

CONDOMINIUM DES NOUVELLES-HEBRIDES

NEW HEBRIDES CONDOMINIUM

ARRETE CONJOINT 2 de 1957

JOINT REGULATION 2 of 1957

JOINT REGULATION

No. 2 of
1957.**To provide for the Control of Mining in the New Hebrides.**

Joint Regulation No. 2 of 1957 was published in Condominium Gazette No. 194 and is reprinted as amended by Joint Regulation No. 7 of 1968.

MADE by Her Britannic Majesty's High Commissioner for the New Hebrides and the High Commissioner for the French Republic in the Pacific Ocean and the New Hebrides under Article 7 of the Anglo-French Protocol of 1914.

1. Prospecting for and working of mines in the archipelago of the New Hebrides shall be governed by the provisions of this Regulation and by the joint enactments made for its implementation.

The following shall be considered as mines: the natural deposits of mineral substances, including liquid and gaseous hydrocarbons, other than building, road-making and fertilizing materials, and other similar substances, with the exception, however, of phosphates, nitrates and associated salts, the deposits of which shall be considered as mines.

In case of doubt regarding the classification of a substance the decision shall rest with the Resident Commissioners.

2. All unextracted natural deposits of mineral substances in and under all land in the territory which are classified as mines under Article 1 shall be deemed to be and always to have been the property of the Resident Commissioners jointly.

3. No person or company shall undertake or carry on prospecting for or the working of mines without having obtained beforehand a personal authorisation issued by Joint Decision of the Resident Commissioners. This authorisation, which shall be subject to such fees as the Resident Commissioners may jointly prescribe, may only be issued for—

a limited period which may not exceed five years,

a limited [surface area (expressed in hectares)],

one or more minerals explicitly enumerated.

The Resident Commissioners may, at their joint discretion and without being obliged to disclose their reasons, refuse, restrict the exercise of, or withdraw a personal authorisation and no claim for compensation or damages shall lie in respect of such a decision.

The withdrawal or restriction of the exercise of the personal authorisation shall not affect prospecting licences and mining leases already granted.

A request for a personal authorisation submitted to the Department of Mines must disclose:

In the case of an individual, his identity;

In the case of a company, its Memorandum and Articles

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of Association, and the identity of its office-bearers and managers and directors;

In either case, a sufficient statement of the technical and financial background of the applicant.

4. Over and above the necessity to obtain a personal authorisation:

The sole right to prospect for a mineral deposit shall be conditional on the grant of a prospector's licence.

The right to work a mineral deposit shall be conditional on the grant of a lease issued by virtue of a prospecting licence.

Prospector's licence and leases shall be granted by the Resident Commissioners jointly.

5. The Resident Commissioners may, by means of joint enactments made for the implementation of the present Regulation, fix the general conditions to be imposed on licence holders and lessees, in regard to—

1. the legal form of undertakings and the amount and distribution of capital invested;
2. the conditions under which prospecting, extraction and working may be carried on;
3. the conditions of employment of labour;
4. the disposal of the minerals extracted;
5. the method of calculating and the rate of royalties and taxes to be levied for the benefit of the joint budget.

6. (a) A prospecting licence shall confer, within the specific limits of its area and without limitation on vertical depth, the exclusive right of prospecting for the minerals for which it is granted.

(b) An application for a prospecting licence must be submitted to the Department of Mines and give:

1. the name of the applicant and his nationality;
2. references to the personal authorisation and its validity;
3. the mineral or minerals for which the licence is requested;
4. the area to be prospected.

(c) The area shall be bounded by a square the sides of which shall run in the directions true North-South and East-West.

The length of each side shall be not less than 500 metres and not more than 10 kilometres. The applicant shall have the right to have his prospecting licence limited to those portions of the square not covered by the sea and to pay the fee for this area only. Attached to the application must be two copies of a sketch or plan on the scale of 1—10,000 showing true North and indicating the position of one of the angles of the square in relation to an outstanding fixed landmark.

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(d) If the square requested encroaches on the area of any licence or lease valid for the same minerals and which has been previously applied for, the rights of the licensee shall be definitely limited to the area available at the time of application.

(e) The application shall be registered at the Department of Mines, the date and hour of its deposition being recorded in a special register provided for the purpose. A receipt shall be issued.

