shall be taken of any potential value of the land for any other higher or more intensive use.

[Ins. Cap. A59.]

Matters to be disregarded in determining compensation

61. In determining the amount of compensation to be awarded for land resumed under this Part or for the termination of rights lawfully created over such land, the Court shall not take into consideration—

- (a) the degree of urgency which has led to the resumption;
- (b) any disinclination of the person interested to part with the land resumed or any rights lawfully created over the land or any part thereof;
- (c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;
- (d) any damage which is likely to be caused to the land acquired after the date of the posting of the declaration under section 48 by or in consequence of the use to which it will be put;
- (e) any increase in the value of the land resumed likely to accrue from the use to which it will be put when resumed;
- (f) any outlay on additions or improvements to the land resumed which was incurred after the date of the posting of the declaration under section 48, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair;
- (g) any improvements to the land made without the prior consent of the Superintendent after the publication of the notification under section 47 (1) or, if no such notification was published, any improvements made without the consent of the Superintendent after the posting of the declaration under section 48;

(h) evidence of sales of comparable properties, unless the Court is satisfied that the sales are made *bona fide* and not for speculative purpose and the onus of proving that the transactions are made *bona fide* and not for speculative purpose shall lie with the person who requires the matter to be referred to the Court under section 56(1);

(i) any enhancement or likely enhancement in the value of the land resumed as a result of development in the neighbourhood by the provision of roads, drains, electricity, water, sewerage or social, educational, recreational or other infrastructural facilities within seven years prior to the date of the publication of the notice under section 47 or if no such notice has been published, the date of the publication of the declaration under section 48(1) in the *Gazette*; or

[Ins. Cap. A59.]

(j) the fact that the land is Native Area Land or Native Customary Land if such land is within reasonable proximity Mixed Zone Land.

Rules as to the amount of compensation

62.—(1) Where the applicant has made a claim to compensation pursuant to any notice under section 49, the amount awarded to him shall not exceed the amount so claimed or be less than the amount awarded by the Superintendent under section 51.

(2) Where the applicant has refused to make such claim or has omitted, without sufficient reason to be allowed by the Court, to make such claim, the amount awarded by the Court may be less than, and shall in no case exceed, the amount awarded by the Superintendent.

(3) Where the applicant has omitted, for a sufficient reason to be allowed by the Court, to make such claim, the amount awarded to him by the Court may be less than or may exceed the amount awarded by the Superintendent.

(4) The provisions of this section and sections 60 and 61 shall be read and explained to the assessors by the Court before they give their opinions as to the amount of compensation to be awarded.

Assessor's opinion to be recorded

63. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court.

Difference of opinion

64. In case of a difference of opinion between the Court and the assessors, or either of them, the opinion of the Court shall prevail.

Assessor's fees

65.—(1) Every assessor shall be paid a fee not exceeding one hundred ringgit a day or any part day thereof for his attendance in Court.

(2) Such fees shall be paid by both the applicant and the Superintendent or any other party named as respondent to the reference. The Court shall direct the parties as to the manner in which such fees shall be paid.

(3) The Court may at any time order any party to deposit such amount in Court, as the Court shall determine, as security for payment of the fees of the assessors.

(4) Any fees paid to the assessors under this section shall be deemed to be costs of the proceedings and shall be dealt with by the Court when making the award in accordance with section 67(2).

Award to be in writing

66. Every award made under this Part shall specify the amount awarded under section 60 (1)(a), the amount, if any, deducted under paragraph (b) or (f), and the amounts, if any, respectively awarded

under paragraphs (c), (d), (e) and (g) of the same subsection, together with the grounds of awarding or deducting the said amounts.

Costs

67.—(1) (a) When the amount awarded does not exceed the sum awarded by the Superintendent, the costs of all proceedings under this Part shall be paid by the applicant.

(b) When the amount awarded exceeds the sum awarded by the Superintendent, the costs shall ordinarily be paid by the Superintendent but, if the Court is of the opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Superintendent that some deduction from his costs should be made or that he should pay a part of the Superintendent's costs, the Court may at its discretion make such order as to costs as it may think fit.

(c) If the claim of the applicant exceeds by twenty per cent or more the amount awarded, he shall not be entitled to his costs.

(d) The fee payable under section 56(1) shall be refunded if the Court awards a sum exceeding the sum awarded by the Superintendent.

(2) Every award shall state the amount of costs incurred in the proceedings before the Court under this Part and by what persons, and in what proportions, they are to be paid.

Appeal to the Court of Appeal

68.—(1) When the amount of compensation awarded or claimed is not less than fifty thousand ringgit, the Superintendent or any person interested may appeal from the decision of the Court to the Court of Appeal. No appeal shall lie from the decision of the Court in any other case:

Provided that the Court may reserve any question of law arising therein for the decision and directions of the Court of Appeal.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in civil matters to the Court of Appeal.

[Am. Act 7/64; Cap. A68.]

Payment of interest on excess compensation

69. If the sum which in the opinion of the Court the Superintendent ought to have awarded as compensation is in excess of the sum which the Superintendent did award as compensation, the award of the Court may direct that the Superintendent shall pay interest on such excess at the rate of four per cent per year from the date on which he took possession of the land to the date of payment of such excess to the Court or to the person interested.

Application of Courts of Judicature Act 1964

70.—(1) Save in so far as they may be inconsistent with anything contained in this Part, the Courts of Judicature Act *1964 [Act 91]* shall apply to all proceedings before the Court and the Court of Appeal under this Part.

[Am. Act 7/64; Am. Reprint Commissioners; Am. Act 91; Cap. A68.]

(2) The costs, if any, payable by the applicant may be recovered as if they were costs incurred in a civil suit and as if the award were the decree therein.

Payment of compensation or deposit thereof in Court

71.—(1) On making an award under section 51, the Superintendent shall make a written offer of the compensation awarded by him to the persons lawfully entitled thereto, according to the award, and shall pay it to them unless prevented by one or more of the contingencies mentioned in subsection (2).

(2) If they do not consent to receive it, or if there be no person competent to transfer the land, or if there be any dispute as to the title

to receive the compensation or as to the apportionment of it, the Superintendent shall deposit the amount of the compensation in Court :

Provided that—

(a) any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount;

(b) no person who has received the amount otherwise than under protest shall be entitled to make any application under section 56; and

(c) nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Part to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Superintendent instead of awarding a money compensation in respect of any land may enter into any arrangement with a person having an interest or rights therein in such a way as may be equitable having regard to the interests of the parties concerned including the resettlement or relocation of any person whose rights lawfully created in Native Customary Land or Kampung Reserves have been terminated under this Part, to any other land provided by the Government.

Payment of interest

72. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Superintendent shall pay the amount awarded with interest thereon at the rate of four per cent per year from the time of so taking possession until it has been so paid or deposited.

Temporary occupation of waste or arable land

73.—(1) Whenever it appears to the Minister that temporary occupation and use of any waste or arable land are needed for any of

the purposes specified in section 46, he may direct the Superintendent to procure the occupation and use of the same for such term as he shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Superintendent shall thereupon give notice in writing to the persons interested in such land of the purposes for which the same is needed and shall, for the occupation and use thereof for such term as specified in subsection (1) and for the materials, if any, to be taken therefrom, pay to them such compensation, either in a gross sum of money or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Superintendent and the persons interested differ as to the sufficiency of the compensation or the apportionment thereof, the Superintendent shall refer such difference for the decision of the Court.

Power to enter and take possession

74.—(1) On payment of such compensation, or on executing such agreement, or on making a reference under section 73, the Superintendent may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Superintendent shall make or tender to the persons interested compensation for the damage, if any, done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein.

(3) If the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term and if the persons interested shall so require, the Government shall acquire the land and shall pay therefor such a sum as would have been paid by way of compensation if the land had been resumed permanently for any of the purposes specified in section 46 and, in assessing the same, the date of the notice given under section 73 shall be the material date.

Dispute as to condition of land

75. If the Superintendent and the persons interested differ as to the condition of the land at the expiration of the term, or as to the compensation mentioned in section 74(2), or as to any matter connected with the said agreement, the Superintendent shall refer such difference to the decision of the Court.

Service of notice

76.—(1) Service of any notice under this Part shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 47, by the officer therein mentioned and, in the case of any other notice, by or by order of the Superintendent or the Court.

(2) Whenever practicable the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the Superintendent and also on some conspicuous part of the land to be resumed :

Provided that, if the Superintendent or the Court so directs, the notice may be sent by registered letter addressed to the person named therein at his last known residence address or place of business, and service of it may be proved by the production of the registration receipt. It shall be presumed that such registered letter was received by the addressee in the ordinary course of the post.

Obstructing survey, etc.

77. Whoever wilfully obstructs any person in doing any of the acts authorized by section 47 (1) or section 49 (1) or wilfully fills up, destroys, damages or displaces any trench or mark made under section

47 (1) shall be guilty of an offence: Penalty, a fine of two thousand ringgit.

Police to enforce surrender

78. If the Superintendent is opposed or impeded in taking possession under this Part of any land, he shall apply to the Commissioner of Police who shall enforce the surrender of the land to the Superintendent.

[Am. Cap. A29.]

Government not bound to complete acquisition

79.—(1) Except in the case provided for in section 74, the *Minister shall be at liberty to withdraw from the resumption of any land of which possession has not been taken.

* *Mod. Swk. L.N. 68/64. Powers vested in Director of Lands and Surveys — see G.N. 992/63.*

(2) Whenever the *Minister withdraws from any such resumption, the Superintendent shall determine the amount of compensation due for the damage, if any, done to such land under section 47(1) or section 49(1) and not already paid for under section 47(2), and shall pay such amount to the person injured, and shall pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for resumption together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings.

* *Mod. Swk. L.N. 68/64. Powers vested in Director of Lands and Surveys — see G.N. 992/63.*

(3) Any dispute as to the amount of compensation payable under this section shall be referred to the Court, and the provisions of

this Part shall apply accordingly with such modifications as may be necessary.

Exemption from stamp duty and fee

80. No award or agreement made under this Part shall be chargeable with stamp duty and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Bar of suits to set aside awards

81. No suit shall be brought to set aside an award or apportionment under this Part.

82. *[Deleted]*.

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

Interpretation of this Part

83. For the purpose of this Part—

(a) a person shall not, in relation to the Government or an officer of the Government, be deemed to be interested in any land being resumed or occupied under this Part, or entered upon under any of its provisions, unless such person either has an interest which is protected under section 132, although it is not registered, or has an interest which is protected by registration under Part VII or has any rights lawfully created under section 5, 6 or 7; but nothing in this definition shall be deemed to preclude the Court, in proceedings other than those contemplated by this Part, from giving effect to any right or equity which a person may have against a person receiving or entitled to receive compensation under this Part; and

(b) “Court” means the High Court.

PART V

SETTLEMENT

GENERAL

Settlement Notification

84.—(1) Whenever it appears to the Director that in any area there may be doubt or uncertainty as to whether the existing documents of title properly define the rights and interests of those entitled or the boundaries of the land included therein, or where it appears likely that rights of ownership have been acquired by natives by the exercise of their customary rights, or whenever for any other reason he is of the opinion that it is expedient to effect a settlement of rights, he may publish in the *Gazette* a Settlement Notification in accordance with subsection (2).

(2) The Settlement Notification shall state the situation and limits of the area, hereinafter called “the settlement area”, within which the settlement of rights to land and registration thereof shall be effected and shall declare that, after a period to be defined in the Settlement Notification, the demarcation of parcels and presentation of claims may begin in any block within the settlement area.

(3) On or after the publication of the Settlement Notification under this section, the Director shall assign a Settlement Officer and such Assistant Settlement Officers as may be necessary to carry out the settlement.

Notice by Settlement Officer

85.—(1) The Settlement Officer shall cause a preliminary notice of the intended survey, settlement and registration of rights in any block within the settlement area to be published at the office of the District Officer and at convenient places in the neighbourhood of such block.

(2) The notice shall be published not less than thirty days before any exercise by the Settlement Officer of the powers conferred upon him by section 88 and shall contain—

(a) directions as to the clearance of boundaries and the presentation of documents of title in support of claims;

(b) notice of the consequence of failure to present claims in due time; and

(c) such instructions as the Settlement Officer may think fit for obtaining assistance and information in respect of native customary rights.

Staying actions after publication of any notification

86.—(1) No proceedings concerning rights to land in any block within the area for which a Settlement Notification has been published shall be commenced in any court.

(2) Any proceedings commenced before the notification is published may be continued, and the Settlement Officer may delay dealing with the rights in the land concerned until such proceedings have been finally determined. Any such proceedings may, by leave of the court, be withdrawn upon such terms as the court may, in all the circumstances, consider equitable.

Notice of progress to be published

87. Before and during the course of the settlement, the Settlement Officer shall publish from time to time notices stating the order in which he intends to proceed. The notices shall be published in the District Office and at convenient places within the settlement area.

General powers of Settlement Officer

88. Subject to this Code, the Settlement Officer, in execution of his duties, may—

(a) publish notices ordering the attendance at any time and place of claimants to land in the settlement area;

(b) order any claimant to cut the boundaries of the land claimed by him before such date as he may direct; and, in default of compliance, may cause such boundaries to be cut at the expense of such person;

(c) issue notices or orders requiring the attendance of any person or the production of any documents that he may deem necessary for carrying out the settlement, and may administer oaths in any inquiry made for the purpose of the settlement;

(d) dispense with the attendance of any person or the production of any document;

(e) make a copy of any document produced, and endorse or stamp such document with some writing to show that it has been produced to him;

(f) authenticate any document signed and attested before him; and

(g) extend the time for the performance of any act to be done under this Code.

SETTLEMENT OF ALIENATED LAND

Schedule of alienated land

89.—(1) If any parcels of lawfully alienated land are situated within the limits of the settlement area, the Settlement Officer shall, after an examination of registers, counterparts or issue documents of title, instruments, survey plans and maps and other evidence, draw up a Schedule of Alienated Land which shall be in Form D in the First Schedule and shall show in respect of alienated land in the block—

(a) the name of the district in which the land is situate;

(b) the name and number of the block;

(c) the reference numbers of all parcels in the block;

(d) the area of each parcel;

(e) the name and address of the proprietor of each parcel or of each proprietor, if there are more proprietors than one;

(f) where there are more proprietors than one of any parcel, the share held by each proprietor;

(g) the nature of the title to each parcel;

(h) the commencement date, and the term, of the title to each parcel;

(i) any other interests in each parcel, and the name and address of every person holding any such interest;

(j) the annual rent payable in respect of each parcel;

(k) any special conditions of title in respect of any parcel;
and

(l) any other particulars which may be prescribed by rules made under section 213.

(2) During the preparation of the Schedule of Alienated Land, it shall be lawful for the Settlement Officer to introduce corrections, amendments and additions in respect of the following particulars relating to any parcel of alienated land, namely—

(a) the spelling of names of persons and places;

(b) references to survey plans and maps;

(c) statement of areas;

(d) diagrams of alienated land;

(e) the phrasing of special conditions;

(f) particulars required to give effect to section 40(3) or (4) and any other particulars requiring clarification :

Provided that any person aggrieved by the exercise of the power aforesaid may lodge an objection thereto with the Settlement Officer during the period when the Schedule of Alienated Land is open to public inspection, and such objection shall be investigated and dealt

with for all purposes, including appeal under section 102, as if it were a claim presented under section 91.

Publication of Schedules of Alienated Land

90.—(1) Every Schedule of Alienated Land together with the appropriate survey plans shall be open to public inspection during the normal Land Registry office hours of business for a period of three calendar months at the office of the Superintendent of the division in which the land, the subject matter of the Schedule, is situate, and copies of the Schedules shall be posted at the office of the District Officer in whose district the land is situate and at some convenient place in the neighbourhood of the land, the subject matter of the Schedule.

(2) A notice to the effect that the Schedule of Alienated Land has been prepared and stating the places and times at which it can be inspected shall be published in the *Gazette* and in such other publications as may effect the widest possible publicity, not less than fourteen days before the date on which the Schedules are first open to public inspection.

Amendments to Schedule of Alienated Land

91.—(1) Every person possessing any claim to a right, title, share or interest requiring and capable of registration under this Code, which has not been entered into the Schedule of Alienated Land, shall present such claim to the Settlement Officer during the period when such Schedule is open to public inspection.

(2) The Settlement Officer shall publicly investigate all claims presented in accordance with subsection (1) and shall have power to make a decision thereon or may, in the case of conflicting claims, permit the parties to refer the determination of the same to arbitration under the Arbitration Act 1952 [*Act 93*].

Entries in Register, etc.

92.—(1) On expiry of the period of three calendar months during which the Schedule of Alienated Land is open to public inspection, the Registrar shall enter in the Register all necessary particulars of each parcel specified in the Schedule of Alienated Land, other than any parcel the subject matter of any dispute which has not been finally decided.

(2) Where the particulars relating to any parcel of land have not been entered in the Register by virtue of the fact that a dispute in respect thereof has not been finally decided, the Registrar shall, as soon as the matter in dispute has been finally decided, make the necessary entries relating to the title of such parcel in the Register in accordance with the terms of such decision, and subsection (1) shall then apply to such title.

(3) If the Settlement Officer considers that the document of title relating to any parcel of land, in respect of which particulars have been entered in the Register under this section, should for any reason be replaced by a new document of title, he shall give a certificate under his hand to that effect and upon production to him of that certificate, the Registrar shall issue an appropriate certificate in Form F in the First Schedule.

