

HIGH COMMISSIONER'S NOTICE No. 35 of 1924.

With reference to the High Commissioner's Proclamation No. 9 of 1924 applying to Caprivi Zipfel the provisions of the law of South-West Africa relating to prospecting and mining for precious and base minerals and precious stones, His Excellency has been pleased to give directions for the publication of the subjoined translation of the aforesaid Mining Law together with amendments thereto as published in Proclamation No. 24 of 1919 of South-West Africa.

The translation of the original German Ordinance, in so far as it is still in force, has been prepared with all possible care for the convenience of English-speaking prospectors and miners; but in the event of divergencies or ambiguities, the original German text, where not amended, will be decisive.

By Command of His Excellency the
High Commissioner.

B. E. H. CLIFFORD,
Imperial Secretary.

High Commissioner's Office,
Capetown, 11th April, 1924.

MINING LAW.

I.—GENERAL PROVISIONS.

Section 1.

The hereafter mentioned minerals are excluded from the right of disposal of the owner of the land. They can only be prospected for and won in accordance with the provisions of this Ordinance.

A.—PRECIOUS MINERALS.

- (1) Precious metals (gold, silver and platinum).
- (2) Precious stones.

B.—BASE MINERALS.

- (1) All metals not mentioned before, in their native state and as ores.
- (2) Mica and semi-precious stones, as well as abestos.
- (3) Coals, salts, and valuable earths, namely—
 - (a) coal, brown coal and graphite;
 - (b) bitumen in solid, liquid or gaseous form, especially rock oil and asphalt;
 - (c) rocksalt and the salts occurring in the same deposit and salt-wells;
 - (d) Earths, which are valuable owing to their sulphur-contents or for the production of alum, vitriol and saltpetre;
 - (e) mineral phosphates.

The recovery of cooking-salt out of the so-called salt pans does not fall under this Ordinance.

Section 2.

Repealed.

Section 3.

For the purposes of this Ordinance—

- (a) any person not domiciled in the Protectorate and any partnership or company whose head office is outside the Protectorate shall appoint a representative in the Protectorate to be approved of by the Mining Authority;
- (b) where, in the opinion of the Mining Authority, the scene of any mining operations is inaccessible, the person, partnership or company carrying on such operations shall appoint a representative to be approved of by the Mining Authority;
- (c) every such representative shall reside at a place which shall be approved of by the Mining Authority.

Pending such appointment the Administrator may appoint a representative at the expense of such person or company.

Natives and other coloured persons can only be appointed as representatives with the consent of the Mining Authority.

Section 4.

Any decision of the Administrative Authorities given in execution of this Ordinance shall be subject to review save where otherwise herein provided.

Such objection shall be dealt with by the Administrator and his decision thereon shall be final: the procedure shall be such as may be laid down by him.

Section 5.

Repealed.

Section 6.

Repealed.

Section 7.

It shall be competent for the Mining Authority to take the evidence of witnesses and experts before giving decisions under this Ordinance. The laws and rules obtaining in the Courts of the Magistrates of the Protectorate shall *mutatis mutandis* apply to procuring the attendance of such persons, their examination and the production of books, documents, plans, registers and records.

Section 8.

Repealed.

Section 9.

The Public notifications by the Administrative Authorities prescribed in this Ordinance are made in the manner customary to the place, and in any case through fixing them on the official board of the authorities giving the decision. The notification is held to have been made on the first attachment, which must be attested.

II.—PROSPECTING.

(a) GENERAL REGULATIONS.

Section 10.

It shall be lawful for any person to search for the minerals mentioned in Section 1 in their natural state upon a prospecting licence issued subject to the provisions of the Ordinance by the Magistrate of the district in which such person desires to prospect. Such licence shall specify the areas in which prospecting is permitted thereunder. The fee payable for such licence shall be two shillings and sixpence for each month or part of a month of the period thereof. No such licence shall be granted until such person has given security to the satisfaction of the Magistrate for the restoration to a safe condition of any property rendered dangerous or unsafe through such prospecting. Such person shall be bound so to restore any property so rendered dangerous or unsafe.

Section 11.

Prospecting on public roads, public places, railways and graveyards is prohibited.

Prospecting is also prohibited wherever the Mining Authority shall decide that preponderating reasons of public interest render prospecting inexpedient. The Mining Authority shall also decide within what distance from wells and other water-places prospecting shall be unlawful.

Prospecting is further prohibited under buildings and within a distance therefrom of fifty metres, or in gardens or enclosed yards, unless the person entitled to the use of the ground and the owner has given his express consent thereto.

Section 12.

A prospector may demand the cession of the use of ground belonging to others, required for the construction of buildings, roads, dumps, storehouses and warehouses, and for grazing, as well as the water and wood thereon, in so far as such cession is necessary for the prospecting operations, but grazing, water and wood only in so far as such cession can take place without materially interfering with the working of the place. In order to obtain the cession of such use with regard to cultivated land the prospector must negotiate with the person entitled to the use or his representative with a view to an agreement.