(f) The prospecting licence shall be issued by the Resident Commissioners jointly in accordance with an order of priority determined by the date and, if necessary, the time of filing of the application and against payment of a fee, calculated according to the area applied for, which shall be paid into the joint budget.

(g) The Resident Commissioners may however:

- (1) reject all application for a prospecting licence or revoke a licence already issued, if it is established that the application for a licence has been vitiated by serious irregularities which cannot be corrected, in which case the reason for the decision shall be communicated to the interested parties;
- (2) defer consideration of an application for a licence without detriment to its order of priority or suspend a licence already issued, if it is established that prospecting in the area applied for would be liable to disturb public order.

(h) The prospecting licence shall be valid for two years from the date of issue; the Resident Commissioners may renew it twice, for two years each time at the request of the licensee.

Renewal shall be automatic unless the licensee has given evidence of no activity or [inadequate] activity only during the preceding period of validity. On the expiration of the period of validity the prospecting licence shall be cancelled and for the following four months the licensee shall not be eligible to obtain, either directly or through an intermediary, the issue of a new licence in respect of all or part of the area concerned.

(i) The holder of a prospecting licence may be authorised by joint decision of the Resident Commissioners to dispose of the minerals produced by his work. Any prospecting which turns into exploitation shall be prohibited by administrative direction.

7. (a) The holder of a prospecting licence shall be entitled to a mining lease if he has during the period of such licence furnished proof [to the satisfaction of the Resident Commissioner] of the existence of a mineral deposit within the area applied for.

(b) The mining lease shall confer on its holder within the limits of its area and without limitation on vertical depth the exclusive right of prospecting for and working deposits of the minerals for which the prospecting licence on which the lease is based is valid and in respect of which proof of the existence of a deposit is furnished.

(c) The application for a lease must on penalty of nullification:

1. reach the Department of Mines before the date of expiration

of the prospecting licence by virtue of which it is requested;

2. be accompanied by two copies of a surface plan on the scale of 1—10,000 set to true north and indicating the exact position of the area requested for lease in relation to the area of the prospecting licence by virtue of which the request is made;
3. be accompanied by all necessary information (plans, reports, analyses, quantities etc.) in regard to the results of the work, completed bearing on the position, the nature and the characteristics of the deposit to be exploited and enabling its existence to be confirmed. The area must be entirely contained within the area of the prospecting licence on which it is based and it must be limited, barring derogation by a square or rectangle set in the directions North-South and East-West. It must have a minimum area of 15 hectares.

(d) The application shall be registered at the Department of Mines, the date and hour of its deposition being recorded in a special register provided for the purpose. A receipt shall be issued.

(e) The lease if granted, shall be effected by a Joint Decision of the Resident Commissioners known as a "certificate of lease", which shall be published in the Condominium Gazette.

(f) If without due cause to the satisfaction of the Resident Commissioners the working of the lease is not undertaken or is suspended or restricted or carried on in a manner contrary to the public interest the lessee may be required by the Resident Commissioners to undertake, resume, continue, intensify or modify the activities within a stated period which shall not be less than six months.

On failure to comply with this order the lessee may lose his rights and the lease shall be sold in accordance with conditions set out in a Joint Order.

(g) The lessee shall pay to the Condominium budget an annual rent based on the area leased; in default of which he shall be liable to the penalty set forth in the second sub-paragraph of paragraph (f) above. In addition there shall be charged a royalty based on the value of the minerals extracted.

(h) The lease shall be valid for twenty-five years. The holder of the lease may apply for renewal. Applications for renewal must be addressed to the Resident Commissioners not more than eighteen months and not less than one year before the date on which the lease is due to expire. On receipt of an application for renewal the Resident Commissioners may at their discretion either reject or accede to it. In the latter case the lease will be renewed for a fresh period of twenty-five years with the possibility of renewal thereafter in the same way; a new certificate of lease shall be issued the conditions of which may differ from those of the original certificate of lease.

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8. Mining operations must be conducted according to standard practice. They shall be subject to supervision by the Joint Administration which shall prescribe such measures as are necessary for the safety of miners, the conservation of mineral deposits and public safety.