SETTLEMENT OF STATE LANDS

Presentation of claims to State land

93.—(1) All claimants to State land in the block shall appear at such time and such place as the Settlement Officer may, by notice under section 88, direct.

(2) Claimants may appear in person, or by advocate, or by any representative approved by the Settlement Officer and shall produce to the Settlement Officer all documents held by them, or under their control, affecting the State land which they claim. A claimant who fails to appear may submit to the Settlement Officer a statement of his claim in writing.

Investigation of claims to State land

94.—(1) The Settlement Officer shall investigate publicly all claims to State land, whether based upon documentary evidence, native customary tenure or otherwise, and shall have power to determine in whose favour the rights to such land shall be shown in the Settlement Order made under section 95 or may, in the case of conflicting claims, permit the parties to refer the determination of the same to arbitration under the Arbitration Act 1952 [*Act 93*].

(2) In the case of native customary rights, the Settlement Officer may provide for the termination thereof by the payment of compensation or shall show the same in the Settlement Order and, if the rights are such as would enable a lease to be issued to the persons entitled, shall enter also all the particulars to enable a lease to be issued:

Provided that, if the Settlement Officer provides for the termination of any native customary rights under this section and there is a dispute as to the amount of compensation to be paid, the Settlement Officer shall refer the matter for arbitration in accordance with section 212.

(3) If, before the Settlement Order has been published as provided for in section 95, the Settlement Officer is satisfied that any person who has not presented a claim is entitled to any right to land, he may proceed as if such person had presented a claim within the time prescribed.

Settlement Order

95.—(1) After full investigation and final determination of all claims, the Settlement Officer shall make a Settlement Order which shall be in Form E in the First Schedule and shall contain any other particulars which may be prescribed by rules made under section 213.

(2) Every Settlement Order shall be published in the *Gazette*, and copies thereof shall, at the same time and for a period of one month thereafter, be exhibited at the office of the Superintendent in whose division, and at the office of the District Officer in whose district, the land is situate and at any other place which may be prescribed.

(3) After the publication of the Settlement Order, the Settlement Officer may by notice in the *Gazette*, with copies exhibited in the same manner as in the case of the Settlement Order, correct any clerical errors and make any clerical amendments or additions to the Settlement Order, as may be necessary to give effect to his decision.

Registration of new grant or lease in respect of land specified in Settlement Order

96.—(1) A new folio in the Register prescribed by section 112 shall be prepared for each parcel of land shown in the Settlement Order and a grant or lease, as the case may be, for each such parcel, in respect of which the Settlement Order specifies some person as the proprietor of such parcel, shall be prepared by the Superintendent and registered in accordance with section 112, and any such grant or lease shall be for such tenure and upon such conditions as may be prescribed by this Code.

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

(2) *[Deleted Ord. No. 2/74].*

MISCELLANEOUS

Representation of absentees, minors, persons under disability and others and also of members of a class

97.—(1) Subject to any general or special direction of the Minister, the Settlement Officer shall, after consultation with—

(a) any local authority having jurisdiction over any part of the settlement area; and

(b) the Probate Officer,

appoint a committee of suitable persons to advise him on any relevant system of customary law, to represent the interests of absent persons, minors, and persons under disability and to bring to the attention of the Settlement Officer any claims which may not for any reason have been presented.

(2) The appointment of a committee under subsection (1) shall not without further order give such committee the right to appear before the Settlement Officer or upon any appeal, but the Settlement Officer shall take into consideration any representations made by such committee and the Settlement Officer or any court to which appeal lies may, if satisfied that there is no other person entitled to represent a party who is absent or under disability and that it is desirable to make such appointment, by order appoint such committee, or some of them, to represent such party in the proceedings before the Settlement Officer or upon such appeal, as the case may be :

Provided that no appointment under this section shall render the committee liable to pay the costs of any other party.

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

Exclusion of areas from Settlement Area for Native Communal Reserves

98.—(1) After consultation with the committee appointed in accordance with section 97(1), the Settlement Officer may exclude from the provisions of this Part any area which is subject to, or likely to become subject to, section 6, and he shall forthwith submit a report on the area to the Director for submission to the Minister.

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

(2) Provided that, if the part of such area to which the declaration under subsection (1) relates is comprised in a block in respect of which a notice under section 85 relates, the Settlement Officer shall—

(a) amend such last mentioned notice accordingly; and

(b) take all reasonable steps to inform any persons whose attendance he may have required under section 88 in connection with such part and such other persons, if any, who may have presented claims in connection with such part.

Government rights to unclaimed land

99. All land in any settlement area to which rights are not established by any claimant and registered in accordance with section 112, other than land in respect of which a dispute has not been finally decided, shall belong absolutely to the Government and shall be entered as such in the Register.

Restriction on dealing pending settlement

100.—(1) After publication of any notice under section 85, no dealing affecting the title to any land in the block affected by such notice, whether such dealing purports to be a disposition affecting the whole or part of the land in the title or an undivided share therein, shall be accepted for registration until after the posting of the Schedule of Alienated Land provided for in section 90(1) and the expiry of the period within which an appeal may be made under section 102 or, if such an appeal is made, until such is disposed of pursuant to the said section:

Provided that any such dealing may be produced to and accepted by the Settlement Officer and duly taken into consideration by him in drawing up the Schedule of Alienated Land.

(2) Nothing in subsection (1) shall be so interpreted as to allow registration after the date of the posting of the Schedule of Alienated Land, or the extended time referred to in that subsection, of any instrument which could not be registered before that date, unless such instrument complies with the appropriate provisions of this Code and contains a sufficient description of the land dealt with therein to enable the land to be properly identified.

No claim to compensation on account of failure to locate parcel in existing Registers

101. No claim to compensation shall lie, and no action shall be maintainable against the Government—

(a) on account of any failure during the settlement to locate a parcel to which the record in any existing Registers, or any existing title deed, or the judgment of any court relates;

(b) on account of any failure to establish any right to land which purports to be based on any record in an existing Register or an existing title deed; or

(c) on account of any error in the establishment of any boundaries in the partition of any land or in the statement of any area.

Appeal from a decision of Settlement Officer or of the Superintendent under section 18

102.—(1) Any person aggrieved by any act or decision of the Settlement Officer, or by any decision of the Superintendent to exercise or refrain from exercising the power conferred by section 18, may, notwithstanding anything to the contrary in section 7 of the Subordinate Courts Ordinance [*Act 92*] contained, appeal to the court of a Magistrate of the First Class by a petition in writing made within three months from the date of the publication in the *Gazette* of the Settlement Order containing the decision which is the subject of appeal or, in the case of a decision arising out of a claim investigated by the Settlement Officer in accordance with section 91(2), within three months from the date on which a copy of such decision was served on the person so aggrieved, and, for the purpose of any further appeal, any such decision made by a Settlement Officer or the Superintendent as is mentioned in this section shall be deemed to have been made in civil proceedings.

[Am. Ord. No. 3/79.]

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

(2) Any court to which an appeal is made shall notify the Director of any such appeal and shall also notify the Director in writing of its decision.

(3) A fee as prescribed by rules made under section 213 shall be payable on the presentation of any appeal under subsection (1).

No appeal after period prescribed

103. After the expiration of the period prescribed, no appeal shall lie from any decision recorded in the Settlement Order, except as provided for in section 203, and neither the Schedule of Alienated Land nor the Settlement Order shall be open to the inspection of any person, whether entitled to an interest in the land or not, without the express permission of the Superintendent.

PART VI

SURVEY

General powers

104. Any Surveyor or Settlement Officer or any fit and proper person authorized in writing in that behalf by a Superintendent may, at any reasonable time, enter upon all lands which he is required to mark out or survey, and upon any neighbouring land, and may make all inquiries, and may affix or set up any boundary mark in or upon such land, and dig up any ground for the purpose of so doing, and may cut down and remove any timber or other growth which may obstruct any survey line or any boundary:

Provided always that as little damage as possible shall be done to the land or to any property thereon.

Note to secure attendance

105.—(1) Any Surveyor or Settlement Officer may cause a notice to be served on any person owning, occupying, applying for or otherwise interested in any such land and any land abutting thereon, or on any person employed on or connected with such land, requiring such person to attend before him at a time and place to be stated in the notice for the purpose of pointing out the boundaries of such land, or of rendering aid in placing or repairing the boundary marks, or of affording assistance or information for the purpose of marking out or survey.

(2) Every person upon whom such notice may be served shall be legally bound to attend as required by the notice, and to do, so far as he may be able, any of the things mentioned therein. A contravention of this section shall constitute an offence: Penalty, a fine of two hundred ringgit.

Clearing boundary lines

106.—(1) Any Surveyor or Settlement Officer may cause a notice to be served on any proprietor or occupier of, or applicant for, such land requiring him to clear any boundary line, or to cut any line which may be necessary for the purposes of marking out or survey, or to provide labour or otherwise assist in such work.

(2) Every proprietor, occupier or applicant upon whom such notice may be served shall be legally bound to comply with the requirements thereof.

(3) If any proprietor, occupier or applicant fails to comply with the requirements of such notice he shall be guilty of an offence: Penalty, a fine of one hundred ringgit, and such officer may hire labour for the purposes specified in the notice, and the Superintendent may, in the proceedings before the Magistrate taking cognizance of the offence, recover the cost of such labour from such proprietor, occupier or applicant.

Compensation for injury done by clearance

107.—(1) If it is necessary to remove or destroy any trees, fences, crops or other property of value in order to clear any line, the Surveyor or Settlement Officer shall assess the value of the same, and shall pay or tender the amount so assessed to the proprietor thereof:

Provided that the assessment shall be made before the property is removed or destroyed.

(2) Any dispute regarding the sufficiency of the amount so paid or tendered shall, unless the proprietor requires that it be referred to arbitration, be determined by the Superintendent whose decision shall be final.

Boundary marks to be set up

108. Any Surveyor or Settlement Officer may, after making due inquiry, mark out the boundaries of such land, and may, unless sufficient permanent marks of a suitable description have already been set up, cause the same to be affixed or set up in such manner and number as he may consider sufficient, and the Superintendent may recover the cost thereof from the proprietor or applicant.

Power to re-erect and repair boundary marks

109. Whenever a Superintendent becomes aware that any boundary mark in his district has been injured, destroyed, removed or not properly maintained, he may cause the same to be replaced or repaired, and may recover the expenses of so doing from the person is who bound to preserve such mark.

Removal of or interference with survey and boundary marks

110. No land mark, boundary mark, trigonometrical station or other survey mark shall be defaced, obliterated, moved, injured or otherwise impaired, destroyed or rendered useless, except by a person duly authorized thereto by the officer having control of such station or mark, and any person acting in contravention of this section shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit, and the offender may further be ordered to pay the cost of repairing or replacing such station or mark and of making any survey rendered necessary by the act for which such conviction was had, the amount to be recovered by the process provided for the recovery of fines. Should any person have occasion to require the temporary or permanent removal or alteration of any such station or mark, he may make an application in writing to that effect to the Superintendent, setting forth the reasons for such application, whereupon the Superintendent may comply with such application and shall be entitled to recover from the applicant the cost of such work as may be thereby entailed.

Recovery of cost

111. Whenever it is provided in this Part that the Superintendent may recover the cost or the expenses of doing any act or thing, the same may, if not paid on demand, be sued for by the Superintendent by summons returnable before any Magistrate having jurisdiction over the recovery of debts.

PART VII

REGISTRATION

Register

112.—(1) Every Registrar shall keep a Register in such form as may be prescribed and shall record therein particulars of all instruments, dealings and other matters required to be registered or entered on the Register.

(2) Any existing Land Register under the former Land Ordinance [*Cap. 27 (1948 Ed.)*] or the former Land Settlement Ordinance [*Cap. 28 (1948 Ed.)*], hereinafter referred to as “a previous register”, shall, notwithstanding any difference in form, be deemed to form part of the Register, and any instruments or other dealings affecting land in either of these registers may be registered in accordance with this Code.

(3) Notwithstanding subsection (2), upon the expiration of the term of a lease, Occupation Ticket or other document of title now registered in any previous register or upon the replacement of such a lease, Occupation Ticket, or document of title by a new lease or leases, whether upon a sub-division or otherwise, any new lease or leases shall, if the survey of the land has been completed to the satisfaction of the Superintendent, be registered in the Register and the prior record in the previous register shall be cancelled.

(4) The Registrar may at any time, if he is satisfied as to the sufficiency of the survey of the land in any lease, Occupation Ticket or other document of title in a previous register under the former Land Ordinance [*Cap. 27 (1948 Ed.)*], cancel the record in that register and

transfer to the Register all the necessary particulars relating to the lease, Occupation Ticket or other document of title.

(5) In this section a reference to a lease shall include a grant.

(6) Notwithstanding anything in this section, if registration of an estate or interest, or of any entry in a previous register, has been made otherwise than in the name of a person, or has been made in the name of a person who would not be entitled to be registered as a proprietor under this Code, then that registration, and any other registration in the previous register affecting that registration, shall not form part of the Register until it has been included in the Register pursuant to an order of a competent court made under section 224 or has, otherwise, lawfully been included in the Register; and, if by any failure to appreciate that this subsection applies or by any error or omission, the registration of that estate, interest or entry, as the case may be, is included in the Register, such inclusion shall be void and shall not for the purposes of section 119 be deemed to have been registered in accordance with this Part.

When instruments deemed to be registered

113. Every grant and lease of State land and every instrument or other dealing affecting land under this Code shall be deemed to be registered under and for the purposes of this Code as soon as particulars regarding the same, together with the name of the person entitled to the interest therein, have been entered on the Register and the entry signed by the Registrar:

Provided that any grant, lease or provisional lease of State land shall also be deemed to be registered as soon as one part of such grant or lease, duly completed, is permanently annexed to, or forms part of, the Register.

Provision for counterparts

114.—(1) Whenever there is no duplicate of any instrument tendered for registration, the Registrar shall retain and file such instrument.

(2) If, upon application for registration, any instrument tendered for registration has been executed in duplicate or in more parts, the Registrar shall, after retaining and filing one such part and upon payment of the prescribed fee, affix his signature to such other parts as have been executed:

Provided that nothing in this subsection contained shall be construed as imposing any obligation on the Registrar to affix his signature on more parts than there are parties to the grant, lease or other instrument excluding the part retained and filed by him in pursuance of this subsection.

(3) Nothing in this section shall preclude the Registrar in his discretion, in any particular case or class of case, from making an additional copy of a lease of State land or other dealing.

(4) Where there is any conflict between the Register, or of any instrument retained by the Registrar pursuant to subsection (2), and the issue document of title delivered to the person entitled, the Register shall prevail.

Registered proprietor

115. The person named in any grant, lease or other instrument registered in accordance with section 113 as entitled to or taking any estate or interest shall be deemed to be the registered proprietor thereof.

Priority of registration

116.—(1) Every instrument shall be registered in the order of time in which it is presented for registration and, in the case of an instrument drawn up, at the request of the parties concerned, by the Registrar or any other officer in accordance with rules prescribed for the purpose, it shall be deemed to have been presented for registration when it has been signed by the parties, all fees and duties have been paid and all other matters have been completed by them to enable the registration to be effected.

(2) In the case of instruments received by post, whether these have been prepared by a Government officer or not, they shall be deemed to have been presented for registration at the time the office closed for business on the day they were received properly drawn and attested and with all necessary matters relating thereto duly completed.

(3) Instruments registered with respect to or affecting the same estate or interest shall, notwithstanding any express, implied or constructive notice, be entitled in priority the one over the other according to the date of registration and not according to the date of each instrument itself.

(4) If two or more instruments executed by the same proprietor and purporting to transfer or encumber the same estate or interest in any land are presented to the Registrar for registration at the same time the person, if any, in possession of the issue document of title of the land shall have the better claim to registration.

Issue document of title

117.—(1) The expression “issue document of title” does not include a document of title other than a document of title issued by the Government to a person holding directly from the Government by way of grant, lease, Occupation Ticket or other similar disposition for a term of years and, subject as aforesaid, means—

(a) in the case of any document of title issued under the provisions of—

- (i) this Code;
- (ii) the former Land Ordinance [*Cap. 27 (1948 Ed.)*]; or
- (iii) any Order of the Rajah affecting land,

that part which pursuant to those provisions is or has been issued to the person entitled thereto;

(b) in the case of a grant or lease under the former Land Settlement Ordinance [*Cap. 28 (1948 Ed.)*], subject as hereinafter provided, the photostat copy thereof issued to the person entitled to such grant or lease; or

(c) in any case in which a certificate in Form F in the First Schedule is issued, that certificate.

(2) In any case in which the only issue document of title subsisting is that referred to in subsection (1) (b), any person who is able to satisfy the Registrar that he is entitled as lessee or grantee to any land comprised therein shall be issued with a certified document of title in Form F in the First Schedule.

Production to Registrar of issue document of title upon registration

118.—(1) In the event of any transfer, charge, sublease or other dealing affecting land comprised in a document of title, the issue document of title shall, unless the Registrar dispenses with the same as provided by section 123, be produced to the Registrar upon registration of such transfer, charge, sublease or other dealing.