The prospector cannot demand the use of the ground or soil whereon residences or farm buildings are erected and the gardens and enclosed yards connected therewith.

Section 13.

The prospector shall make full compensation each month in advance to the person entitled to enjoy the land for the partial or total interruption of such enjoyment, and upon giving up possession shall reinstate such person in such enjoyment.

Section 14.

In the event of any land or servitude having suffered diminution of value through such use, the prospector shall be liable on surrendering the land to give compensation for such diminution of value. The owner of the land or servitude shall be entitled to adequate security for the fulfilment of this obligation before acquiescing in the use by the prospector.

Section 15.

When it is evident that the use will last longer than three years, or when the use still continues after the lapse of three years, the owner of the ground can require the prospector to acquire the ground and its appurtenances.

Section 16.

Where only a portion of land is appropriated to the use of the prospector, the owner shall be entitled to enforce the provisions of Section 15 only in respect of such portion, unless the remaining portion is no longer capable of being properly turned to account.

Section 17.

With regard to all the portions of ground alienated for prospecting purposes, if eventually the land is no longer required for mining purposes, the person then owning the ground which has been reduced in size through such alienation, has the pre-emptive right to purchase same.

Section 18.

In default of agreement between a prospector and any of the parties contemplated in Sections 12 to 16 inclusive, the Mining Authority shall, after hearing both parties, decide whether, to what extent, and on what conditions prospecting may be undertaken, and the prospector is obliged to make compensation or to acquire the land. Recourse to a Court of Law to compel acquiescence in the use of land shall only be had where relief from such compulsion is sought under paragraphs 1 and 3 of Section 11 save as provided therein or on the ground of special legal title ("besonderer Rechtstitel").

The Mining Authority may not prohibit prospecting work save in the cases specified in Section 11. The Mining Authority shall fix the amount of compensation and security in default of agreement among the parties interested.

Section 19.

Whether, to what extent and on what conditions prospecting can be allowed on native lands is decided by the Administrator without prejudice to claims for compensation.

Section 20.

The prospector must pay compensation for any damage done to ground or its appurtenances through prospecting operations.

The prospector is not liable to pay compensation for damages done by prospecting operations to buildings or other constructions, if such constructions were erected at a time when the danger threatening them through such prospecting could not have remained unknown with the use of ordinary attention.

If the erection of such constructions cannot take place owing to such danger, the claim for compensation for depreciation suffered thereby by the ground will fail, when it appears from the circumstances that the intention to erect such constructions is only put forward to obtain such compensation.

Section 21.

Save where otherwise provided by contract, any claim in respect of damage caused by prospecting operations (Section 20) shall lapse on the expiration of three years from the date on which the claimant first had knowledge of the damage and of the person responsible therefor; and shall in any case lapse on the expiration of thirty years from the date of the damage.

Section 22.

A prospector may, without the consent of the Mining Authority, dispose of the minerals won (Section 1) through his prospecting operations, but only for assaying, experimental or scientific purposes as well as for the purposes of his own prospecting operations.

The Mining Authority can, in addition to the punishment prescribed in paragraph (1) of Section 91, demand from the person who contravenes the provisions of paragraph 1 the payment of the value of the minerals which have been unlawfully disposed of.

(b) PROSPECTING CLAIMS.

Section 23.

No person, not being the holder of a prospecting licence shall peg off a prospecting claim. Subject to the provisions herein after contained, a prospector may peg off one or more prospecting claims, and such claims may be either precious mineral claims or base mineral claims.

By pegging the prospector excludes all third parties, save rights already acquired, from prospecting or mining for all the minerals mentioned in Section 1 on a prospecting claim for precious minerals; and from prospecting and mining for all minerals mentioned in Section 1 B on a prospecting claim for base minerals (closure of prospecting claim).

A prospecting claim in its horizontal extension shall have the form of a rectangle, subject to any curtailments owing to rights of third parties. The area of such rectangle shall not exceed 400 metres by 200 metres where the claim is for precious minerals, or 1,200 metres by 600 metres where it is a base mineral claim.

Section 24.

The pegging of the prospecting claim must be done in such a way that a distinctly recognizable beacon is erected and maintained in a conspicuous place, if possible in the middle of the prospecting claim.

On the beacon must appear in durable writing:—

- (1) Name of prospector.
- (2) The nature of the prospecting claim (prospecting claim for precious minerals or base minerals).
- (3) The date and hour of erection of the beacon.
- (4) A number to distinguish the claim from any other claims pegged off by the same prospector in the same district.

On both sides of the beacon straight trenches of at least 2 metres length must be dug indicating the longitudinal sides of the prospecting claim. If the beacon is not in the middle of the prospecting claim the position of the beacon in reference to the corners or to the centre must also be indicated.