9. (a) A prospecting licence shall constitute a personal right which cannot be shared, leased or mortgaged. Subject to any restrictions imposed by a joint enactment it may be ceded and transferred to any holder of a personal authorisation.

(b) A mining lease shall constitute a right in real property of limited duration which is distinct from the ownership of the soil and which may be mortgaged. A mining lease may be ceded and leased and subject to the prior authorisation of the Resident Commissioners may be the subject of a merger or division.

(c) The authorisations provided for in the two preceding paragraphs may be deferred or refused without the interested parties thereby acquiring any claim to indemnification. A special register kept in the Department of Mines and available for inspection (but not removal) on request shall record:

the grant of prospecting licences and mining leases together with their withdrawal or renewal;

all relinquishments and transfer together with all civil and judicial acts concerning prospecting licences and mining leases;

sub-leasing of mining leases.

10. The prospector or lessee may on being so authorised by the Resident Commissioners—

within the area of his licence or lease make use of land necessary for his work and connected operations, cut wood necessary therefor and exploit any unused water-falls;

outside the area of his licence or lease make use of land necessary for the establishment of roads of access, safety works, stocks of industrially useful minerals and refining plants.

If the land referred to above is not private property, the authorisation will be given without payment.

If the land or a portion of it is private property, authorisation to occupy it shall be given subject to payment to the owners, leaseholders or users of an annual indemnity amounting to twice the net revenue or on purchase of the land or usufructary rights to it. The purchase price shall be fixed at twice the value of the rights acquired. The licensee or lessee may be compelled to purchase if occupation deprives the user or the owner of the land for more than one year or causes destruction of crops or trees or if after operations have been carried out the land occupied is no longer fit for the purpose for which it was formerly used.

Further, if the land or a portion of it is the property of natives

of the New Hebrides the licensee or lessee must before entering into possession inform one of the Agents of the District of his intention. Any agreement made between the licensee or the lessee, and the natives concerned either for occupation or purchase of the land must be submitted for the comments of the Native Advocate and the approval of the Resident Commissioners or officers nominated by them for the purpose.

11. A Department of Mines constituted by [Joint Rules] shall supervise under the authority of the Resident Commissioners the application of this Regulation and any enactments made for its implementation.

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It shall assist the Department of Labour in the application of labour legislation in mining undertakings.

It shall take steps to prepare, collect and disseminate information with particular reference to, mineral substances, mineral resources, the mining industry, and pure and applied geology.

For these purposes officers of the Department of Mines shall have the right at any time to investigate indications of deposits or actual deposits and shall have the rights of access at any time to all mining works and installations subject to their inspection.

Licensees, lessees and exploiters are required to facilitate inspection of accessible works.

12. All disputes relating to the grant and exercise of licences and leases shall be submitted to the court competent in accordance with the provisions of the judicial system.

Prospecting and exploitation undertaken contrary to the provisions of this Regulation, or any joint enactments made for its implementation or of the certificate of lease shall be an offence punishable by a fine not exceeding twenty pounds or a term of imprisonment not exceeding one month or by both such fine and imprisonment.

[12A. (1) The Resident Commissioners may make Joint Rules for the better carrying out of this Regulation.

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(2) Joint Rules No. 1 of 1957, Joint Rules No. 11 of 1958 and Joint Rules No. 12 of 1958 shall be deemed to have been made under the provisions of the immediately preceding subsection of this section.

(3) Any action or thing done under the provisions of the said Joint Rules and Joint Rules No. 2 of 1957 and Joint Rules No. 15 of 1958 which would have been validly and properly done if the Principal Regulation had included subsection (1) of this section shall be deemed to have been validly and properly done thereunder.

(4) Joint Rules No. 2 of 1957 and No. 15 of 1958 are hereby repealed.]

13. This Joint Regulation may be cited as the Mining Joint Regulation and shall come into effect on the 15th Day of March, 1957.

Vila, 5th February, 1957.

P. ANTHONIOZ

The Resident Commissioner for the French Republic in the New Hebrides, the delegate of the High Commissioner for the French Republic in the Pacific Ocean and the New Hebrides.

REID COWELL

Her Britannic Majesty's Acting Resident Commissioner in the New Hebrides, the delegate of Her Britannic Majesty's High Commissioner for the New Hebrides.