Particulars to be endorsed on issue document of title

(2) Whenever particulars regarding any instrument have been entered on the Register, the Registrar shall except in the case of a transfer or other dealing endorsed on a sublease or on a charge, record the like particulars on the corresponding issue document of title unless the Registrar, as provided by section 123, dispenses with the production of the same.

Instrument not effectual until entry in Register

119.—(1) No instrument shall be effectual to pass any land or any interest therein, or render any land liable as security for the payment of money, until it has been registered in accordance with this Part.

(2) No court of competent jurisdiction shall recognise, assist, enforce or protect, as against a registered proprietor or a person claiming through or under a registered proprietor, any claim to the possession, enjoyment or occupation of any land, or any interest affecting land, which is founded upon or arises from any instrument which by reason of subsection (1) is not effectual:

Provided that nothing in this subsection shall operate to defeat a claim to damages or for specific performance founded upon, or arising from, such an instrument.

(3) An instrument which, by virtue of this section, is ineffectual shall be treated as ineffectual by every court of competent jurisdiction until it has been registered in accordance with this Code, notwithstanding the existence of a right to specific performance.

(4) The deposit with any person, by way of security for the payment of money, of any document affecting or relating to land may operate as an agreement to create a charge, but shall not give rise to any claim to enforcement as a charge, unless and until a charge relating to the same transaction has been executed and registered on the Register.

Informal instruments not to be registered

120. No Registrar shall register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land under this Code, except in the manner herein provided, nor unless that instrument is in accordance with the provisions hereof.

Register to be open for search

121. Any person may, upon payment of the prescribed fee and subject to any rules that may be made in that behalf, have access to the Register for the purpose of inspection during the hours that the office is open for business.

Arrears of rent, fees, etc., to be paid before registration

122. No instrument of transfer, charge or sublease of, or of any other nature effected by the lessee relating to, land under this Code shall be registered, unless all arrears of rent and other fees and dues payable to the Government have been paid.

Registrar may dispense with issue document of title or charge

123.—(1) The Registrar may for reasonable cause dispense with the production of any issue document of title, or any charge, for the purpose of entering the particulars by this Code required to be entered upon the transfer, or other dealing with land, under this Code.

(2) When the production has been dispensed with under subsection (1), the Registrar shall, after giving one month's notice in the *Gazette* of his intention so to do, notify in the Register that the particulars of the registration have not been entered on the issue document of title or charge, and the registration shall thereupon be as valid and effectual as if the particulars had been so entered.

Registration in name of deceased person

124.—(1) The death of any person, either before or after the presentation of any instrument executed by him, shall not prevent the registration of such instrument, but such instrument may be registered and shall be valid, notwithstanding such death.

(2) A lease or grant of State land, a transfer, charge or any other instrument may be registered notwithstanding that the person acquiring the interest therein has previously died, and the interest thereby acquired shall devolve in like manner as if the instrument had been registered immediately prior to the death.

Stamp duty to be paid before registration

125. No Registrar shall register any instrument liable to stamp duty unless the full amount of stamp duty payable thereon has been duly paid, but no registration shall be invalidated by reason of any error in this respect.

Instruments requiring correction

126.—(1) The Registrar may refuse to complete or proceed with the registration of any instrument, or to do any act or make any entry in relation thereto, if he is of the opinion that, because of some defect or error therein or because of an omission to furnish certain documents or for any other reason, it is not capable of registration.

(2) Notice of such refusal shall be given to the person who presented the instrument for registration, or to the person entitled thereunder, requiring him to correct the error or do such other thing as may be necessary to make the instrument capable of registration. In the event of such person omitting, for a period of one month after the date of such notice, to comply with the requirements thereof, the Registrar may deliver the instrument to the person who presented it for registration, or send it by registered letter through the post to such person or to the person entitled thereunder, and thereupon all fees and duties paid thereon shall be forfeited.

Certified copies

127. Upon payment of the prescribed fee, the Registrar shall furnish to any person applying for the same a certified copy of any registered instrument, and every such certified copy signed by him and sealed with his seal shall be received in evidence for all purposes for which the original instrument might be put in evidence.

The issue of new document of title in case of loss of original

128.—(1) In the event of any issue document of title being lost, mislaid or wholly or partly destroyed, the registered proprietor, together with other persons, if any, having knowledge of the circumstances, may make a statutory declaration as to the facts giving the names and descriptions of the registered proprietors and particulars of all charges or other dealings affecting the land and the title thereto.

(2) The Registrar, if satisfied as to the truth of the declaration, may issue a new issue document of title which shall be an exact copy of the original document of title, or contain the same particulars, and

shall also give particulars of every registered charge or other dealing that affects the land and the title thereto.

(3) The Registrar shall at the same time enter in the Register notice of the issuing of the new issue document of title, and the date thereof, and the circumstances under which it was issued.

(4) The Registrar before issuing the new issue document of title shall give at least one month's notice of his intention so to do, and shall publish the same locally and also in the *Gazette*.

(5) Every such new issue document of title shall be available for all purposes and uses for which the original issue document of title so lost, mislaid or destroyed would have been available, and shall be as valid to all intents as the lost issue document of title.

(6) This section shall as far as they are applicable and with the necessary modifications, apply to any sublease or charge of which the outstanding duplicate has been lost, mislaid or destroyed.

Co-proprietorship

129.—(1) Except in the case of land held by trustees, when land is held by co-proprietors they shall be entitled to the land in undivided shares equally, or in such other proportion as may be registered, and, subject as hereinafter provided, any one of them may claim to have a partition of the land made:

Provided that no partition shall be effected except in accordance with Part X and subject to such terms and conditions as may be imposed by the State Planning Authority.

[Added Cap. A50.]

(2) No such partition of land subject to a charge or sublease shall be made unless the chargee or sublessee, as the case may be, shall in writing delivered to the Registrar have given his consent to such partition.

(3) No such partition of land shall in any case be made unless either the consent of all the co-proprietors has been obtained or the same has been ordered by a competent court.

(4) [*Deleted by Cap. A50*].

Joint tenants

130.—(1) In the case of any land or any charge, sublease or other interest acquired by two or more persons as trustees, the words “as trustees” may be inserted in the document of title at the time of the issue thereof, or in the instrument whereby the interest is acquired, and an entry to the same effect shall be made in the Register. The persons named therein shall thenceforth hold the land or the interest therein as joint tenants and, subject to any lawful appointment of a new trustee or trustees, with the right of survivorship.

(2) Nothing in this section shall require the Registrar to concern himself with the terms of any trust and, subject to this Code, the land, charge, sublease or interest may be dealt with by the registered proprietors as if they were the absolute proprietors.

Title guaranteed to registered proprietor

131. No title or right to land included in the Register shall be acquired by possession or user adversely to, or in derogation of, the title of the registered proprietor holding directly from the Government.

Indefeasibility of title

132.—(1) Subject to this Code, the registered proprietor of any estate or interest in land to which this section applies shall, except in the case of fraud, hold such estate or interest subject to the interests noted on the Register but free from all other interest except—

(a) the estate or interest of a proprietor included in the Register in priority to the title under or through which the first mentioned registered proprietor claims, being an estate or interest to which this section applies;

(b) as regards any portion of land included in the issue document of title by virtue of a wrong description:

Provided that this exception shall not apply if the registered proprietor is a purchaser in good faith and for value of the portion of land affected, or derives title through such a purchaser;

(c) the implied conditions, obligations and restrictions referred to in section 32;

(d) the interest of a tenant in possession of land for a term not exceeding one year;

(e) any charge affecting the land under any written law; and

(f) any easement lawfully created and subsisting on the 1st day of January, 1958, or at such later date when the estate or interest affected by such easement becomes included in the Register.

(2) This section shall apply to any estate or interest in land included in the Register, other than an estate or interest included in a previous register under the former Land Ordinance [*Cap. 27 (1948 Ed.)*] and included in the Register by reason only of section 112 (2) or an estate or interest acquired by a foreign person, foreign company, foreign corporation or foreign body in contravention of section 13A, 13B, 13C, or 13E.

[Am. Cap. A50.]

Doctrine of notice not to apply

133.—(1) No person, whether or not he has become registered as the proprietor of any interest, who contracts or deals with, or takes a transfer from, a registered proprietor or with or from a person who is entitled to be registered as proprietor shall, except in the case of fraud, be concerned to ascertain the circumstances under which such proprietor, or any previous proprietor, was registered, or to see to the application of the purchase money, or be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding.

(2) The knowledge that any trust or unregistered interest is in existence shall not of itself be imputed as fraud for the purpose of this section.

Effect of fraud

134.—(1) Any issue document of title or entry or alteration in the Register procured or made by fraud shall be void as against any person defrauded, or who may be defrauded, thereby, and no person who is a party or privy to the fraud, or who claims solely as a volunteer under such person, shall take any benefit therefrom.

(2) Nothing in this Code shall be so construed as to place in doubt the title of any person who is a purchaser in good faith and for value of any interest, and who is registered as the proprietor of such interest, on the ground that the registered proprietor through or under whom he claims was registered as proprietor through fraud or error, whether such fraud or error consisted in a misdescription of the land or otherwise.

No compensation for failure to locate land in old Registers

135. In cases where documents of title have been issued under the former Land Ordinance [*Cap. 27 (1948 Ed.)*] and the entries on the register under that Ordinance have not been cancelled and replaced by new entries in the Register, no claim to compensation shall lie, and no action shall be maintainable, against the Government on account of any failure to locate the parcel of land to which the document of title relates, or on account of any error in the marking out or establishment of any boundaries, or in the statement of any area.

Rectification of the Register

136.—(1) Subject to any rules made under section 213, the Registrar may, upon such evidence as appears to him sufficient, correct errors or omissions in any document of title or other instrument, or in the Register, and may make any entry necessary to supply any such omission, and any errors so corrected or entries so

supplied shall have the like validity and effect as if such error or omission had not been made, except as regards any entry in the Register prior to the actual time of correcting that error or omission.

(2) Where it appears to the satisfaction of the Registrar that—

(a) any document of title or other instrument has been issued in error or contains any mis-description of land or of boundaries;

(b) any document of title, instrument, entry or endorsement has been fraudulently or wrongfully obtained, or is fraudulently or wrongfully retained; or

(c) the production of any document of title or other instrument is required for the purpose of enabling the Registrar to exercise his powers under subsection (1),

he may require the person to whom that document of title or instrument has been issued, or by whom it is retained, to deliver up the same for the purpose of being cancelled or corrected, as the case may require.

(3) If any such person refuses or neglects to comply with any such request or cannot be found, the Registrar may apply to the High Court to issue a summons for such person to appear before the Court and show cause why such grant, lease or other instrument should not be delivered up to be cancelled or corrected.

(4) If such person, in answer to such summons as aforesaid, is unable to show cause or, when served with such summons, neglects or refuses to attend before the Court at the time therein appointed, or shall have absconded before such summons is served upon him, the Court may direct the Registrar to cancel or correct any document of title or other instrument, or any entry in the Register relating thereto, and to substitute and issue such other document of title or instrument or make such other entry as the circumstances of the case may require.

TRANSFERS

Transfer by registered proprietor

137.—(1) When any land or any estate or interest therein is intended to be transferred, the transferor and transferee shall execute for the purpose of registration a memorandum of transfer in Form G in the First Schedule, which memorandum shall give such description of the land as may be necessary, shall refer to the entry in the Register relating thereto and shall contain a precise statement of the estate or interest intended to be transferred. Every transfer shall be subject to section 31.

(2) A right of way or other easement over or affecting any land may be created by a grant in Form G (1) in the First Schedule modified to suit the circumstances, and may be made appurtenant to other land, but no such right of way or other easement in respect of land subject to a charge shall be binding on the chargee, except so far as he has consented thereto.

[Am. Cap. A17.]

(3) Upon any lawful transfer of part of the land comprised in any existing document of title, a new document of title shall be issued for the part transferred and another document of title shall be issued for the balance, pursuant to section 25.

Where land is subject to a charge

138. In every memorandum transferring any land subject to a charge, there shall be implied the following agreement by the transferee with the transferor and, so long as the transferee shall remain the proprietor, with the chargee, that is to say, that the transferee will pay the principal sum, interest and other moneys secured by such charge at the rate and at the time or times specified in the instrument creating the same, and will indemnify and keep harmless the transferor from and against the principal sum, interest and other moneys secured by such instrument and from and against all liability in respect of any of the agreements therein contained, or by this Code implied, on the part of the transferor.

Transfer of sublease and charges

139.—(1) A registered charge or sublease may be transferred by a memorandum of transfer in Form G in the First Schedule.

(2) Upon the registration of any memorandum of transfer of a charge or sublease, the interest of the transferor as set forth in the charge or sublease, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee.

(3) The transferee shall thereupon become subject to, and liable for, the same requirements and liabilities to which the transferor would have been subject and liable if such transfer had not been made; and, by virtue of every such transfer, the right to sue upon the charge or sublease, and to recover any money or damages thereunder, and all interest in any such money or damages, shall be transferred so as to vest the same in the transferee thereof.

Implied agreement by transferee of sublease

140. In every transfer of a sublease, there shall be implied the following agreement by the transferee with the transferor, that is to say, that the transferee will henceforth pay the rent by the sublease reserved and perform and observe all the agreements and conditions in the sublease expressed or implied on the part of the sublessee to be performed and observed, and will indemnify and keep harmless the transferor against all actions, claims and expenses in respect of the non-payment of such rent or the breach or non-observance of such agreements or conditions, or any of them.

Removal of easement

141. Where an easement has been determined or terminated, the Registrar shall, upon proof to his satisfaction of the determination or the termination, make an appropriate entry upon the Register and upon any relevant instrument relating thereto:

Provided that, unless the determination or determination was by effluxion of time or merger, the Registrar before making the entry in the Register shall give notice of his intention so to do to all persons appearing to him to be entitled to any interest under the easement or shall give at least one month's notice of his intention in the *Gazette*.

If transfer has been lost or has not been executed

142. Any person claiming to be rightfully entitled to any estate or interest in land by reason of the payment by him to the registered proprietor of the full amount agreed upon as purchase money and who has lost or inadvertently destroyed the instrument of transfer before registration thereof, or who has not obtained a registrable instrument of transfer executed by the registered proprietor and who, by reason of the continued absence of the registered proprietor from Sarawak without having appointed an attorney or because the whereabouts of the registered proprietor is unknown and it is not known whether he be alive or dead, is unable to obtain an instrument of transfer from the registered proprietor to replace the instrument that has been lost or destroyed or a registrable instrument of transfer, where one has not already been given, may apply to the High Court for an order declaring him to be entitled to the estate or interest claimed and to be registered as proprietor thereof and the Court, upon production of such evidence as it considers necessary and upon proof to its satisfaction that all the purchase money has been duly paid, may make such order accordingly. Such order shall be liable to stamp duty as an instrument of transfer.

CHARGES

Forms of charges

143.—(1) Whenever any estate or interest in land is intended to be charged with, or made security for, payment of any money, the registered proprietor and chargee shall execute a memorandum of charge in Form H(1) or H(2) in the First Schedule, which memorandum shall give such description of the land as may be necessary, shall refer to the entry in the Register relating thereto and shall contain a precise statement of the estate or interest intended to be charged. Any such charge may contain such other special conditions as may have been agreed to by the parties, but shall not contain a charge over property other than land or an estate or interest in land.

(2) If the proprietor and the chargee agree that no dealing shall be registered against the land during the period of the charge, the following covenant shall be included in the charge:

“I (We) registered proprietor(s) and I (We) chargee(s), hereby agree that during the period of this charge no dealing shall be registered against the property unless the chargee has given his consent to such registration.”.

(3) Upon registration of the charge the covenant shall operate as a caveat against the registration of any dealing affecting the land during the period of the charge, unless it is with the written consent of the chargee:

Provided that nothing in this subsection shall operate to prohibit the registration of any transmission affecting the land in consequence of the death or bankruptcy of the chargor or a dealing pursuant to an order of a court of competent jurisdiction.

Profits and other moneys secured by any charge where an Islamic bank is the Chargee

143A. For the purposes of sections 144 to 157, “interest” shall be construed to mean, in relation to any charge where any bank licensed under the Islamic Banking Act 1983 [*Act 276*] is the registered Chargee, the gain, profit or other moneys due thereon in accordance with the terms of the charge.

[Ins. Cap. A17.]

Conditions implied

144. In every charge there shall be implied the following covenants and conditions:

(a) that the chargor will pay to the chargee the principal sum mentioned in the charge with interest thereon in accordance with the provisions of the charge;

(b) that the chargor will, during the continuance of the charge, punctually pay all rates, taxes and charges as and when the same become due in respect of the said land;

(c) that the chargor will maintain and keep in a reasonable state of repair all buildings or other improvements erected or made upon the land and that the chargee may at all reasonable times, until such charge is satisfied, upon giving to the chargor two days previous notice, enter by himself or by his agent into and upon such land to view and inspect the state of repair of such buildings or improvements;

(d) that the chargor will, in the case of a charge of country land, continue to maintain and cultivate in a proper manner all parts of the land, other than such parts as may lawfully be used for other than agricultural purposes, and that the chargee may at all reasonable times, until such charge is satisfied, enter upon such land to view and inspect the state of maintenance and cultivation;

(e) in any case where a charge is subject to a prior charge, there shall also be implied a covenant by the chargor that he will duly and punctually pay all principal, interest and other moneys secured by, and perform and observe all the covenants and conditions contained or implied in, any charge having priority to this present charge.