The Administrator may issue other directions regarding the form and nature of the beacons.

Prospecting beacons may only be erected between sunrise and sunset.

Section 25.

If the beacon does not conform to the requirements prescribed by paragraph (1) of Section 24, or to be prescribed by the Administrator in compliance with paragraph (3), Section 24, the closure of the prospecting claim does not follow.

Section 26.

Within two weeks after the pegging of a prospecting claim its corners must be indicated by clearly visible stakes or stone beacons at least 1 metre high, whereon the inscriptions prescribed under Section 24 (3) must appear. In case the corners are inaccessible their situation must be shown otherwise in such a way that it is at once recognizable.

In default of compliance with the foregoing paragraph, the claim shall cease to be closed. The claim shall also cease to be closed if it be pegged off in such a manner as to exceed the permitted area, or in a shape deviating essentially from that prescribed.

Section 27.

A prospecting fee of ten shillings shall be payable monthly in advance in respect of every precious-mineral claim, and a prospecting fee of five shillings shall be payable monthly in advance in respect of every base-mineral claim. Such fees shall be payable for the period from the first day of the month during which the claim was pegged off, to the last day of the month in which the application for conversion of the prospecting claim was lodged with the competent authority (Section 37), or such conversion was ordered by the Mining Authority (Section 38), or the prospecting claim ceased to be closed.

Such fees shall be payable to the Mining or such other Authority as the Administrator may require for a period of not less than six months, the first payment being due upon the day of the notification of the pegging-off of the claim (Section 28), and subsequent payments being due upon the first day of each calendar month. In default of payment on the day when due, the prospecting claim shall cease to be closed.

Section 28.

The pegging of a prospecting claim must forthwith be notified in writing or reported in person to the Mining Authority. The Administrator may direct such notification to be made to any other authorities.

The notification must contain—

- (1) the name, occupation and residence of the prospector;
- (2) the district wherein the prospecting claim has been pegged;
- (3) the nature of the prospecting claim (for precious minerals or base minerals);
- (4) the date and hour of erection of the beacon;
- (5) as accurate as possible a description of the situation and size of the prospecting claim, mentioning the ordinal number, and attaching a sketch wherein its boundaries, its proportionate dimensions, the surface objects occurring, as well as the north point, must be shown, in such a way that the prospecting claim can be located.

The Administrator may direct that the notification must contain still further particulars, or must be made in a particular form.

If any of the required particulars are missing, the authorities [paragraph (1)] can grant a further period for the completion thereof.

Section 29.

If the notification is not received by the authorities within four weeks after the pegging of the prospecting claim, or in case of the granting of a respite within that period, the closure of the prospecting claim ends.

Section 30.

Agreement between seller and buyer shall be necessary and sufficient for the transfer of the right to a prospecting claim. Such agreement must be lodged in writing or reported in person with a public authority of the Protectorate. A transfer may not be conditional or limited as to time, and shall be notified to the Mining Authority. Until receipt of such notification, the Mining Authority may treat the person registered in the Prospecting Register as entitled to all rights and subject to all obligations accruing from the prospecting claim.

Upon application and payment of a fee of ten shillings, a certificate of such registration shall be issued.

Section 31.

The title to a prospecting claim can be abandoned by the prospector notifying the abandonment in writing or reported in person to the Mining Authority. On receipt of the notification the closure of the prospecting claim ends.

Section 32.

A prospector is obliged either himself or through an authorized person who is acquainted with the position to point out to an adjoining prospector on request the direction of the boundary lines of his prospecting claim.

Section 33.

So soon as a prospecting claim has ceased to be closed, the prospector shall remove the beacon and boundary marks in such manner as to leave no doubt of the intention of removal. The like obligation of removal shall be incumbent upon the prospector in the event of the conditions of Section 25 applying.

If the prospector make default of such removal, the authorities may proceed to effect such removal at the expense and without prejudice to the penalty provided in paragraph (1) of Section 91.

Section 34.

Every pegging of a prospecting claim notified in proper form and at the proper time, as well as the transfer or abandonment of the title of a prospecting claim, must be entered in a Prospecting Register by the Mining Authority.

A certificate is issued officially and free of cost of the first entry of every prospecting claim.

Further instructions about the contents and the way of keeping the Prospecting Register are issued by the Administrator.

Section 35.

The Prospecting Register shall be open to public inspection.

III.—MINING.

(a) MINING PROPERTIES IN GENERAL.

Section 36.

The regular mining of minerals mentioned in Section 1 is only allowed on a mining area.

Section 37.

A prospector can at any time, even without proving a discovery, demand that his prospecting claim or any part thereof be converted into a mining area.

The application for conversion must be made to the Mining Authority, stating the name which will be given to the mining area.

The application must be accompanied by a diagram, together with a description showing the situation and extent of the mining area.

The Administrator may declare any other authorities to be competent to receive the application for conversion.

Section 38.

When minerals in Section 1 have been regularly won in the prospecting claim, or when the prospecting claim has been kept closed for two years, the Mining Authority can undertake the conversion even against the will of the prospector. Otherwise it can declare the closure of the prospecting claim to have ended.

The title to a prospecting claim whereof the closure has ceased according to paragraph 1, cannot be acquired by the same person or company. Likewise the Mining Authority may prohibit prospecting by third parties in such claims, or eventually cancel any rights acquired therein, when the circumstances show that the intention is to evade the provisions of paragraph 1.

The decisions referred to in this section cannot be challenged by means of an action.

The Administrator can reduce the period of two years mentioned in paragraph 1 to one year, in general or in specific cases.

Section 39.

The mining area must, saving the exceptions through the rights of others, have a rectangular shape, length being not more than five times the breadth.

In depth the area is bounded by perpendicular planes following the sides of the rectangle.

The area of the mining area must be ascertained by horizontal projectures in hectares.

Section 40.

With the consent of the Mining Authority several prospecting claims immediately adjoining each other or portion thereof may be amalgamated into one mining area.

Section 41.

The conversion must be preceded by the survey and marking off of the mining area. The Mining Authority is empowered to allow exceptions to this rule.

Where the survey and marking off are required and the prospector refuses to cause this to be done, the conversion must be refused. On notification to the prospector of the final decision refusing the conversion the closure of the prospecting area ceases. The decision cannot be challenged by means of an action.

The survey and marking off of the mining area must take place according to instructions to be given by the Administrator.

Section 42.

The costs of survey and marking off must be paid by the prospector.

If, in the case of Section 38, the Mining Authority orders the conversion, it has the right to cause the survey and the marking off to be done at the cost of the prospector.

Section 43.

The Mining Authority or other authority appointed by the Administrator in that behalf, shall draw up a record, called the "Survey Record," of the survey and demarcation, and shall cause a plan of the survey to be thereunto annexed.

Section 44.

Before deciding upon the conversion of a prospecting claim into a mining claim the Mining Authority shall publicly announce such proposed conversion.

Such announcement shall state—

- (1) The name, occupation, and residence of the prospector;
- (2) the name to be given to the mining area;
- (3) the area and boundaries of the mining area claimed, having regard to the plan of survey (Section 43), or if no survey and marking off has taken place, to the diagram of site (paragraph 2, Section 37).
- (4) Name of district wherein the mining area claimed is situated.
- (5) The name of the minerals (Section 1 A, B) to which the mining operations will be confined.

The announcement shall call upon any persons having conflicting rights to give notice of opposition within a given period, in default whereof such rights shall receive no consideration in deciding upon the conversion, and shall lapse. During such period the survey or situation plan shall be open for public inspection at the Mining Authority's offices.

If any conflicting rights are or become known to the Mining Authority, the Mining Authority shall address the announcement specially to the person interested. The period for giving notice of opposition shall in every case run from the date of the public announcement.

Section 45.

The Mining Authority shall, on the expiration of the period herein before mentioned, proceed to decide upon the conflicting rights notified.

Section 46.

Any person against whom a decision has been given may within three months of having received notice thereof take legal proceedings to have the same set aside. No review (Section 4) shall be allowed.

The defendant in such proceedings shall be the person in whose favour the decision of the Mining Authority has been given. If such decision has been in favour of two or more persons, such proceedings shall not be taken otherwise than against all such persons jointly.

The trial of the action shall not take place before the expiration of the period mentioned in paragraph 1 of this section in respect of every party entitled to sue. Actions may be joined for the purpose of being tried and decided together. The issue of the writ and the date of the trial shall forthwith be announced by the Court publicly and to the Mining Authority.

Section 47.

The Mining Authority shall decide upon the conversion of a prospecting claim into a mining claim on the expiration of the period mentioned in Section 44, paragraph (3), or, if conflicting rights have been notified, after final adjudication thereupon. There shall be no appeal to the Courts from such decision.

The decision decreeing the conversion shall be publicly announced. Any demand for review must be lodged within two weeks of such announcement, and there shall be no further review (Section 4, paragraph 2).

Section 48.

So soon as the decision to convert has become absolute the Mining Authority shall certify the conversion by record.

Such record shall state—

- (1) The name, occupation, and residence of the person entitled.
- (2) Name of mine.
- (3) Area and boundaries of the mining property, having regard to the plan of survey (Section 43), or, in case a survey and marking off has not taken place, to the diagram of site (Section 37, paragraph 2).
- (4) Name of district wherein mining area is situated.
- (5) The name of the minerals (Section 1 A, B) to which the mining operations will be confined.
- (6) Date of drawing of deed.
- (7) Seal or stamp and signature of Mining Authority.

Section 49.