Redemption

145.—(1) A chargor shall be entitled to redeem the land charged, at any time before the same has been actually sold under the power of sale, on payment of all moneys due and owing under the charge at the time of payment.

(2) A chargor shall be entitled to redeem the land charged although the time for redemption appointed in the charge has not arrived, but, in that case, he shall pay to the chargee, in addition to any other moneys then due or owing under the charge, interest on the principal sum secured thereby for the unexpired portion of the term of the charge.

(3) A chargor seeking to redeem after the expiry of the term of the charge, or of any further term for which it has been renewed or extended, shall give to the chargee three clear months' notice in writing of his intention to redeem or shall pay to the chargee three months' interest in lieu thereof :

Provided that there shall be no right to redeem in any case in which the chargee has entered into possession of the land charged, or any part thereof, or has taken any step to realise his security.

(4) Where the chargor has made default in payment of the principal sum at the expiry of the term of the charge, or of any period for which it has been renewed or extended, and the chargee has accepted interest on the said sum for any period not being less than three months after default has been so made, then, so long as the chargor performs and observes all covenants expressed or implied in the charge other than the covenant for payment of the principal sum, the chargee shall not call up and compel payment of the said sum without giving to the chargor three clear months' notice of his intention so to do.

Alteration of terms of the charge

146.—(1) In the case of every charge under this Code—

(a) the amount secured by the charge may be increased or reduced;

(b) the rate of interest may be increased or reduced; and

(c) the term or currency of the charge may be shortened, extended or renewed by a memorandum in one of the Forms I, J or K in the First Schedule, as is applicable :

Provided that it shall not be necessary for the chargor to execute a memorandum of reduction, or for the chargee to execute a memorandum of increase, of the amount of the charge:

Provided further that it shall not be necessary for the chargor or chargee to execute a memorandum of reduction or increase of the rate of interest payable under the charge.

[Ins. Ord. No. 5/90.]

(2) The memorandum may include all or any of the matters referred to in subsection (1) and the said Forms may be modified accordingly.

(3) A memorandum varying the terms or conditions of any charge of land subject to a subsequent charge shall not be binding on any chargee unless he has consented thereto in writing, but that consent shall render such memorandum binding on the chargee so consenting.

Sub-charges

147.—(1) The registered holder of a charge may create a sub-charge and this Code as to registered charges shall apply, with the necessary modifications, to registered sub-charges.

(2) A charge subject to a sub-charge shall not be discharged, nor shall the terms thereof be varied, nor shall the chargee exercise any of his rights in the case of default, without the consent in writing of the sub-chargee.

Remedies for default

148.—(1) If default be made in the payment of the principal sum, interest or other moneys secured by a charge, or in the observance of any agreement, expressed or implied in any charge, the chargee may give to the chargor, his personal representatives or assigns, notice in writing that the chargee will resort to all available remedies unless such default be remedied.

(2) If the chargor fails to comply with the requirements of any notice lawfully given, the chargee shall be at liberty to apply to the High Court—

(a) for an order entitling him to enter into possession and to be registered as proprietor of the charged land;

(b) to receive the rents and profits of the charged land; or

(c) for the sale of the charged land,

and the Court after hearing the evidence may make such order as in the circumstances seems just:

Provided that where a licence for the establishment of a planted forest has been granted under section 65B of the Forests Ordinance [*Cap. 126 (1958 Ed.)*] and a caveat has been lodged by the holder thereof against the land prior to the registration of the charge favouring the chargee—

(i) no relief shall be granted under this section unless and until a copy of the application made by the chargee and all relevant documents in support thereof have been duly served on the holder of such licence; and

(ii) any order for the possession of the charged land or the sale thereof and any memorandum of transfer executed pursuant to section 150 (3) shall be made expressly subject to the rights, interests and caveat of the holder of any licence for the establishment of a planted forest granted under section 65B of the Forests Ordinance [*Cap. 126 (1958 Ed.)*] unless such holder is the purchaser of the charged land.

[Ins. Cap. A42.]

(3) The notice under subsection (1) shall comply with the terms of the charge :

Provided that, without prejudice to section 145 (4), if no period of notice for the purposes of this section is stipulated by the charge, not less than thirty days' notice shall be given.

Second or subsequent charges

149. The proprietor of land subject to a charge may create a second and subsequent charge and, when such a charge has been registered, this Code shall apply to such second or subsequent charge, but any sale under the power expressed or implied in any such charge shall be expressed to be subject to all prior charges.

Sale by order of court

150.—(1) Where any competent court orders the sale of any land subject to a charge, it shall notify the Superintendent of its decision and shall serve a notice of the intended sale upon the chargor and upon the registered proprietor of every other estate or interest in the land. It shall also give notice of the intended sale by advertisement in the *Gazette* and by such other means as it may deem sufficient. The sale shall be by public auction or tender or such other mode of sale as may be directed by the court subject to such conditions of sale as shall be approved by the court. The court shall also fix the date of the sale, which shall be not less than thirty days from the date of the order of sale, and shall authorize such other acts as may be necessary for the conduct of the sale. A reserve price shall be put on the land which shall be approximately equal to its estimated fair market value.

[Am. Cap. A17.]

(2) The chargee and the holder of a licence for the establishment of a planted forest granted under section 65B of the Forests Ordinance [*Cap. 126 (1958 Ed.)*] may be a bidder at any sale to which subsection (1) relates and become the purchaser of the land or any part thereof.

[Am. Cap. A42.]

(3) Where a sale has been effected either to the chargee or to any other person, a memorandum of transfer shall, after payment of the purchase price and such other moneys as may be necessary, be executed in favour of the transferee by such person, including an officer of the court, as the court may order and shall, with the necessary document of title, be presented to the Registrar for registration.

(4) Upon the registration of any memorandum of transfer executed in accordance with this section, the estate or interest of the chargor therein expressed to be transferred shall vest in the transferee, freed and discharged from the liability under the charge under which the power of sale has been exercised and from any other estate or interest, except an estate or interest which has priority over the charge or which by reason of the consent of the chargee is binding on him,

and the Registrar may make in the Register any entry necessary to show that every such liability, estate or interest has been so determined.

Application of purchase money

151. Purchase money arising from any sale under section 150 shall be applied in the order following—

(a) in payment of any rents, taxes, rates and other fees due to the Government;

(b) in payment of the expenses and costs of, and incidental to, the notices, summonses and sale;

(c) in payment of the moneys which may then be due or owing to the chargee;

(d) in payment of subsequent charges, if any, in order of their priority and the surplus, if any, shall be paid to the chargor.

Procedure if no sale

152. When no bid has been made at or above the reserve price, it shall be lawful for the court to adjourn the sale and to order that the land be again put up for auction with the same or with a reduced reserve price :

Provided that, in every case, it shall be the duty of the court to have the time of the sale publicly notified by advertisement and in such other manner as shall be advisable, or as shall be regulated by any rules made under this Code, or by order of the court.

Protection of purchaser

153. Any memorandum of transfer executed in accordance with section 150 (3), upon a sale shall, in favour of any person claiming by, through or under that memorandum of transfer in good faith and for valuable consideration be conclusive proof that all this Code relating to the sale have been complied with and that all things have happened,

and all times have elapsed, to authorize the memorandum of transfer to be made.

[Am. Cap. A42.]

Discharge of charge

154.—(1) Upon the production of any memorandum, by endorsement on the charge or otherwise signed by the chargee and duly attested, acknowledging receipt of the moneys secured or discharging the land, estate or interest from the whole or part of the principal sum, or discharging any part of the land comprised in the charge from the whole or any part of that principal sum, the Registrar shall make an entry in the Register and on the issue document of title noting that the charge is discharged wholly or partially.

(2) Upon the making of any such entry, the land, estate or interest mentioned or referred to in the memorandum shall cease to be subject to, or liable for, the principal sum or for the part so noted in the entry as discharged. Where the charge is wholly discharged, any caveat included therein shall cease to have any effect.

(3) The duplicate of every charge wholly or partially discharged as aforesaid shall be surrendered to the Registrar to be cancelled or partially cancelled, as the case may be, unless the Registrar sees reasonable cause to dispense with this surrender.

Repayment when chargee cannot be found

155.—(1) Where any person entitled to receive, or having received, payment of any money secured by a charge is not in Sarawak, cannot be found or is unknown, or is dead, or it is uncertain who is entitled, the High Court, upon the application of the person entitled to redeem the charged premises, may order the amount of the debt to be ascertained in such manner as the Court thinks fit and may direct the amount so ascertained to be paid into Court or, as the case may be, may by order declare that all moneys secured by the charge have been paid in full.

(2) A certificate by the Registrar of the Court that such payment as is referred to in subsection (1) was directed and has been made, or a copy of the order of the Court declaring that all moneys secured by the charge have been paid in full, shall be registrable and shall, upon registration, operate as a discharge of the land from the charge in the same manner as a memorandum of discharge operates under section 154. As between the chargor and chargee, any amount which is eventually shown by the person entitled to the charge to have been in fact due and payable over and above the amount so paid shall continue to be a specialty debt due under the charge.

(3) The Court shall order the amount so paid into Court to be paid to the person entitled upon the application of that person and on proof that the charge and all other necessary documents have been delivered to the person by whom the amount was so paid into Court or have been otherwise satisfactorily accounted for.

When an order of Court is made

156. Upon the registration of any order made by the Court under section 148(2)(a), the estate or interest of the chargor shall vest in the chargee subject to any charges which may have priority but freed and discharged from any other estate or interest, and the liability of the chargor for the payment of any principal sum, interest or other moneys secured by the charge shall be discharged, except and to the extent that the order of the Court otherwise decrees.

When chargee becomes purchaser

157. Where the chargee becomes the purchaser at a sale conducted under section 150, the amount at which the property was sold, whether that amount is the reserve price at the auction or an amount in excess thereof, shall be treated as the value of the property and, subject to any directions that may be given by the court, that value shall be adopted for the purpose of determining the amount of the debt, if any, still owing by the chargor to the chargee after due allowance is made for any moneys owing by the chargor under any prior charges, if any.

SUBLEASES

Form of sublease

158. When any land is intended to be subleased for any term exceeding one year, the proprietor and the sublessee shall execute for the purpose of registration a memorandum of sublease in Form L in the First Schedule, which memorandum shall give such description of the land as may be necessary to identify the same and shall refer to any entry in the Register relating thereto. Any such sublease may also include an agreement by the sublessee that he will insure and keep the property insured against loss or damage by fire and also such other conditions as may have been agreed to by the parties.

Sublease not binding on chargee without consent

159. No sublease of charged land shall be binding upon the chargee except so far as he has consented thereto.

Covenant for right to purchase

160. A right for, or covenant by, the sublessee to purchase the land may be stipulated in a memorandum of sublease and, in case the sublessee pays the purchase money and otherwise observes his covenants expressed or implied in the instrument, the lessor shall be bound to execute a memorandum of transfer and to perform all other necessary acts for the purpose of transferring to the sublessee the land included in the sublease.

Sublease for term not exceeding one year

161. Any sublease, or agreement for a sublease, granted for a term not exceeding one year shall be valid without registration, and every registered dealing with the land shall be subject to the rights of a tenant in possession under a prior sublease or agreement for a sublease for a term not exceeding one year:

Provided that no right to purchase the land contained in any sublease, or agreement for a sublease, for a term not exceeding one year shall be valid against any subsequent transferee, sublessee or

chargee, unless the memorandum of sublease or agreement be registered or unless a caveat giving notice of such right to purchase be registered.

Agreements implied in subleases

162. In every sublease there shall be implied the following agreements by the sublessee—

(a) that he will pay the rent thereby reserved at the time therein mentioned, provided that in case the premises or any part thereof shall at any time during the continuance of the sublease be destroyed or damaged by fire, flood, storm or tempest so as to render the same unfit for the occupation and use of the sublessee, then the rent thereby reserved or a proportionate part thereof according to the nature and extent of the damage shall abate and all or any of the remedies for the recovery of the rent shall be suspended until the premises shall have been rebuilt or made fit for the occupation and use of the sublessee;

(b) that he will at all times during the continuance of the sublease keep and, at the determination thereof, yield up the premises in good and tenantable repair having regard to their condition at the commencement of the sublease, accidents and damage from fire, flood, storm and tempest and fair wear and tear excepted.

Powers in the lessor

163. In every sublease there shall be implied the following powers in the lessor—

(a) that whenever the rent reserved is in arrear, he may levy the same by distress;

(b) that he may by himself or by his agent at all reasonable times during the term, upon giving to the sublessee two days previous notice, enter upon the property and view the state of repair thereof, and may serve upon the sublessee, or leave at his last or usual place of abode or upon the property, a notice in

writing of any defect requiring him within a reasonable time to be therein mentioned to repair the same; and

(c) that, whenever the rent or any part thereof, whether legally demanded or not, is in arrear for the space of three months, or whenever the sublessee has failed to perform or observe for a space of three months any of the covenants, conditions or stipulations contained or implied in the sublease, and on the part of the sublessee to be performed or observed or whenever repairs required by a notice in terms of paragraph (b) have not been completed within the time specified, he may re-enter upon the premises and recover possession thereof and thereby determine the estate of the sublessee, but without releasing him from liability in respect of breach or non-observance of any such covenant, condition or stipulation.

Agreement implied in sublease

164. There shall be implied in every memorandum of sublease an undertaking by the lessor that he shall, during the continuance of the sublease, pay all rent, taxes and other charges, if any, which are payable to the Government and shall keep the sublessee indemnified against all claims and demands in respect of such rent, taxes and other charges, and in respect of any moneys payable under any charges on the property.

Sublease

165. When any land which is included in a sublease already registered is intended to be subleased for a term exceeding one year, the sublessor and the sublessee shall execute a memorandum of sublease in substantially the same form as that referred to in section 158, and all the provisions of this Code in respect of lessors and sublessees shall, with the necessary modifications, apply to such sublease and the sublessor and sublessee.

Extension or variation of sublease

166.—(1) The term of any sublease may, from time to time, be extended by a memorandum of extension in Form M in the First Schedule signed by the lessor and the sublessee for the time being and registered before the expiry of the then current term of the sublease.

(2) Subject to the provisions of this section, a memorandum of extension shall have the same effect as if it were a memorandum of sublease for the extended term, subject to the same covenants, conditions and restrictions, with the necessary modifications, as are contained or implied in the sublease. Upon the registration of a memorandum of extension, the estate of the sublessee thereunder shall be deemed to be subject to all encumbrances and other interests to which the sublease is subject at the time of the registration of the memorandum of extension.

(3) The covenants, conditions and restrictions contained or implied in the sublease may be expressly varied, negatived or added to by the memorandum of extension.

(4) A memorandum of extension may be registered in the same manner as the original sublease, and a certificate thereto shall be entered on the Register and on all relevant instruments.

(5) If the land affected by the memorandum of extension is, at the time of the registration of the memorandum, subject to any charge, the memorandum shall not be binding on the chargee unless he has consented thereto in writing on the memorandum.

Surrender of sublease

167.—(1) The surrender of a sublease by agreement between the parties may be affected by endorsing thereon the word “surrendered” and that endorsement, if signed by all necessary parties and attested, shall be noted on the Register and on the issue document of title, and shall thereupon operate to vest all the estate and interest of the sublessee in the lessor.

(2) No sublease subject to a charge or sublease shall be surrendered without the consent of the chargee or sublessee.

Re-entry by lessor

168.—(1) In case of re-entry and recovery of possession of any premises held under a sublease, either by process of law or by exercise of any power of re-entry in the sublease contained or implied, the Registrar shall, upon proof to his satisfaction of the re-entry and of actual recovery of possession, notify the re-entry upon the Register and upon the issue document of title, if produced to him for that purpose:

Provided that the Registrar shall require notice of the application to register the same to be served upon all persons interested under the sublease or, failing such notice, shall give at least one month's notice of the application by publication in the *Gazette* before making any entry on the Register.

(2) The estate of the sublessee shall thereupon cease and determine, but without releasing him from liability in respect of breach or non-observance of any covenant or condition in the sublease contained or implied.

TRANSMISSIONS

Transmissions

169.—(1) Whenever a proprietor, chargee or sublessee shall die, become bankrupt or be declared mentally disordered, the representative of such person shall present to the Registrar in Form N in the First Schedule a written application to be registered as proprietor, chargee or sublessee, together with the issue document of title and such other documents as may be necessary, and the original and a certified copy of the certificate of representation, or other satisfactory proof that he is legally entitled to be registered as proprietor, chargee or sublessee, as the case may be. The Registrar shall thereupon make on the Register and issue document of title and, in the case of a chargee or sublessee, upon the memorandum of charge or sublease, appropriate entries showing the nature of the certificate of representation and the circumstances under which the applicant became entitled to be registered, and shall register him as proprietor, chargee or sublessee accordingly.

(2) Before registering any person as representative of any deceased person, the Registrar shall satisfy himself that estate duty has been paid or that satisfactory arrangements therefor have otherwise been made.

(3) Upon the death of any co-proprietor not being a trustee, his undivided share shall devolve upon his representative and not upon the surviving co-proprietor or co-proprietors.