On the signature of such record by the Mining Authority, the mining property of the area therein described shall vest in the grantee to the exclusion of all repugnant rights not specially reserved.

The record of the conversion shall be retained by the Mining Authority, and a copy thereof handed to the grantee on his application and payment of a fee of fifty shillings.

Section 50.

The alteration of the boundaries between adjoining mining areas, the partition of the area in several independent mining areas and the amalgamation of several mining areas to one whole, must be drawn up in a judicial or notarial deed and require ratification by the Mining Authority.

The ratification can only be refused when predominant reasons of public interest or rights of others are opposed thereto. It must be publicly notified. The provisions of Section 49 apply thereto.

(b) SPECIAL RIGHTS AND DUTIES OF THE MINE OWNER.

Section 51.

The mine owner (Section 49) shall have the exclusive right, subject to the provisions of this Ordinance and of his record (Sections 49 and 50), to search for and win—

- (1) In a mining claim for precious minerals, all the minerals mentioned in Section 1;
 - (2) in a base mineral claim, all the minerals mentioned in Section 1 under heading B;
- and to take all measures on and under the surface which may be necessary in that behalf.

Section 52.

The mine owner shall be entitled to put up and work all gear necessary for dressing, smelting, and forwarding his mining produce.

Section 53.

The mine owner is entitled to erect accessory works on open ground.

The same right can be granted him by the Mining Authority in the prospecting claims or mining area of another person, in so far as the accessory works tend to the draining or ventilation or more advantageous working of the mine, provided that the operations in the area belonging to others are neither interfered with nor endangered thereby.

If the prospector or mine owner, in whose claim or area accessory workings are to be erected, refuses to allow this, the Mining Authority decides hereon without recourse to a legal action.

The person entitled to accessory works must pay full compensation for any damages resulting from the erection of the accessory works.

The minerals won in the erection of accessory works on open ground are treated as part of the production of the mine for which the accessory works have been erected. If, in the erection of accessory works in the mining area of another, minerals are won to which the latter is entitled, such minerals must be handed to him without charge at his request.

Section 54.

The Mining Authority decides in how far the mine owner has the right to the use of the water found on his mining area or artificially brought thereon for the purposes of his work and construct appliances necessary therefor. The decision cannot be challenged by means of an action.

Section 55.

In a mining area for base minerals a mine owner is entitled to win in combination therewith precious minerals in so far as according to the decision of the Mining Authority they are bound to be won in combination therewith.

The Mining Authority shall be competent to decide (without such decision being subject to an appeal to the Courts) whether the commercial value of the combined yields is to be attributed principally to the presence of precious minerals, in which case the mining area, in so far as the rights of others are not conflicting, must be declared by the Mining Authority, either wholly or partially, as a mining area for precious minerals, and to the deed drawn up in accordance with Sections 48, 49, and 50 must be added a clause to that effect. The decision must be publicly notified.

Section 56.

If different persons are entitled to the rights to win precious minerals and base minerals within the boundaries of the same area, then each of them is entitled on winning his own minerals also to win in combination therewith the minerals of the others. The minerals won in combination belonging to others must, however, be surrendered to them on request against payment of the costs of winning and working.

Section 57.

Every mine owner shall be bound within two years from the date of his record (Section 49, paragraph 1) to begin or cause to be begun regular mining operations appropriate to the character of the mineral deposit, and to continue the same or cause them to be continued without interruption, save where prevented by circumstances for which he is not responsible. The Mining Authority may extend the period within which this obligation shall be fulfilled.

The Mining Authority shall decide (without such decision being subject to appeal to the Courts) whether any mining operations are in accordance with such obligation.

The Administrator may direct that in particular parts of the Protectorate such obligation shall be satisfied by the yearly expenditure of a specified sum of money and proof of the occupation of a certain number of workmen in mining work. The Administrator may also reduce by not more than one year the period provided in the first paragraph of this section.

If the mine owner does not comply with the provisions of the first and third paragraph of this section, the Mining Authority may commence proceedings under Section 69 to 75 with a view to the forfeiture of the mining property.

Section 58.

The mine owner shall notify in writing or by protocol to the Mining Authority, or other party to be named by the Administrator, the commencement of mining operations, before such commencement; every material alteration of the method of working, before the inauguration of such alteration; and every total or partial stoppage of the working, within four weeks after such stoppage.

The mine owner shall also notify in the like manner and to the like authority his intention of winning any mineral which has not theretofore been won.

The Administrator may issue further regulations regarding such notification.

Section 59.

The mine owner is obliged to keep books as to the yield, its value (Section 64, paragraph 1), the men employed and the wages paid.

The Mining Authority or other authorities appointed by the Administrator have the right to inspect at any time the books to be kept in conformity herewith.

Further regulations may be issued by the Administrator as to the manner of keeping such account. The Administrator may require any mine owner to furnish the Mining Authority, or other authority named by the Administrator, with returns extracted from his books at any given periods and in any given form.