(4) Upon the registration being made pursuant to subsection (1), the representative shall hold the land, charge or sublease subject to all equities affecting the same but, for the purpose of any dealing therewith, shall be deemed to be the absolute proprietor thereof:

Provided that no charge or sublease executed by the representative of a deceased person shall be registered unless it has been consented to by a Probate Officer, as defined by the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*], or has been made under the authority of an order of a court of competent jurisdiction.

Change of name

170. Upon the production of proof of the marriage of a female registered proprietor of any land, charge or sublease under this Code, or upon proof of the change of name of any proprietor, the Registrar shall, upon the written application of the proprietor, make appropriate entries on the Register and on the other documents of title to evidence the marriage or change of name.

Vesting orders of court

171.—(1) Where the vesting of any land or estate or interest therein in any person has been made pursuant to an order of a court of competent jurisdiction or under any written law in force in the Federation or any part thereof, the person who is entitled to the land or estate or interest therein may, subject to subsection (3), lodge an application in Form N(1) in the First Schedule with the Registrar to give effect thereto:

Provided that no Order of the Court vesting any land or estate or interest therein in such person shall affect such land or estate or interest therein until it has been registered pursuant to this section.

(2) The Registrar shall, upon receipt of the application lodged under subsection (1) and upon being satisfied that the necessary stamp duty has been paid, make an appropriate entry in the Register, the document of title and such other documents as may be necessary that the land or estate or interest therein has been vested in the applicant without being concerned to inquire into its regularity or validity, and upon that entry being made, the land or estate or interest therein shall be vested in the applicant (subject to such subsisting charges, caveats, covenants, conditions or restrictions, if any, as may be binding on the applicant) on the date of the entry in the Register. The Registrar shall also record the like particulars on the relevant documents of title, charge, caveat or other instruments submitted or affected thereby. The instruments so entered in the book of the registry shall thereupon be as valid and effectual as if they have been registered in accordance with Part VII.

(3) The applicant shall, when applying to the Registrar under subsection (1), submit to the Registrar—

(a) the relevant legislation to which the application is founded on;

(b) the relevant document of title of the land affected;

(c) a certified copy of the relevant Court order vesting the land or estate or interest therein in the applicant; and

(d) any other document to prove that the applicant is legally entitled to be vested as the proprietor of the land or estate or interest therein.

(4) In the case of any instrument registered in accordance with this section, a certificate from the Registrar declaring the applicant to have been so vested and registered as proprietor of the land or estate or interest therein or as a person named in the instrument, charge or caveat registered, shall be conclusive proof of the registration.

[Sub. Cap. A17.]

Production of Certificate of Transmission by Probate Officer

172. Upon production to him of a certificate of transmission lawfully issued by a Probate Officer pursuant to the provisions of the Administration of Estates Ordinance [*Cap. 80 (1948 Ed.)*], whereby any land or an estate or interest therein is vested in any person, the Registrar shall make appropriate entries on the Register and on the relative documents of title to give effect to the said certificate and, until such entries have been made, the certificate shall have no effect in vesting or transferring the said land or the estate or interest.

CAVEATS

Caveat against dealing

173. Any person—

(a) claiming to be entitled to or to be beneficially interested in any land, estate or interest under this Code by virtue of any unregistered agreement or other instrument or transmission, or of any trust express or implied or otherwise howsoever, or by virtue of a licence issued pursuant to section 65B of the Forests Ordinance [*Cap. 126 (1958 Ed.)*] for the establishment of a planted forest;

[Am. Cap. A42.]

(b) who is a guardian of the property of an infant beneficially interested in any land or any estate or interest therein; or

(c) transferring any estate or interest under this Code to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in Form O in the First Schedule.

Particulars to be stated

174.—(1) Every caveat shall be signed by the caveator, or by his attorney or agent, and shall state with sufficient certainty the

nature of the estate or interest claimed by the caveator and how it is derived from the proprietor. It shall also appoint a place, or give an address, within Sarawak at or to which notices and proceedings relating to the caveat may be served or addressed.

(2) Every caveat shall be entered upon the Register as of the date and hour of the reception thereof by the Registrar.

Effect of caveat

175. So long as a caveat remains in force, the Registrar shall not make any entry on the Register having the effect of charging, transferring or otherwise affecting the estate or interest in respect of which the caveat may have been lodged :

Provided that nothing herein shall prevent the completion of the registration of a dealing which has been accepted for registration before the receipt of the caveat or the registration of a dealing expressed to be subject to the rights of the caveator and to the registration of which the caveator has given his written consent.

Notice of caveat to be given

176. Upon the receipt of any caveat, the Registrar shall give notice thereof to the proprietor of the estate or interest against which the caveat has been lodged.

Procedure for removal

177.—(1) Any registered proprietor or any other person having a registered estate or interest in the estate or interest against which a caveat has been lodged, may at any time, if he thinks fit, apply to the High Court for an order that the caveat be removed.

(2) The Court, upon proof that notice of such application has been duly served, may make such order in the premises, either *ex parte* or otherwise, as in the circumstances seems just.

Lapse of caveat

178. Except in the case of a caveat lodged by the Registrar in exercise of powers conferred upon him by this Code and a caveat lodged by virtue of a licence issued pursuant to section 65B of the Forests Ordinance [*Cap. 126 (1958 Ed.)*] for the establishment of a planted forest, every caveat shall, upon the expiration of three months after notice given to the caveator that application has been made for the registration of any instrument affecting the land, estate or interest, be deemed to have lapsed as to that land, estate or interest, or so much thereof as is referred to in the notice, unless notice is within the said period of three months given to the Registrar that application for an order to the contrary has been made to the High Court and unless such an order is made and served on the Registrar within a further period of twenty-one days, or such extended period, if any, as the High Court, by order made prior to the expiration of the further period mentioned, may in any special circumstances allow.

[Am. Cap. A42.]

Person entering caveat without cause

179.—(1) Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just.

(2) Such compensation as is referred to in subsection (1) shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat.

Withdrawal

180. Any caveat may be withdrawn by the caveator or by his attorney or agent under a written authority and either as to the whole or any part of the land affected.

No second caveat may be entered

181. When any caveat has lapsed, it shall not be lawful for the Registrar to receive any second caveat, affecting the same land, estate or interest, by the same person or in respect of the same right and for the same cause, except by order of the High Court.

Registrar may enter caveats

182.—(1) The Registrar may enter caveats for the protection of any person who is under the disability of infancy or unsoundness of mind, or is absent from Sarawak, to prohibit the transfer or dealing with any estate or interest belonging or supposed to belong to any such person, or on behalf of the Government to secure the interests of the Government, or the enforcement of any charitable trust, or the interests of the public, or any class or section of the public, or of any public body, and also to prohibit the dealing with any land, estate or interest in any case in which it appears to him that an error has been made in any document of title, or for the prevention of fraud or improper dealing.

(2) In any case in which the Registrar is hereby authorized to enter a caveat on behalf of the Government, a caveat may also be entered by the State Attorney-General on behalf of the Government.

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

PROCEDURE IN SPECIAL CASES

Executions, judgments and pending actions

183.—(1) The Registrar, on being served with a copy of a writ of execution or a judgment, decree or order of any court of competent jurisdiction and on being satisfied that an interest in land which is noted on the Register is affected thereby, shall mark on such copy the date of such service and enter a memorandum thereof on the Register, and no dealing with the interest, pursuant to such writ, judgment, decree or order shall be effected until the memorandum has been so entered.

(2) After the interest has been dealt with pursuant to any such writ, judgment, decree or order, the Registrar shall, on presentation of

an instrument in the appropriate form, register such instrument if presented within a period of six months from the date of service on the Registrar, or within such further time as the Court which issued such writ, judgment, decree or order, as the case may be, may in any particular case for special reasons allow, in which case no other instrument dealing with the interest and presented after the service of the copy but before the presentation of the first-mentioned instrument shall be registered or be deemed to be presented for registration; but, if no such instrument is presented within the period of six months or such extended period as the Court may allow, the writ, judgment, decree or order shall cease to affect the interest.

[Am. Ord. No. 3/79.]

(3) Save as provided in this section and in section 184, no execution or pending action shall affect any interest in land.

(4) On the registration of transfer by way of sale pursuant to this section, the purchaser shall become the transferee and registered proprietor of the interest in all respects as if the transfer were a transfer for value by the registered proprietor.

(5) For the purposes of subsection (2) “appropriate form” includes a form provided by or under any enactment or any written law and, if no provision has been made, means the appropriate form provided by or under this Code.

Satisfaction of writ, judgment, decree or order to be noted on Register

184. Upon proof to the Register of the satisfaction of any writ, judgment, decree or order a copy whereof has been served in accordance with section 183(1), he shall make an entry on the Register to that effect, whereupon such writ, judgment, decree or order shall cease to affect the interest concerned.

Orders and provisions for rectification of the Register

185. Notwithstanding the provisions of any written law other than a written law expressly excluding the operation of this section and passed into law after this Code—

(a) an order for rectification of the Register made otherwise than under section 136;

(b) a direction under section 45 (5) of the Education Ordinance, 1961*; and

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

* *See under Act 45/61 and Act 550. This Ordinance was repealed after the Education Act 1961 (Act 45/61) had been modified and extended to Sarawak (vide P.U.(A) 425/75 w.e.f. 1.1.1976). The Education Act 1961 (Act 45/61) was repealed by the Education Act 1996 (Act 550) w.e.f—31.12.97 (P.U.(B) 541/97).*

(c) any provision in any written law that any previous register shall be rectified or amended in any way upon the happening of any event,

shall not be effectual to transfer or otherwise vest any estate or interest in land until such order or direction has been registered or, in the case of such provision as is referred to in paragraph (c), until the Registrar, upon being furnished with proof that such event has occurred, has made an appropriate entry in relation thereto in the Register.

Trusts

186. Without prejudice to section 130 or the provisions relating to caveats, the Registrar shall not note any trust on the Register, but an order of a competent court or an instrument declaring a trust or appointing new trustees, or a certified copy thereof, may be deposited with the Registrar for safe custody and reference, and the Registrar may protect by caveat, or in such manner as he deems fit, the right of persons beneficially interested thereunder, or thereby appointed as trustees, or required to give any consent; but such instrument or copy shall not form part of the Register or be deemed to be registered nor

shall the Registrar be deemed to owe a duty to any person to concern himself therewith.

Stay of registration

187.—(1) Any person proposing to deal for value with the registered proprietor of an interest in land may, with the consent in writing of such proprietor and on stating the particulars of the proposed dealing, lodge with the Registrar an application for a stay of registration in Form P in the First Schedule.

(2) If, as shown by the Register, the proprietor is free to deal with his interest, the Registrar shall make an order certifying that the proprietor is so free and staying registration of any instrument affecting the interest for thirty days from the time specified in the order, and such order shall be affixed to the relevant issue document of title or instrument.

(3) If, within the said period of thirty days, an instrument affecting the proposed dealing is lodged for registration, such instrument shall have priority over any other instrument lodged for registration after the commencement of the period specified in the order and shall be registered notwithstanding any caveat lodged with, or any copy of a writ of execution or of a judgment, decree or order of any court of competent jurisdiction served on, the Registrar after the time specified.

POWERS OF ATTORNEY

An attorney may deal with land

188. A registered proprietor of any estate or interest in land may by power of attorney in any usual form, and either in general terms or specially, authorize and appoint any person on his behalf to execute transfers or other dealing therewith.

Power of attorney to be registered

189. Every power of attorney intended to be used for the purpose of effecting a dealing under this Code shall be presented to the Registrar and shall be registered and retained by him, unless a duplicate or attested copy thereof is furnished to the Registrar in lieu.

Continuance of power of attorney

190.—(1) Every power of attorney shall, so far as concerns any act or thing done thereunder in good faith, operate and continue in force until notice of the death of the donor of the power, or until notice of other revocation thereof, has been received by the donee of the power.

(2) Every act or thing within the scope of the power, done in good faith by the donee of the power after such death or other revocation as is referred to in subsection (1) and before notice thereof has been received by him, shall be as effectual in all respects as if that death or other revocation had not happened or been made.

(3) The Registrar, before registering any instrument executed by an attorney, may require proof that the power of attorney under which the attorney purported to act was still in force at the date of the execution of the instrument.

(4) A statutory declaration by any attorney to the effect that he has not received any notice or information of the revocation of a power of attorney by death or otherwise shall be taken to be conclusive proof of the non-revocation, at the time when the act was done, in favour of all persons dealing with the donee of the power in good faith, without notice of the said death or other revocation.

Irrevocable power of attorney

191. Where a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable then in favour of a purchaser—

(a) the power shall not be revoked at any time either by anything done by the donor of the power without the concurrence

of the donee or by the death, unsoundness of mind or bankruptcy of the donor; and

(b) any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee or the death, unsoundness of mind or bankruptcy of the donor had not been done or had not happened.

DUTIES OF REGISTRAR AND OTHER OFFICERS

Registrar not bound to produce Register without court order

192. A Registrar shall not be bound to produce in any court of law or elsewhere any Register or other document in his custody as such Registrar, or to attend before any court to give evidence as such Registrar, except by order of the High Court, which order shall not be made unless the Court is satisfied that the production is necessary and that the required evidence cannot be given by certified copy of the Register or document.

Preparation of instruments

193.—(1) At the request of the parties thereto, any transfer, charge, sublease or other instrument may, upon payment of such fees as may be prescribed, be drawn up and prepared by the Registrar or by any Government officer generally or specially authorized by the Director.

(2) The Registrar, or any other person acting under the authority of subsection (1), or the Government, shall not be liable for any defect in any instrument or other document which the Registrar or such other person has in good faith drafted or assisted in the drafting thereof.

(3) Any general authorization under subsection (1) shall be published in the *Gazette* and any special authorization may be given under the hand of the Director or a Deputy Director.

No document of title to be altered without authority

194. No Government officer or other person shall make any entry or endorsement on, or alteration to, the Register or to any document of title which he is not authorized to make under this Code.

Additional powers of Registrar

195. Every Registrar in addition to the powers hereinbefore vested in him may exercise all or any of the powers following, that is to say—

(a) he may by notice require any person, having in his possession or control any grant, lease or other instrument upon which any memorial or entry is required to be endorsed for the purposes of this Code, to produce that instrument within a reasonable time to be fixed by the notice and to deposit it with the Registrar for such time as may be necessary for the making of that endorsement or entry;

(b) he may, if in his opinion any document of title has become worn, defaced or mutilated so as to justify his so doing, require the holder of that document to surrender it for cancellation and upon cancellation a new document of title shall be issued to the person entitled thereto upon payment of the prescribed fee:

Provided that the Registrar may at his discretion remit that fee, except in case of wilful defacement or mutilation of any instrument;

(c) he may administer oaths or may take a statutory declaration in lieu of administering an oath.

Books to be kept

196. In addition to the Register prescribed by section 112, a Registrar shall keep the following books—

(a) a presentation book, in which shall be entered particulars of all instruments received for registration, referring to

the same by number in the order in which they are so received for registration;

(b) a personal index, in which shall be recorded the names of such classes of proprietors entered in the Register as may be prescribed, and the nature of their interest; and

(c) such index books as may be required to record, and give the necessary references to, the pages in the Register relating to all registered land:

Provided that any index may be kept in the pages of a book bound together or unbound, or upon cards regularly arranged.

COMPENSATION FOR LOSS

Compensation for loss

197. Any person who is deprived of any land, or of any estate or interest therein, by reason of any of the provisions relating to indefeasibility contained in sections 132, 133 and 134 and who is by reason thereof barred from bringing an action against the registered proprietor for possession, or other action for the recovery of that land, estate or interest, may bring an action against the Government for recovery of damages.

[Am. Reprint Commissioner.]

Notice of action to be served on State Attorney-General

198.—(1) Notice in writing of every action against the Government, and of the cause thereof, and of the amount claimed, shall be served upon the State Attorney-General and also upon the Director one month at least before the commencement of the action.

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

(2) If these officers concur that the claim ought to be admitted as to the whole, or any part thereof, without action and jointly certify to that effect, the amount of the claim may, without further appropriation than this section, be paid by the Government in whole

or in part to the person entitled thereto in accordance with the certificate.

Recovery of compensation

199.—(1) Where any sum of money has been lawfully paid by the Government as compensation for any loss suffered by any person, the amount of that compensation, together with all costs incurred in contesting or defending any claim or action in relation thereto, shall be deemed a debt due to the Government from the person legally responsible for the fraud, misrepresentation or other cause whereby the loss was suffered, and may be recovered from him or from his personal representatives in like manner as any other debt due to the Government.

(2) A certificate purporting to be under the hand of the State Financial Secretary that any such sum has been paid under subsection (1) shall, until the contrary is proved, be evidence that such payment was made as aforesaid.

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

Government not liable in certain cases

200. Notwithstanding that effect may have been given to the same by entry on the Register, the Government shall not under any circumstances be liable for compensation for any loss, damage or deprivation occasioned by any of the following things:

- (a) by the breach by a registered proprietor of any trust;
- (b) by the same land having been included in two or more documents of title;
- (c) by the improper use of the seal of any corporation or company;
- (d) by the registration of any instrument executed by any person under any legal disability, unless the fact of that disability

was disclosed on the instrument by virtue of which that person was registered as proprietor;

(e) by the improper exercise of any power of sale or re-entry;

(f) by an amendment of a plan which is not accompanied by a shifting of boundary marks on the ground.