Section 60.

If the mine owner does not personally manage and supervise mining operations on the spot, he must without prejudice to the provisions of Section 3, appoint a person for the management and supervision of the operations (mine manager) who is responsible for the fulfilment of the duties resting on the mine owner for mining operations.

The name of the mine manager must be given to the Mining Authority.

The sanction of the Mining Authority is required for the appointment of natives or other coloured persons as mine manager.

In case the provisions are not complied with, the Mining Authority can, in addition to the penalties threatened by Section 90 (7), forbid mining operations and take steps for the forfeiture of the mining property in terms of Sections 69 to 75.

Section 61.

The Administrator may order that the persons whom the mine owner has entrusted with the assaying of the ores, with the book-keeping or with the preparation of the returns required, are obliged to make a solemn declaration before authorities to be appointed by the Administrator to the effect that they will conscientiously fulfil these duties.

Section 62.

The mine owner must pay a Claim Tax and an Output Royalty.

Section 63.

The yearly Claim Tax is—

- (a) for mining areas for precious minerals, thirty shillings per hectare;
- (b) for mining areas for base minerals, one shilling per hectare;

with a minimum of thirty shillings for every mining area per annum.

The Claim Tax is payable half-yearly in advance on the 1st April and the 1st October to the authorities appointed by the Administrator. For the first half-year it is calculated as from the beginning of the month following upon the vesting of the mining right (Section 49).

Section 64.

The Output Royalty amounts to 2 per cent. of the value before treatment of unwrought minerals (Section 1).

The Administrator can in general or with regard to certain minerals issue special instructions as to how such Output Royalty should be calculated.

Payment must be made half-yearly on the 1st April and on the 1st October, namely, for the half-year beginning on the 1st April and 1st October respectively.

Section 65.

Any person who makes default during two months of any payment due in respect of Claim Tax or Output Royalty shall be liable to a penalty equal to one-fourth of the amount due. On becoming liable to such penalty such person shall be summoned to make payment.

Section 66.

If payment of the Claim Tax or Output Royalty due and the extra payment incurred under Section 65 is not yet made within a further two months after such summons, the Mining Authority must order the collection of the amount due.

In case such proceedings prove unavailable the Mining Authority can institute proceedings under Sections 69 to 75 with a view to the forfeiture of the mining property.

Section 67.

Where the right to a mining claim is transferred, all rights and obligations accruing to the mining proprietor under the provisions of Sections 51 to 66 accrue to the transferee.

Section 68.

In case the mining property has been forfeited (Section 57, paragraph 4; Section 60, paragraph 3; Section 66, paragraph 2), the Mining Authority decides, without such decision being subject to any appeal to the Courts in how far reasons of policy are opposed to the removal of timbering and masonry work of the underground appliances or transport and working gear and other plant.

(c) CLOSING OF THE MINING PROPERTY.

Section 69.

The preliminary steps in the proceedings for the forfeiture of mining property (Section 57, paragraph 4; Section 60, paragraph 3; Section 66, paragraph 2) shall be initiated by resolution of the Mining Authority.

Section 70.

A mine owner may apply to the Court for a decree rescinding such resolution (Section 69) within three months from the date upon which such resolution has been notified to him. If no such application be made within the period mentioned, the mine owner shall have no further right to oppose such resolution.

No review (Section 4) shall be allowed.

Section 71.

Where such a decree is not applied for, or, being applied for, is refused, the resolution of the Mining Authority shall thereupon be publicly announced and also especially brought to the notice of any known lienholders.

Section 72.

Any lienholder shall be entitled at any time within three months after notification of the resolution has been made to him, but not later than six months after the public announcement thereof, to make application before such courts as the Administrator may hereafter create, to put up the mining property to public auction at the lienholder's expense, such expense to be paid out of the proceeds of the auction. A lienholder who does not avail himself of this right shall, upon the forfeiture of the mining property, be liable to forfeit all rights accruing to him under his lien.

The mine owner and the Mining Authority, or either of them, may also make application for putting up the mining property for auction within one month of the said public announcement.

Section 73.

If no application be made for putting up the mining property to auction, or if such property, having been put up, be not sold, the Mining Authority shall by resolution decree the forfeiture of the property. Such resolution shall not be subject to any appeal to the Courts.

Such resolution shall be publicly announced and also specially announced to the mine owner and all known lienholders.

All rights to the mining property shall lapse as such resolution has become unappealable for all parties mentioned in paragraph 2 of this Section.

Section 74.

If the mine owner wishes to abandon his mining property, either partially or as a whole, he must declare this to the Mining Authority in writing or by reporting in person.

The Mining Authority shall publicly announce such declaration and also notify the same to known lienholders.

If such declaration refers to the whole extent of the mining property, the provisions of Sections 72 and 73 apply.