Measure of damages

201. No person shall, as against the Government, be entitled to recover any greater amount for compensation in respect of the loss or deprivation of any land, or any estate or interest therein, than the value of that land, estate or interest at the time of that deprivation, together with the value of the permanent buildings erected thereon and any improvements made thereto prior to the time of that deprivation, with interest at the rate of five per cent per year to the date of the judgment recovered.

Limitation of actions

202. No action for recovery of damages as aforesaid shall lie or be sustained against the Government unless the action is commenced within a period of three years from the date when the right to bring the action accrued:

Provided that any person under the disability of infancy or unsoundness of mind may bring such an action within three years from the date upon which the disability ceased.

APPEALS, COURT PROCEDURE AND NOTICES

Appeal from decision of Registrar

203. If the Registrar refuses to perform any act or duty which he is hereby required or empowered to perform under this Code, or if the proprietor or other claimant to any land, estate or interest is dissatisfied with the direction or decision of the Registrar in respect of any matter or thing under this Code, the person deeming himself

aggrieved may require the Registrar to set forth in writing the grounds of his refusal, direction or decision.

Notice to Registrar of appeal

204. Any such person may, if he thinks fit, call upon the Registrar to appear before the High Court to substantiate and uphold the grounds of such refusal, direction or decision by a notice served upon the Registrar fourteen clear days, at least, before the date appointed for the hearing.

Hearing of appeal

205.—(1) Upon the hearing by the High Court of any proceeding under sections 203 and 204, the Court shall make such order in the premises as the circumstances of the case may require, and such order shall be binding upon the Registrar.

Expenses of appeal

(2) All expenses attendant upon any such proceeding shall be borne and paid by the person initiating the proceeding unless the Court orders that the same be paid out of public funds.

Procedure

206. In the conduct of actions and proceedings under this Part in any court, the same rules shall apply, and there shall be the same rights of appeal, as are in force or exist for the time being in respect of civil proceedings in the same court.

Special case

207. The Registrar may, by special case, submit for the decision of the *Federal Court any question arising under this Part which the State Attorney-General has, by certificate under his hand, certified as appearing to him to require such a decision, and the *Federal Court

shall give its judgment thereon as if the question had been raised in due form upon an appeal from a decision in the High Court.

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

* *See the Courts of Judicature Act 1964 (Act 91) as amended by Act A886. See also Act A885.*

Methods of effecting service

208.—(1) Any notice required or authorized by this Part to be served upon any person shall be delivered to that person and may be delivered to him either personally or to his wife or husband, as the case may be, or to any adult member of his family residing with him. If his address in Sarawak is known and there be postal communication with such place, any such notice may be served by posting it by registered letter addressed to that person at the known address.

(2) In the case of natives, if service by personal delivery is impracticable, the notice may be served by posting it by registered letter addressed to, or by personal service upon, the Penghulu, Tua Kampung or Headman of the community or section of any community to which the native concerned was last known to belong.

(3) If the person is absent from Sarawak, the notice may be delivered as aforesaid to his agent in Sarawak. If he is deceased the notice may be delivered as aforesaid to his personal representative.

(4) If the person is not known, or is absent from Sarawak and has no known agent in Sarawak, or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of a court of competent jurisdiction.

(5) If service in accordance with subsection (1), (2), (3) or (4) is impracticable, notice may be given by a notification in the *Gazette*, followed by another insertion of the notice in the next ensuing publication thereof, and any such notices may be consolidated in one or more notifications in such form as may be deemed fit.

(6) Notwithstanding anything in this section, a court of competent jurisdiction may in any case make an order directing the

manner in which any notice is to be delivered or dispensing with the delivery thereof.

PART VIII
OFFENCES AND SANCTIONS

Unlawful occupation, cultivation, clearing, etc., of State land

209.—(1) Any person who, without lawful authority—

(a) occupies, or erects any building on, any State land; or

(b) clears, ploughs, digs, encloses or cultivates any such land or part thereof,

shall be guilty of an offence: Penalty, in the case of a first offence, a fine of one thousand ringgit and, for a second or subsequent offence, imprisonment for two years and a fine of five thousand ringgit.

[Am. Cap. 50.]

(1A) Any person who aids and abets the commission of an offence under section 32A or subsection (1) shall be guilty of the like offence.

[Sub. Ord. No. 3/79.]

(2) A person shall be deemed to have committed an offence under subsection (1) if it is proved that he has asserted or attempted to assert any right or privilege over State land, or over any land deemed to be State land for the purposes of this Code, and is unable to satisfy the court that he is by law entitled to assert such right or privilege.

(3) When a conviction has been recorded under subsection (1), the court shall, if application is made to it in that behalf by or on behalf of the Superintendent, issue a warrant addressed to all police officers requiring them forthwith to dispossess and remove such person from such land and, on behalf of the Government, to take possession of the land together with all crops growing thereon and all buildings and other immovable property, if any, upon and affixed thereto; and the persons to whom such warrant is addressed shall forthwith carry the same into execution, and any police officer into whose hands the same may come shall proceed forthwith to carry such warrant into execution.

(4) When a conviction has been recorded under subsection (1), the court may, upon application by or on behalf of the Superintendent, inquire into and assess any material damage effected to the Government land unlawfully occupied and may, in addition to imposing a fine, order the same to be paid to the Superintendent on behalf of the Government together with the expense incurred in any survey which was, in the opinion of the court, necessary to establish unlawful occupation, or the extent thereof.

(5) An application under subsection (3) or (4) may be made without further process if made before the court recording a conviction under subsection (1) adjourns but, if not so made, shall be made by summons returnable before that court, and the court shall make no further order unless proof of the service of such summons upon the person convicted is forthcoming.

(6) For the purposes of this Part—

“State land” shall include all land held by or on behalf of the Federal or State Government or a public authority or a statutory authority.

[Ins. Ord. No. 3/79.]

Power of arrest

209A.—(1) Any officer empowered by the Director by notification in the *Gazette* may without warrant arrest any person found committing or attempting to commit or abetting the commission of an offence under section 32A or 209.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person so arrested to the officer in charge of the nearest police station or, if the offence is compoundable under section 209F, to an officer empowered under that section to accept compensation:

Provided that, in the latter case, if the person arrested refuses to compound the alleged offence, he shall forthwith be sent to the officer in charge of the nearest police station, and the Criminal Procedure Code [*Act 593*] shall apply to the person so arrested.

[Ins. Ord. No. 3/79.]

Power of eviction, seizure, etc.

209B.—(1) When there is reason to believe that an offence against section 32A or section 209 (1) has been committed, any officer duly authorized by the Director may—

[Am. Cap. A68.]

(a) remove from any land any person whom he has reason to believe to be committing the offence;

(b) detain or seize any vehicle, tractor, agricultural implement or other thing whatsoever which he has reason to believe was used or is being used in the commission of the offence; and

[Am. Cap. A68.]

(c) demolish or remove any building, or take possession in the name of the Government, of any land together with all buildings, crops growing thereon and other immovable property, if any, upon and affixed thereto.

(2) When an officer exercises his powers of arrest, eviction or seizure under section 209A or subsection (1), he shall declare his office or authority to any person against whom he is acting.

(3) Every officer in the exercise of the powers conferred under section 209A or subsection (1) may call upon any police officer for assistance and it shall be the duty of every police officer to comply with such request.

(4) Whenever anything is seized under this section, the seizing officer shall forthwith give notice in writing of such seizure and the grounds thereof to the owner, if known, of such thing, either by delivering such notice to him personally or by post or at his place of abode, if known :

Provided that such notice shall not be required to be given where such seizure is made on the person, or in the presence of the offender or the owner or his agent, as the case may be.

[Ins. Ord. No. 3/79.]

Custody and delivery of things seized

209C. Where an officer has seized anything in exercise of his powers under section 209B, he shall place on such property or thing a mark indicating that it has been seized and shall, without undue delay, make a report of such seizure to a Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, in any case where such property has been seized in connection with an offence dealt with under section 209F or committed by some person unknown or who cannot be found, it shall not be necessary to report to a Magistrate the seizure thereof.

[Ins. Ord. No. 3/79.]

Forfeiture of things seized

209D.—(1) All things seized in exercise of the powers conferred by section 209B (1) shall be liable to forfeiture.

(2) Where anything has been seized under section 209B (1), the seizing officer may, at his discretion, temporarily return such thing to the owner of the same on security being furnished to the satisfaction of the seizing officer that such thing shall be surrendered to him on demand or to produce it before a court of competent jurisdiction.

(3) An order for the forfeiture or for the release of anything seized in exercise of the powers conferred under section 209B (1) shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of the thing shall be made if it is proved to the satisfaction of the court that an offence under section 32A or 209 has been committed and that the thing was the subject matter of or was used in the commission of the offence

notwithstanding that no person may have been convicted of such offence.

(4) If there be no prosecution with regard to anything seized in exercise of the powers under that subsection, such thing shall be taken and deemed to be forfeited at the expiration of three months from the date of seizure unless before that a claim thereto is made in the following manner—

(a) any person asserting that he is the owner of such thing and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the Superintendent in whose possession such thing is held that he claims the same;

(b) in receipt of such notice the Superintendent shall refer the claim to the Court of a Magistrate of the First Class* for decision;

(c) the Court of a Magistrate of the First Class* to which the matter is referred shall issue a summons requiring the person asserting that he is the owner of the thing and the person from whom it was seized to appear before the court and upon his appearance or default to appear, due service of the summons being proved, the court shall proceed to the examination of the matter and on proof that an offence under section 32A or 209 has been committed and that such thing was the subject matter of or was used in the commission of such offence shall order the same to be forfeited or may in the absence of such proof order its release.

(5) All things forfeited or deemed to be forfeited shall be delivered to the Superintendent and shall be disposed of in accordance with the direction of the Director.

(6) Where anything seized in exercise of the powers conferred under section 209B(1) is of a perishable nature or where the custody of such thing involves unreasonable expense and inconvenience, the Director may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

[Ins. Ord. No. 3/79.]

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

No costs or damage arising from seizure to be recoverable

209E. No person shall in any proceedings before any court in respect of the seizure of anything seized in exercise or the purported exercise of the powers conferred under section 209B be entitled to the costs of such proceedings or to any damages or other relief arising in consequence of any act done under section 209B or 209D unless such seizure was made without reasonable or probable cause.

[Ins. Ord. No. 3/79.]

Power to compound offences

209F.—(1) The Director, and any other officer duly authorized by the Director by notification in the *Gazette*, may, subject to rules made under section 213 (1) (*dd*), accept from any person who is reasonably suspected of having committed an offence under **other than an offence under Part X**, this Code or any rules made thereunder—

[Ins. Cap. A119.]

(a) a sum of money not exceeding two-third of the fine stipulated for the offence; and

(b) a sum equivalent to—

(i) any royalty, fee, premium or other levy due and payable under this Code, to the Government at the time of the commission of the offence; and

(ii) any expense incurred or damage suffered by the Government by reason of the offence committed by that person, such expense or damage shall be assessed by the Director.

(1A) The Secretary of the State Planning Authority or any officer duly authorized by him by notification in the *Gazette* may compound an offence under Part X of this Code in the manner and in accordance with the provisions laid out by this section.

[Ins. Cap. A119.]

(2) Where any property has been seized and is liable to forfeiture as provided in this Part, the officer compounding the offence may release such property:

Provided that the said officer may, prior to the release of the property, require the owner thereof to pay an amount equivalent to the value thereof, as assessed by the Director or any officer duly authorized by him.

[Sub. Cap. A68.]

(3) On the payment of such sum of money or such value or both, as the case may be, the person reasonably suspected of committing the offence shall be discharged, the property, if any, shall be released and no further proceedings shall be taken against such person or property.

(4) All sums of money received under this section as compensation or in respect of property forfeited under section 209D shall be credited to the Consolidated Fund of Sarawak.

(5) Any power vested in any officer by notification under subsection (1) may, at any time, be withdrawn by the Director by notification in the *Gazette*.

[Ins. Ord. No. 3/79; Sub. Cap. A50; Am. Cap. A61.]

Miscellaneous offences

210. No person shall—

(a) fraudulently procure, or assist in fraudulently procuring, any document of title or other instrument, or any entry in the Register, or any erasure or alteration in any entry in the Register or in any document of title or other instrument;

(b) fraudulently alter, add to, erase, deface or destroy any Register, document of title or other instrument, or any entry in the Register;

(c) forge, or procure to be forged, or assist in the forging of, the seal of any Registrar or the name, signature and handwriting of any Registrar or other officer, in cases where the Registrar or other officer is expressly or impliedly authorized to affix his seal or signature;

(d) use, with intent to defraud any person, any document upon which any impression of any seal of any Registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged;

(e) knowingly or wilfully or recklessly make or submit to any person referred to in section 3(1) or to any officer of the Department of Lands and Surveys, any declaration (whether on oath or otherwise), representation, statement or claim which is false or contains particulars which are false, concerning any matter or procedure made, to be done or complied with or to be submitted in pursuance of this Code; and

(f) erect, use, maintain or allow to operate any communication tower on any land or building unless the erection, use and the maintaining or continued operation of such towers have been approved by the State Planning Authority:

[Am. Cap. A95.]

Penalty, imprisonment for five years and a fine of one hundred thousand ringgit.

Penalty for carelessly destroying

211. Whoever shall carelessly destroy, mutilate, deface or lose any Register or document of title, or any registered instrument, or shall carelessly allow any such Register, document of title or instrument to be destroyed, mutilated, defaced or lost, whilst in his

custody or safe-keeping, shall be guilty of an offence: Penalty, imprisonment for six months and a fine of one thousand ringgit.

Penalty : continuing offence

211A. Where provision is made by or under this Code for the imposition of a daily penalty in respect of a continuing offence, the court by which a person is convicted of the original offence shall fix a reasonable period from the date of conviction for compliance by the defendant with any directions given by the court, and, where a court has fixed such a period, the daily penalty shall not be recoverable in respect of any day before the expiration thereof.

[Ins. Ord. No. 8/88.]

Offence by corporation

211B. Where an offence under this Code has been committed by a body corporate, a person who at the time of the commission of the offence is a director, manager, secretary or other similiar officer of the body corporate or a person who is purporting to act in such capacity shall, as well as the body corporate, be deemed to be guilty of the offence unless he proves that the offence has been committed without his knowledge or that he took reasonable precautions to prevent its commission, or in the case of a continuing offence, the continuation thereof.

[Ins. Cap. A50.]

Who may prosecute

211C. Prosecution of any offence under this Code or any rules made thereunder may be conducted by the Public Prosecutor or any person duly authorized by him under section 377(b) of the Criminal Procedure Code [*Act 593*].

[Ins. Cap. A50; Sub. Cap. A59.]

PART IX
ARBITRATION AND MISCELLANEOUS

Arbitration

212.—(1) Whenever it is provided by this Code, or by any rules made hereunder, that any dispute or matter shall be referred to arbitration in accordance with this section, or that any person may require that it be so referred, or words having similar meaning are used, it shall be the duty of the Director, Superintendent or other public officer, as the case may be, acting under this Code or of any such rule, in this section referred to as “the Government side”, to prepare, submit to the *Chief Judge a brief summary of such dispute together with details of the offer made by the Government side and the estimated value of any land, or of any right or interest therein, to which the offer relates and such other particulars as the *Chief Judge may in his discretion, by any general or special direction under the hand of the Registrar of the High Court, require.

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

* *See the Courts of Judicature 1965 (Act 91) as amended by Act A886 and also Act A885 and Cap. A20.*

(2) The Chief Judge shall in his discretion, according to the value or importance of the dispute or matter, appoint a person whose name appears in a list published in the *Gazette* by the Registrar of the High Court for appointment as arbitrators under this section to act as arbitrator.

[Sub. Cap. A50.].

(3) After subsection (2) has been complied with, such dispute or matter shall be determined in like manner and with the like results, for all intents and purposes but with any necessary modifications, as if there had been a reference to a single arbitrator by consent of all parties, within the meaning and for the purposes of the Arbitration Act 1952 [Act 93], and as if the arbitrator appointed under subsection (2) had been validly appointed under that Act.

[Am. Cap. A50.]

Rules

***213.—(1)** The Majlis Mesyuarat Kerajaan Negeri may make rules generally for carrying out the provisions of this Code and to guide the public officers charged with its administration in the exercise of their powers and duties and, in particular, such rules may provide for—

* *Premia, Rents and Fees Rules (Vol. VIII, 1958, p.173. Am. G.N.S. 149/60, 234/61 & Swk. L.N. 136/71, 102/98).*

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

(a) amending the Forms in the First Schedule and prescribing new Forms in respect of any matter to be done under this Code and rules;

(b) licences and permits of State land;

(c) the conditions under which Native Customary Land may be occupied under permit by persons other than those entitled to the customary rights:

Provided that such rules secure that due regard is had to the rights of the persons entitled and that provision may be made for appeal against any decision taken in connection with the issue of such permits;

(d) regulating the purchase or acquisition of an estate, interest or right in any land by a foreign person, foreign company, foreign corporation or other foreign body;

(dd) the procedure and form for compounding of offences under this Code;

[Am. Ord. No. 18/71; Cap. A61.]

(e) the conduct and conditions of sales by auction or otherwise;

(f) fixing the tenure of grants other than grants in perpetuity and the terms for which leases of various classes of land may be issued;

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

(g) the disposal by licence or otherwise of any rights reserved to the Government upon alienation;

(h) authorizing the Registrar to refuse registration of instruments he considers have been tampered with;

(i) the method of correcting mistakes in any registered instrument;

(j) the payment and remission of rent, fees or surcharges and the deferring of the payment thereof; and

(k) the keeping of a Register of Native Rights under section 7A(2), the making of any entry therein and the conditions for registration of any native rights in the said Register;

(l) the procedure for the registration of native rights described in section 7A(1) in the Register of Native Rights and the transfer, transmission, inheritance and acquisition and other matters affecting such rights;

(m) the inspection on the Register of Native Rights and supply of extracts or details of entries therein to the public, and the fees payable in relation thereto; and

(o) the procedures for the conduct of inquiry under section 51(2) and (3).

(2) Such rules may provide that any specified contravention thereof shall constitute an offence and may provide for the punishment thereof by penalties not exceeding imprisonment for three months and a fine of five hundred ringgit.

(3) The rules contained in the Second Schedule shall, for all purposes including subsequent amendment thereof, be deemed to have been made under this section.

Notices

214. Save in so far as any provision thereof is inconsistent with the provisions of any other Part or of any rule concerning notices, section 208 (which provides for the methods of effecting service of notices) shall apply also to any notice which may be required to be given under any Part or under any rules.

Attestation

215.—(1) Every instrument executed for the purpose of transferring, charging or affecting any estate or interest under this Code, shall be signed by the parties thereto and shall be attested in accordance with the following provisions—

(a) if executed within Sarawak, it shall be attested by a Superintendent, a Registrar or any person generally or specially authorized by the Director;

(b) if executed in any part of Malaysia other than Sarawak, it shall be attested by a Notary Public, a Registrar appointed under the National Land Code or a Magistrate;

[Sub. Ord. No. 18/71.]

(c) if executed in the United Kingdom or any part of the Commonwealth outside Malaysia, it shall be attested by a Notary Public, a Commissioner of Oaths, a Magistrate or by a Commonwealth Representative;

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

(d) if executed in any other country, it shall be attested by a Commonwealth Representative, exercising his functions in that country, and be sealed with his seal of office, if any, or by an attesting witness who has appeared before any such Commonwealth Representative and made a declaration endorsed on the instrument as to its due execution, or in such other manner as may be prescribed.

(2) In this section “Commonwealth Representative” means an Ambassador, High Commissioner, Minister, Chargé d’Affairs, Consular Officer or Trade Commissioner, and includes any person lawfully acting for any such officer, and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Minister or Chargé d’Affairs.

(3) Any general authorization under paragraph (a) of subsection (1) shall be published in the *Gazette* and any special authorization shall be given under the hand of the Director or Deputy Director.

Attestation Corporation may execute under seal

216. A corporation may execute an instrument by affixing thereto the common seal of the corporation or by an attorney appointed under the common seal, and any such seal fixed to any instrument shall be sufficient proof of the Registrar that the same was affixed under proper authority, and that the instrument is binding on the corporation.

Variation in forms

217. Any variation from any of the Forms set out in the First Schedule, not being in the matter of substance, shall not affect their validity or regularity, but they may be used with such alteration as the character of the parties or circumstances of the case render necessary.

Legal representatives

218. In any form under this Code, the description of any person as proprietor, transferor, transferee, chargor, chargee, lessor, lessee or sublessee, or as trustee, or as having or taking any estate or interest in any land, shall be deemed to include the heirs, executors and administrators and assigns of that person.

Implied covenants

219. Any covenant, power, condition or agreement implied under this Code shall have the same force and effect as if it had been set out at length in the instrument wherein it is implied, and any such covenant, power, condition or agreement may be negated, varied or extended.

Instruments remaining on old registers under former Land Ordinance and subsequent instruments and entries

220.—(1) Any document of title duly registered under the provisions of the former Land Ordinance [*Cap. 27 (1948 Ed.)*] and not brought on to the Register under section 112(3) or (4) shall, subject to the other provisions of this Code, have the same force, effect and protection as if this Code had not been passed.

(2) Subsection (1) shall apply also to documents of title issued, and to entries made, after the 1st day of January, 1958, unless and until they have been registered in the Register pursuant to section 112 (3) or (4).

In cases where a registration should not form part of the Register, the Registrar shall enter a caveat and give notice of the effect thereof

221.—(1) In any case in which it appears to the Registrar that the registration of any estate or interest in land, or any previous register or any entry relating thereto, should not form part of the Register by virtue of section 112(6), he shall enter a caveat prohibiting any dealing with, and any registration against, that estate or interest.

(2) The Registrar shall by notice in the *Gazette*, and also by notices posted on or near the land to which the notice relates, in such languages as he may consider appropriate state—

(a) that such caveat as is mentioned in subsection (1) has been entered; and

(b) that, if such caveat remains on the previous register for more than a year from the date upon which it was first entered, the registration in the previous register which led to the entering of the caveat shall be cancelled.

The Registrar shall also enter a caveat and give notice stating the effect thereof if a registration has been included in the Register in contravention of section 112 (6)

222. In any case in which it appears to the Registrar that the registration of any estate or interest in land, or any entry relating thereto, has been included in the Register in contravention of section 112(6), he shall enter such caveat as is provided for in section 221(1) and shall further, by notice in the *Gazette* and by notices posted on or near the land, state that such caveat has been entered and that, if such caveat remains on the Register for more than six months from the date when it was first entered, the registration in the Register which led to the entering of the caveat shall be cancelled.

[Am. Reprint Commissioner.]

Cancellation of registration upon expiry of period stated in notice or of any extended period

223.—(1) Subject to this section and sections 224 to 226 inclusive, if, upon the expiration of the period mentioned in section 221(2)(b) or the period mentioned in the notice referred to in section 222, the caveat mentioned in section 221 or 222 has not been removed from the register, the Registrar shall cancel from the previous register or from the Register, as the case may be, the registration in respect of which the caveat was entered.

(2) Notwithstanding subsection (1), if, prior to the expiry of the respective periods therein mentioned—

(a) a competent court orders that such period be extended;
or

(b) the Registrar, upon application made to him by any party interested, considers that either of the periods mentioned in

subsection (1) should for any cause which he may deem sufficient be extended,

then, subject as hereinafter provided—

(i) if paragraph (a) applies, the order of the court shall have effect; or

(ii) if paragraph (b) applies, the Registrar may as often as he may consider expedient grant a further extension:

Provided that the aggregate period comprised by the original period and any extension ordered or granted shall not by virtue of this section exceed—

(a) in the case of section 221, three years; or

(b) in the case of section 222, eighteen months.

Jurisdiction and powers of Court after entry of a caveat under section 221 or 222

224.—(1) If a caveat has been entered under section 221 or 222, the High Court shall have jurisdiction, upon application by any party interested in obtaining such relief, to make such order or orders as in its judgment is or are necessary to enable justice to be done.

(2) Without prejudice to the generality of subsection (1), the High Court shall have power to make an order—

(a) declaring that the registration of any estate, interest or entry, in respect of which the caveat has been entered, may lawfully form part of the Register;

(b) that the registration of any estate or interest or any entry should not be cancelled from the Register;

(c) vesting any estate or interest in the person who in its judgment is, or would if the necessary relief were granted by the Court be, entitled thereto;

(d) appointing new or additional trustees of any trust express or implied;

(e) declaring what duties, taxes or other charges require to be paid to the Government before any registration should be included in the Register in the names of such person as may be specified in the order;

(f) directing the Registrar to refrain from taking any course he proposes to take; and

(g) granting any relief consequential upon any order made by the Court.

(3) Any application under this section may be made by summons, which shall be served upon the Registrar and upon such other persons as the Court may direct.

(4) The Court shall have power to make such order as to costs as it may consider just in all the circumstances of the case.

(5) For the purposes of this section and of section 223, the expression “any party interested” includes any person claiming under a person who would have a right to apply for the removal of the caveat under section 177 and, in the case of the subsistence of any charitable trust in any registered estate or interest, includes the trustees and beneficiaries under such trust and the State Attorney-General.

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

Withdrawal of caveat and effect thereof

225.—(1) The Registrar—

(a) may of his own motion withdraw any caveat entered under section 221 or 222 if he is satisfied by such evidence as he may deem sufficient—

(i) that it should not have been entered; or

(ii) that a registration may now lawfully be made in lieu of the registration in respect of which the caveat was entered; and

(b) shall withdraw the caveat if he is ordered to do so by a competent court.

(2) Upon the withdrawal of any caveat entered under section 221, the Registrar shall, if the previous register was a register under the former Land Settlement Ordinance [*Cap. 28 (1948 Ed.)*], include in the Register the registration in respect of which the caveat was entered and any registration previously excluded by virtue thereof; and, if the previous register was a register kept under the former Land Ordinance [*Cap. 27 (1948 Ed.)*], the question, if and so far and when it arises, as to whether any registration should form part of the Register, otherwise than by virtue of section 112(2), shall be dealt with and resolved in like manner as it would have been dealt with and resolved if the caveat had not been entered:

Provided that account shall be taken of any order made by a competent court and of any transaction or matter, including the furnishing of any particulars or other evidence ensuing after the entry of the caveat and account of which may lawfully be taken by the Registrar.

Saving for powers conferred by Part V

226. Nothing in sections 221 to 225 inclusive, or in section 112 (6), shall be deemed to preclude the Director from issuing under section 84 a Settlement Notification affecting land, the registration of an estate or interest or entry in, or relating to, which has led to the entering of a caveat under section 221 or 222 but, in any such case, section 86 (1) shall not be deemed to prohibit any application under section 224.

PART X
DEVELOPMENT AND SUB-DIVISION OF LAND

Interpretation

[Ins. Cap. A50.]

227. In this Part—

“develop” or “development” means to carry out any building, engineering, or other operations in, on, over or under any land, or the making of any material change in the use of any building or land:

Provided that the following operations or uses of land shall not be deemed for the purposes of this Part to involve development of land:

(a) the carrying out of works for the maintenance, improvement or other alteration of a building which do not materially affect the external appearance or the floor area of the building;

(b) the carrying out by any statutory authority of any works required for the maintenance or improvement of a street being works carried out on land within the boundaries of the street;

(c) the carrying out by any statutory authority of any works for the purpose of laying, inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus including the breaking open of any street or other land for that purpose;

(d) the use of any existing building or land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation), and the use for any of those purposes of any building occupied together with the land so used; and

for the avoidance of doubt it is hereby declared that for the purposes of this Part, the following circumstances shall also constitute material change of use or development:

(i) the use as two or more separate houses of any building or any part thereof, previously used as a single house;

(ii) the use as a dwelling-house of any building not originally constructed for human habitation;

(iii) the use for other purposes of a building or part of a building originally constructed as a dwelling-house;

(iv) the demolition of, reconstruction of or addition to a building;

(v) the alteration in a material degree, to the features or colour scheme or external appearance of a commercial building or a row of shophouses, including but not limited to, the installation of air conditioning plant or equipment, water storage tank or telecommunication equipment and communication towers;

[Am. Cap. A95.]

(vi) the use for the display of advertisements of any external part of a building which is not normally used for that purpose;

(vii) the erection of any communication towers, religious or cultural purposes on land or building which is not intended for that purpose;

[Am. Cap. A95.]

(viii) the use of land for the deposit of refuse or waste materials notwithstanding that the land is comprised of a site already used for that purpose, if the superficial area or the height of the deposit is thereby extended; and

(ix) the removal of rock materials to an extent that results in significant alteration to the topography of the land;

“engineering plan” means the plan for works required by the State Planning Authority under section 232(2), to be undertaken for the provision of roads, drains, footpaths, bridges, car parking spaces, public utilities and other facilities, and reserves, and the term “engineering works” refers to such works;

“local plan” shall consist of—

(a) a written statement formulating in such detail as the State Planning Authority thinks appropriate for the proposed development and other use of land in a particular area, or for any description of development or other use of such land, in that area, including such measures as the Authority thinks fit for the improvement of the physical environment and the management of traffic;

(b) a map or plan showing the proposals for development or land use for the area; and

(c) such diagrams, illustrations or other descriptive matter as the Authority thinks appropriate to explain or illustrate the proposals in the plan;

“qualified person” means any person whom the State Planning Authority shall certify in writing as a person having the requisite professional qualifications or experience to prepare and submit plans for the sub-division or development of land;

“structure plan” shall consist of—

(a) a written statement formulating the policy and general proposals of the State Planning Authority in respect of the development and other use of land of a town, city or region including measures for the improvement of physical environment and management of traffic;

(b) a map or plan showing the general proposals for development or land use for the area intended to be covered by the plan; and

(c) such illustrations or other descriptive matter as the Authority thinks appropriate to explain or illustrate the general proposal in the plan;

“sub-division” means—

(a) the application to a Superintendent for the issue of a document of title to any part of any land comprised in one document of title, or for the partition of any land into two or more parcels;

(b) the consolidation or amalgamation in one document of title of the areas comprised in two or more subsisting documents of title;

(c) the delineation on a plan, or the demarcation on the site, of any part or parts of any land with a view to the sale of such part or parts;

(d) the disposal by the owner by way of sale of any specified part less than the whole of any land comprised in one document of title; or

(e) the laying out or making of any road, footpath, drain or access-way, or the grant or reservation of any right of way over any land.

Establishment of State Planning Authority

228.—(1) There shall be established a State Planning Authority consisting of the following members:

(a) the Minister, as Chairman;

(b) the State Secretary, as Deputy Chairman;

(c) the Permanent Secretary to the Ministry for Resource Planning;

(d) the Director of Lands and Surveys; and

(e) not more than three other members of whom two shall be public officers (whose public duties are relevant to assist the

State Planning Authority in the discharge of its functions), to be appointed by the Minister.

(2) The Permanent Secretary to the Ministry for Resource Planning shall also be the Secretary of the State Planning Authority.

(3) A member of the State Planning Authority appointed under subsection (1) (e) shall, unless he sooner resigns his office or his appointment is sooner revoked, hold office for such period as may be specified in his instrument of appointment but shall be eligible for re-appointment.

(4) The Chairman or Deputy Chairman and two other members shall constitute a quorum for any meeting of the State Planning Authority.

(5) The State Planning Authority shall regulate its own procedures and proceedings.

(6) No decision, act or action made or taken by the State Planning Authority shall be invalidated by reason of any vacancy in its membership or on account of the invalidity of the appointment of any of its members.

Functions of the State Planning Authority

229.—(1) The functions of the State Planning Authority shall be—

(a) to plan, regulate and control the development and use of all lands and buildings;

(b) to consider and approve, subject to such terms and conditions as it may deem fit to impose, plans for the sub-division and development of land;

(c) to determine the location and siting of Government buildings, public utilities and facilities, and the siting of new towns, villages and areas for settlement or resettlement of people;

(d) to formulate policies and guidelines for and to give directions to local authorities with regard to the use and development of land within their respective areas of jurisdiction,

including, but not limited to, the improvement of the physical environment, the management of traffic or communications systems, and the provision of waste and sewage systems;

[Am. Cap. A95.]

(e) to draw up or formulate policies and plans for the development and re-development of any area including the formulation of structure plan and local plan for any particular region or area of the State;

(f) to declare, by notification in the *Gazette*, any road in the State as a designated special road and to issue direction to any relevant government body or statutory authority in respect of the following:

(i) the maintenance and upkeep of any designated special road;

(ii) the approval of engineering, building, renovation or re-development plans for any building or structure built or to be built on any area declared under section 11 to be a prescribed zone adjoining any designated special road;

(iii) the construction or location on or below the ground of any designated special road or within any prescribed zone adjoining any such road, of any mains, pipes, service lines, structures or other facilities for electricity, gas or water supplies or communication or telecommunication or sewerage services; and

(iv) the landscaping or beautification of any prescribed zone adjoining any designated special road; and

[Ins. Cap. A119.]

(g) to perform such other functions as the Majlis Mesyuarat Kerajaan Negeri may assign to it.

(2) The State Planning Authority may, by notification published in the *Gazette*, delegate any of its functions to **any Minister or** the Director or any other public officer, upon such terms and conditions and subject to such directions with regard to the exercise thereof, as may be stipulated in the instrument of delegation.

[Ins. Cap. A119.]

Prohibition of sub-division and development without approval

230.—(1) Any proprietor who—

(a) sub-divides or develops his land otherwise than in accordance with a plan of sub-division or development approved by the State Planning Authority; or

[Am. Cap. A95.]

(b) fails to comply with any requirement or condition imposed by the State Planning Authority; or

(c) erect, build or put up any building, structure, road, drain or communication tower otherwise than in accordance with the plan of sub-division or development approved by the State Planning Authority;

[Ins. Cap. A95.]

shall be guilty of an offence: Penalty, a fine of five hundred thousand ringgit and, in the case of a continuing offence, a further fine of one thousand ringgit in respect of every day during which the offence continues:

[Am. Cap. A68.]

Provided that no proprietor shall be deemed to commit an offence against this section by reason merely of the fact that he makes application for the issue to him of a separate document of title consolidating two or more documents of title.

(2) Where the Director or any other officer has reasonable grounds to suspect that an offence under subsection (1) has been committed, the Director or any such officer may, without prejudice to

any action taken against the proprietor under subsection (1), issue an order directing the proprietor—

(a) to stop all further works pertaining to any sub-division or development of the land; and

(b) to demolish, remove, replace, modify or alter any building, structure, drain, road or communication tower which has not been approved by the State Planning Authority or has not been erected, built or put up in accordance with the plan of sub-division or development approved by the State Planning Authority or which does not comply with any condition or requirement imposed by the State Planning Authority.