If such declaration only refers to a portion of the mining property, then lienholders and the Mining Authority have the right, in terms of Section 72, to apply for the sale by auction of the whole mine. If such application is not made, or if the application does not lead to the sale of the mine, then the Mining Authority shall decree the forfeiture of the mine property in terms of Section 73, to the extent of the declared abandonment.

Section 75.

Upon the forfeiture of a mining property the mining area again becomes open.

IV.—LEGAL RELATIONS BETWEEN THE PERSONS MINING AND THE OWNERS OF LAND, AS WELL AS THE PERSONS ENTITLED TO THE USE OF THE LAND.

A.—TRANSFER OF LAND.

Section 76.

In so far as the use of the land belonging to others is necessary to mining operations, including the accessory works required therefor (Sections 52, 53, 54) the person working the mine can demand cession of the use. Such cession can only be refused for predominant reasons of public interest.

The use of land whereon dwellings or stores have been erected, and of the gardens and enclosed yards connected therewith, cannot be demanded by the person working the mine; provided, however, that if, in the opinion of the Mining Authority, against whose decision in this respect no appeal shall lie, the erection of buildings or the enclosure of lands is being or has been carried out not for bona fide occupation, farming, or industry, but with the intention of preventing the holders of mineral rights from exercising the full enjoyment of those rights, it shall be lawful for the Mining Authority to set aside the prohibition in this paragraph contained.

Section 77.

The person working the mine must fully indemnify the person entitled to the use of the ground, yearly in advance for the loss or diminution of the use and must return the ground after the use has terminated.

Section 78.

If, through the use, the ground or a servitude thereon depreciates, the person working the mine must, on returning the ground, give compensation for such depreciation. On cession of the use, the owner of the ground, as well as the person entitled to the servitude, can require proper security for the fulfilment of this obligation. The owner of the ground can also, in case the ground cannot any longer be used suitably, demand that the person working the mine, instead of paying compensation for the depreciation, should acquire the ownership of the ground and its appurtenances.

Section 79.

When it is evident that the use will last longer than three years, or when the use still continues after the expiration of three years, the owner of the ground can demand that the person working the mine shall acquire the ground and its appurtenances.

Section 80.

If the use only concerns a portion of a piece of ground in the cases mentioned in Section 78, paragraph 3, and Section 79, the acquisition of that portion only can be demanded unless the remaining portion cannot be suitably used any longer.

Section 81.

With regard to all the portions of ground alienated for mining purposes, if eventually the ground is no longer required for mining purposes, the person then owning the ground, which has been reduced in size through such original alienation, has the right of pre-emption on same.

Section 82.

If the person conducting mining operations and the persons having claims against him by virtue of the provisions of Sections 76 to 80 cannot agree, the Mining Authority, having heard both parties thereon, decides whether, to what extent and on what conditions use thereof should be made and the person mining is liable for compensation or to acquire the property.

Legal proceedings may only be instituted with regard to the liability to cede the use, when freedom of such liability is claimed by virtue of Section 76, paragraph 2, or of a special legal title.

Section 83.

Whether, to what extent and on what conditions mining can be allowed on native lands is decided by the Administrator without prejudice to claims for compensation.

B.—COMPENSATION FOR DAMAGE TO LAND.

Section 84.

The person conducting mining operations must pay compensation for damage done to the land or its appurtenances through his mining operations.

The person mining is not liable to pay compensation for damage done through the mining operations to buildings or other constructions if such constructions were erected at a time when the danger threatening them through such mining operations could not have remained unknown with the use of ordinary attention.

If the erection of such constructions cannot take place owing to such danger, the claim for compensation for depreciation suffered thereby by the ground will fail, when it appears from the circumstances that the intention to erect such constructions is only put forward to obtain such compensation.

Section 85.

No claim shall be allowed in respect of any damage caused by mining operations (Section 84) after the expiration of three years from the date on which the claimant first had knowledge of the damage and of the person responsible therefor, and no such claim shall in any case be allowed after 30 years from the date of the damage, save where otherwise expressly by agreement provided.

V.—SHARE OF THE OWNER OF THE LAND IN THE OUTPUT ROYALTY.

Section 86.

Where any of the minerals mentioned in Section 1 are won on surveyed land in farming use, the Administration will allow owner thereof on his demand one-fourth of the mining royalty paid under Section 64, provided that the whole of the surface and subsoil whence the mineral is won belong to the said land.

Where the surface or subsoil whence the mineral is won belongs only in part to the said land, the owner of such land shall participate in the mining royalty only in the proportion of such part.

The demand for participation in the royalty must be lodged with the Mining Authority within six months after the periods provided in paragraph 3 of Section 64, in default whereof any right to participation shall lapse in favour of the Administration.

Decisions of the Mining Authority taken in execution of any of the foregoing provisions of this paragraph shall not be subject to any appeal to the Courts.

Companies whose title to land rests upon a right conferred or confirmed by the Imperial Chancellor or the Foreign Office, Colonial Department, are excluded from any of the benefits provided in the first and second paragraphs of this section.

VI.—MINING POLICE.

Section 87.

The Police supervision over the prospecting and mining operations shall be exercised by the Mining Authority.

The Administrator may transfer the Police supervision in any parts of South-West Africa to other authorities. Such transfer shall be publicly notified.

Section 88.

The supervision of the Mining Police is specially directed upon—

- (1) the security of the constructions;
- (2) the security of life and health of the employees and workmen;
- (3) the maintenance of proper morals and behaviour in the works.
- (4) the protection of the surface in the interests of personal security and public traffic.
- (5) the protection of the public against the injurious consequences which may result from prospecting and mining.

Section 89.

Any person who discovers minerals when prospecting, or who finds minerals when mining, which have not been notified as being mined before, must, within three months after becoming aware of such discovery, give notice of such discovery to the Mining Authority. The Administrator can issue further instructions as regards the form and contents of the notices and also stipulate that the duty to give notice has been satisfied by giving the notice to some other authorities.

VII.—PENALTIES.

Section 90.

Any person who—

- (1) unlawfully uses land belonging to another for the purposes of prospecting (Section 12); or
- (2) removes, destroys, disfigures, or displaces a beacon or boundary mark of a prospecting or mining claim belonging to another with intent to prejudice any person; or
- (3) unlawfully conducts mining operations or erects mining works for the purpose of winning minerals mentioned in Section 1; or
- (4) unlawfully carries away from any prospecting or mining claim belonging to another, or any land not being a claim, any minerals occurring therein with the intention of converting them to his own use; or
- (5) knowingly transgresses the boundaries of his claim whilst exercising his mining rights; or
- (6) contravenes any of the provisions of Section 59 concerning the keeping of accounts, or knowingly makes false entries or statements in such accounts; or
- (7) contravenes any of the provisions of Section 60; or
- (8) neglects to give the notice of discovery provided by Section 89 in the time and form required, or knowingly lodges an untrue notice of discovery; or
- (9) removes any fixtures mentioned in Section 68 contrary to the decision of the Mining Authority, or before such decision has been given;

shall incur a fine not exceeding £150 (one hundred and fifty pounds sterling) or be imprisoned for a period not exceeding six months, unless he shall have incurred larger penalties under other laws or regulations for the time being in force.

Section 91.

Any person who—

- (1) contravenes any of the provisions of Sections 10, 11, 22, 24, 32 and 33; or
- (2) fails to give any of the notices provided by Sections 28, 30 and 58; or
- (3) by neglect of proper precautions transgresses the boundaries of his claim whilst conducting mining operations;

shall incur a fine not exceeding £25 (twenty-five pounds sterling), or, in default of payment, arrest.

Section 92.

Repealed.

VIII.—FINAL PROVISIONS.

Section 93.

The provisions of the Ordinance also apply in such territories wherein companies possess mining rights founded upon any special privileges conferred or confirmed by the Imperial Chancellor or the Foreign Office, Colonial Department, so far as the deed conveying such privileges does not otherwise specify.

Section 94.

The Administrator may confer special titles for the exclusive search or winning of minerals for certain territories.

In such territories the provisions of this Ordinance apply in so far as the deed conveying such privileges shall not otherwise specify.

Section 95.

It is forbidden to officials and military persons in the Government service in the Proctorate to prospect and mine in the Proctorate without the consent of the Administrator.

The minerals (Section 1) won by such persons by prospecting or mining operations without permission become the property of the Treasury at the moment of winning.

Section 96.

The Administrator is empowered to regulate the legal conditions referring to mining in general where the same are not regulated by this Ordinance.

He may specially direct that the Ordinance applies as well to the searching and winning of minerals other than those mentioned in Section 1.

The Administrator may also modify this Ordinance to the extent shown hereunder and direct that such modifications shall be in force over the whole or any part or parts of the territory covered by this Ordinance.

- (1) Extend the periods prescribed in this Ordinance;
- (2) regulate the competency of the authorities in the Proctorate otherwise than this Ordinance provides;
- (3) issue different provisions for the prospecting and mining for precious stones, as well as for other precious minerals in so far as these occur as alluvial deposits;
- (4) make the permission to prospect dependent upon the taking out of a prospecting licence and prescribe that a prospector may not peg off more than a certain number of prospecting areas;
- (5) reduce or increase the prospecting fees, the Claim Tax and the royalty on the production or sales.

Section 97.

Repealed.

Section 98.

The Imperial Ordinance relating to mining in the South-West African Protectorate of the 15th August, 1889 (*Imperial Government Gazette*, page 179), is repealed.

Section 99.

This Ordinance comes into operation on the 1st January, 1906.