[Sub. Cap. A95.]

(3) Any person who fails to comply with an order issued under subsection (2) shall be guilty of an offence: Penalty, a fine of five hundred thousand ringgit and imprisonment for three years.

[Am. Cap. A68.]

(4) Where the proprietor of any land fails to comply with an order issued to him under subsection 2(b) and without prejudice to any action taken against him for an offence under subsection (3), the Director or any officer duly authorized by him may enter upon the land and demolish or cause to demolish any of the works or structures referred to in the order and all costs and expenses thereby incurred shall be recoverable from the proprietor thereof.

(5) Any person who aids or abets any proprietor in the commission of an offence under subsection (1) or (3) shall be guilty of the like offence and shall be liable to the same penalty prescribed for the offence.

[Ins. Cap. A68.]

Procedure for application for sub-division and development of land

231.—(1) Whenever any proprietor proposes to sub-divide land or to develop land, six copies of a plan of sub-division or development in Form Q, showing—

(a) the whole of the land proposed to be sub-divided or developed and the areas and dimensions of the sub-divisions or development proposed;

(b) all existing roads, reserves and access-ways, and land affected by any existing easements;

(c) the proposed roads, drains and location of drainage outlet and their alignments and dimensions;

(d) the proposed use, siting and dimension of any proposed building or buildings communication towers or other structures on the land;

[Am. Cap. A95.]

(e) the situation of any land to be affected by easements which it is proposed to create, and the nature of such easements;

(f) the proposed building plans, showing the sections and elevations of the proposed building or buildings to be built, except in the case of residential buildings of not more than two storeys in height; and

(g) such other details as may be required by the State Planning Authority,

shall be prepared by a qualified person on behalf of the proprietor, and signed by that qualified person and the proprietor, and submitted to the Superintendent of the Division in which such land is situate together with a copy of an extract of any document of title relating to such land and the requisite fees for such submission.

(2) (a) The Superintendent shall forward the documents referred to in subsection (1) together with his comments and such other relevant information as he deems necessary for consideration of the application, to the State Planning Authority, through the Director.

(b) The Director may provide such comments and recommendations on the application prior to the submission thereof to the State Planning Authority.

(3) The State Planning Authority may exempt any person from compliance with any requirements under subsection (1) except paragraph (g) thereof.

Approval for sub-division

232.—(1) The State Planning Authority may, if it considers that it is expedient in the interest of proper planning and overall development of the area to which the application relates—

(a) approve the plan of the proposed sub-division or development, or subject to modifications or amendments thereto, and, subject to any of the conditions or requirements stipulated in subsection (2);

(b) refuse to approve the plan of sub-division or development if it is of the opinion that the land is not suitable for sub-division, or the proposed sub-division or development is not in the interest of proper planning or development of the area or not in conformity with the structure plan or local plan for the area where the land is situated;

(c) require a new plan to be prepared and submitted for its approval.

(2) Where the State Planning Authority decides to approve the sub-division or development of the land, it may require an amended plan to be submitted, and impose any or all of the following conditions or requirements, namely:

(a) to make provision for further or other provision for the construction of roads, footpaths, bridges, sewers and drains, the making of reserves, and the compliance with the requirements for the protection and improvement of the physical environment;

(b) to make provision for car parks or car parking spaces on the land or on an alternative site or place to be approved by the State Planning Authority;

(c) to provide plans for the laying of water mains, electricity and telecommunication lines and facilities, to the satisfaction of the relevant authorities in charge of public utilities; and

(d) such other requirements as the State Planning Authority may impose in the interest of overall planning for the area where the land is situated.

Period of approval

233. Any approval granted under section 232(1) shall, unless extended, lapse either:

(a) on the expiration of twenty-four months from the date of the approved plan referred to in section 234(1), if, within that time, the works covered by the engineering plan referred to in section 234(2)(b) have not been commenced, or where such works are not required, the survey of the land to be undertaken under subsection (4) is not satisfactorily completed; or

(b) the development as a whole is not completed within such time as may be stipulated in the approved plan, and for the purposes of this section, a development is deemed completed when the buildings to be constructed in relation thereto have been certified to be completed under the Buildings Ordinance, 1994 [*Cap. 8*];

Provided that the State Planning Authority may from time to time extend such period for a term not exceeding twelve months at any one time, upon such terms and conditions as it deems fit.

Procedure following approval of plan

234.—(1) (a) As soon as practicable after the plan referred to in section 231 has been approved or any requirement or condition imposed under section 232(2), the State Planning Authority shall notify the Superintendent (with a copy of such notification to the Director) of any condition or requirement imposed under section 232(2), and the Secretary of the State Planning Authority or any other person authorized in that behalf by the Secretary shall sign the plan (which shall hereinafter be referred to as “the approved plan”). Two copies of the approved plan shall be sent to the Superintendent who, on receipt thereof, shall notify the person who submitted the plan of its approval and supply him with a copy of the approved plan.

(b) The State Planning Authority may, on application by the person who submitted the plan, revise or modify the approved plan on such terms and conditions as the Authority may deem fit and upon payment of the prescribed fees. The plan so revised or modified shall be the approved plan for the purposes of this Part.

(2) The person whose plan had been approved may thereupon submit to the Superintendent—

(a) ten copies of a sub-division plan in Form R, which shall be prepared by a qualified person and such plan must conform with the conditions and requirements stipulated in the approved plan;

(b) five sets of engineering plan in Form S for the construction and completion of the roads, car parks, drains and other works stipulated in section 232(2), on the land.

(3) Upon receipt of the engineering plan referred to in subsection (2)(b), the Superintendent shall forward the same to the Director of Public Works or, if the land is within an area forming part of the area under the jurisdiction of a local authority which is a City Administration or a Municipal Council, to the Engineer of such local authority, to make such examination or investigation as the Director or other authorized person may specify, and to draw up a report of such examination or investigation and forward it to the Director who, on being satisfied with the engineering plan, will approve the same.

(4) Upon acceptance of the sub-division plan referred to in subsection (2)(a), and the approval of the engineering plan under subsection (3), the person whose plans have been approved as aforesaid, shall cause the land to be surveyed by a registered surveyor and proceed to carry out the engineering works.

(5) (a) If the Superintendent approves the survey plan prepared pursuant to subsection (4), and the Director of Public Works or the local authority having jurisdiction over the area where the land is situated, as the case may be, certifies to him that all works required to be done under the engineering plan approved under subsection (3), have been completed, he shall forward the survey plan together with the approved plan, to the Director.

(b) If the Director is satisfied that the engineering works, as carried out, conform to the approved plan, he shall direct:

(i) the approved survey plan be deposited in the office of the Superintendent, and a copy thereof shall be sent by the Superintendent to the Secretary of the State Planning Authority, and such deposit shall be conclusive evidence that the sub-division indicated therein has been approved in accordance with this Code; and

(ii) the Superintendent to submit for his approval, terms and conditions for the surrender of any land required to be vested in the State and the grant of new titles in accordance with section 244.

(6) All survey plans deposited under subsection 5(b)(i) shall be made available at all reasonable times for the inspection of any member of the public, who may make a copy thereof or take any extract therefrom upon payment of such fees as may be prescribed by the Director.

Endorsement in Land Register

235. The Director shall, in respect of any land affected by any approved plan and subject to section 244, make or cause to be made in the Register kept under this Code, an endorsement to the effect that such land is subject to the conditions of such approved plan.

Compensation in respect of approved sub-division

236.—(1) Whenever under section 232(1) the State Planning Authority requires the proprietor to make provision for the construction of roads, the making of reserves or the completion to the satisfaction of the Superintendent of the work of making roads and reserves, or the provision of car parks or car parking spaces on the land or on such alternative site or place as may be approved by the State Planning Authority, the following provisions shall have effect—

(a) where the total area of the reserves to be set aside for public parks or open spaces does not exceed one-tenth of the area of the land to be sub-divided or developed, no compensation shall be payable;

(b) in so far as the area of the reserves to be set aside for public parks or open spaces exceeds that fraction—

(i) compensation shall be payable by the State Government in respect of the excess to the extent to which, if at all, the value of such excess is greater than any increase in the value of the land as a result of the approval for the sub-division thereof granted by the State Planning Authority; and

(ii) such compensation may be off-set against any premium payable for the new issue of document of titles for the sub-divisional lot or lots under section 244;

(c) no compensation shall be payable in respect of—

(i) any land required to be set aside for the construction of any road, not being a road of more than twenty-five metres in width;

(ii) the cost of making any road, not being a road of more than twenty-five metres in width, required by the State Planning Authority to be made and the cost of completing such road to the satisfaction of the Director;

(iii) any land or any part thereof which was at the material date in a dangerous, ruinous, dilapidated, unsafe or unsanitary condition; or

(iv) any building the erection of which was begun after the date of coming into force of this section, unless such erection was begun and completed in accordance with a permit in writing from the local authority;

(d) for the purpose of determining the amount of compensation payable under this section, the value of any land shall, without prejudice to the provisions of paragraphs (a), (b) and (c), be deemed to be the value of the land at the date of the approval of the plan under section 232;

(e) the number of car parking spaces to be provided shall be determined having regard to the usage of the land or the building intended to be built thereon or, alternatively, the State Planning Authority may accept such amount as may be fixed by rules made under section 248 as payment in lieu of the provision of each car parking space required.

(2) Notwithstanding subsection (1), no proprietor shall be entitled to any compensation in respect of any land which is already at the date of coming into force of this section vested in or reserved to the Government under section 38.

(3) For the purpose of this section, the expressions “open space” and “public park” shall have the same meanings as assigned to them in the Public Parks and Greens Ordinance, 1993 [*Cap. 3*].

Making of claim for compensation

237.—(1) Any claim for compensation shall be made by serving upon the Director a notice in writing stating the grounds of claim and the amount claimed.

(2) No claim for compensation shall be entertained, except with the consent of the Minister, unless the claim is made within six months of the date of the deposit of the survey plan under section 234(3).

Claim for compensation

238.—(1) Any question arising under this Part as to—

- (a) the right of a claimant to recover compensation; or
- (b) the amount and manner of payment of compensation,

shall, unless the parties concerned otherwise agree, be referred to and determined by the High Court:

Provided that the Court may on its own motion or at the request of any of the parties, if it thinks fit, call in the assistance of one or more persons as assessors who shall advise the Court of their opinions; but in the case of any difference of opinion, the opinion of the Court shall prevail.

(2) The Court shall cause the respective parties to appear before it and it shall be lawful for the Court to hear and determine the claim in a summary manner and, for that purpose, to examine the parties or any of them and their witnesses.

(3) The determination by the Court of a claim under this section shall be final, and the Court shall allow such costs (including the certified expenses of the assessors, if any) as it may think fit.

Powers of entry

239.—(1) Any person authorized in that behalf in writing by the Director may, on the production of such written authority, enter at all reasonable hours upon any land or building and there make such inspection, examination, investigation or survey as may be necessary for enforcing or carrying out the provisions of this Part.

(2) Every person who wilfully obstructs or interferes with any person in the lawful exercise of any power conferred by this section shall be guilty of an offence: Penalty, a fine of two thousand ringgit.

Obligation to give information to Superintendent

240.—(1) Any Superintendent may, for any purpose arising in relation to the enforcement or carrying out of any sub-division, by notice in writing, require the proprietor or occupier of any land or building, or any person receiving, whether for himself or for another, rent out of any such land or building, to state in writing and deliver, or to forward by registered post, to the Superintendent, within a specified time, not less than twenty-eight days after being so required, particulars of the interest or right by virtue of which he owns or occupies such land or building or receives such rent, as the case may be, and the name and address, and the interest or right (so far as known to him), of every person who to his knowledge has any interest in or right over or in respect of such land or building.

(2) Every person required to make and deliver a statement under this section who wilfully makes any false statement, or fails or refuses to make such a statement, shall be guilty of an offence: Penalty, a fine of two thousand ringgit.

Road when properly made up may be declared a public road

241. Where the work of making any road and car parking spaces under section 232(2) has been certified by the Director to have been completed in conformity with the approved plan, the Superintendent shall accept the surrender of the land on which the road or car parking spaces are situated, and such land shall be vested in the State.

Avoidance of certain transactions relating sub-divisions

242. Any plan, agreement, deed or instrument of any kind whatsoever whereby any sub-division contrary to the provisions of this Part is created, recognized, granted or reserved shall be deemed to be void and of no effect, and shall not be registrable under this Code.

Power to demolish buildings erected on land

243. Where any building or structure is erected on any land, after such land has been reserved or set aside for reserves or roads or car parks under this Part, the Director may order the demolition of such building or structure, and the materials thereof may be sold to defray

the expenses incurred by the Director under this section, and, in so far as such expenses are not so defrayed, they may be recovered from the person erecting such building or structure or causing such building or structure to be erected.

Issue of documents of title

244. Subject to section 245 and in compliance with section 234(3), the proprietor of the land thereby sub-divided shall within such period as may be determined by the Superintendent, surrender his title to such land and he shall, after the land referred to in section 241 has been vested in the State, be granted a new title or titles in lieu thereof for the unexpired period of the title surrendered and on the terms and conditions then usual for grants or leases of State land, being a document or documents of title which would permit the land to be used in accordance with the conditions of the approved plan.

Restrictions inconsistent with approved plan

245.—(1) When the purposes for which any land may be used are restricted by the provisions of any written law and such restriction is inconsistent with any condition or requirement imposed by the State Planning Authority under this Part, such restriction shall as regards any such land be suspended and of no effect.

(2) When the purposes for which any land may be used are restricted by conditions attached to the title thereto, and such restriction is inconsistent with any condition or requirement imposed by the State Planning Authority under this Part, the conditions attached to the title shall be deemed to have been modified or suspended accordingly.

Public Authorities Protection Act 1948

246. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the State Planning Authority or any member thereof in respect of any act, neglect or default, done or committed by them in such capacity.

Protection of the Director, Permanent Secretary to the Ministry for Resource Planning and State Planning Authority

247. No personal liability shall attach to the Permanent Secretary to the Ministry for Resource Planning, the Director, or any member of the State Planning Authority in respect of anything done or suffered in good faith under this Code, and any sums of money, damages or costs which may be recovered against the Permanent Secretary to the Ministry for Resource Planning or the Director or the State Planning Authority for anything done or suffered as aforesaid shall be paid out of the State Consolidated Fund.

Delegation of powers

247A. A Superintendent may, with the approval of the State Planning Authority and subject to such conditions as may be imposed, delegate the exercise of any of the powers conferred upon him relating to sub-division and development of land under this Part to a local authority or any other person.

[Ins. Cap. A61.]

Rules

***248.—(1)** The State Planning Authority may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, make rules generally for carrying out the provisions of this Part and, in particular, such rules may provide for—

(a) the regulating of legal access, road reserve widths and cross-section, road junction and pedestrian access;

(b) the regulating of car parking requirements and the provision of car parking spaces;

* (a) *Land Code (Development and Sub-division of Land) (Qualified Persons) Rules, 1998 (Swk. L.N. 67/98).*

(b) *Land Code (Development and Sub-division of Land) (Parking Spaces) Rules, 1998 (Swk. L.N. 68/98).*

(c) *Land Code (Development and Sub-division of Land) (Fees) Rules, 1998 (Swk. L.N. 69/98).*

(c) the regulating of sub-divided lot sizes, plot coverage and plot ratios, siting of building, building setbacks, sizes, heights, lengths and widths;

(d) the regulating of residential densities;

(e) the regulating of the provision of open spaces and the design thereof;

(f) the regulating of standard affecting other types of development such as petrol service station and electrical substation;

(g) the regulating of the use of land and buildings;

(h) the regulating of the design and appearance of buildings;

(i) the form and content of plans prepared for the purposes of this Part;

(j) the qualifications of persons who may prepare or submit plans for the purposes of this Part;

(k) the fees for the submission and approval of the plans by the State Planning Authority, or for the revision, variation and amendment of such plans or the modifications or variations of any conditions or requirements of approval imposed by the State Planning Authority, or for extension of the period of validity of approved plan granted under the proviso to section 233;

(l) the rights and procedures for any appeal against any decision of the State Planning Authority;

(m) the procedures for meetings or deliberations of the State Planning Authority;

(n) the procedures in connection with claims for compensation under section 238;

(o) the principles upon which compensation is to be assessed, and the definition of the matters to be considered in or excluded from such assessment;

(p) the variation and revocation of plans approved under this Part, and the grounds and conditions upon which such variation and revocation may be made or granted;

(q) the surrender of documents of title in respect of land subject to any sub-division approved under this Part, and the issue of separate documents of title in respect thereof;

(r) the service of notices or other documents required to be served for any of the purposes of this Part or any rules made hereunder, including the prescription of the mode of service;

(s) [*Deleted by Cap. A61*]; and

(t) any other matters to be prescribed under this Part.

(2) Any rules made under this section may be made to apply throughout the State or to any particular area of the State.

[Ins. Cap. A50.]

(3) Such rules may provide that any specified contravention thereof shall constitute an offence and may provide for the punishment thereof by a penalty not exceeding imprisonment for three years and a fine of twenty thousand ringgit.

[Ins. Cap. A61.]