

## No. 5 of 1890.

### An Ordinance relating to Mines of Gold, Silver, and Precious Stones in Lands other than Crown Property.

*(See Ordinances No. 20 of 1890 and No. 10 of 1894.)*

**W**HEREAS it is expedient to provide for the better protection of the prerogative rights of the Crown in respect of all gold, silver, gems, or precious stones which may be found in mines in private lands in this colony, and for the regulation and inspection of such mines: Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1 This Ordinance may be cited for all purposes as "The Gemming Ordinance, 1890."

Short title.

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- Interpretation : **2** In this Ordinance—
- “ Land.” “ Land ” means every description of land not being the property of the Crown, and includes the bed of every river and stream adjacent to or flowing through such land.
- “ Mine.” “ Mine ” includes one or more mines opened, worked, or used in any land in respect of which a license has been issued under section 4 for the purpose of searching for or obtaining gold, silver, gems, or precious stones, and includes all shafts, levels, planes, works, machinery, tramways, and sidings both below and above ground, which may be sunk, driven, erected, or constructed in and adjacent to such mine or mines.
- [ § 1, 10 of 1894. ]
- “ Shaft.” “ Shaft ” includes pit.
- “ To open, work, or use a mine.” “ To open, work, or use a mine ” means and includes the sinking of any shaft or the driving of any level or inclined plane, or any act whatsoever whereby the soil or earth or any rock, stone, or quartz in or under any land is disturbed, removed, carted, carried, washed, sifted, or otherwise dealt with for the purpose of searching for or obtaining gold, silver, gems, or precious stones therefrom.
- “ Person.” “ Person ” includes any association or body of persons, whether incorporated or not.
- License to open a mine. **3** It shall not be lawful for any person to open, work, or use any mine without having previously obtained a license as hereinafter provided.
- How issued. **4** (1) The government agent may issue in respect of any land within his province, to any person establishing a *prima facie* right to enter upon and open, work, or use a mine in such land, a license under this Ordinance.
- (2) The license shall be substantially in the form set out in the schedule hereto, and shall be subject to a stamp duty of one rupee.
- [ § 2, 10 of 1894. ]
- Applicant for license to make certain declarations. **5** (1) Before any license is issued, the person applying for the same shall furnish the government agent with a declaration in writing containing—
- (a) The name and boundaries of the land in which the mine is to be opened, worked, or used ;
- (b) The nature of the right of the applicant to open, work, or use the mine on such land ; and
- (c) The name or names and residence or residences of himself and of the person or persons under whose management or superintendence the mine is intended to be opened, worked, or used.
- (2) If the party making such declaration ceases to have an interest in the mine, or if any person or persons other than those named in the declaration shall be entrusted with the management or superintendence of the mine, the licensee shall make a further declaration thereof to the government agent.

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(3) Every such declaration shall be signed by the party making the same, or by his duly authorized agent, and shall be filed of record in the office of the government agent.

6 (1) The government agent may refuse to grant any license which may be applied for, or may attach such conditions thereto and require such security to be furnished by the applicant for the due fulfilment of such conditions as he may deem expedient, and may revoke any such license in the event of any of the conditions not being fulfilled.

License may be refused or revoked. Appeal to the Governor in Executive Council.

(2) Whenever the government agent shall refuse to grant, or shall revoke a license, he shall forthwith report such refusal or revocation, and the reasons therefor, to the Governor in Executive Council, by whom such refusal or revocation may be confirmed or reversed.

(3) Any person aggrieved by an order of the government agent refusing to grant or revoking a license, or by the conditions attached to a license, may appeal to the Governor in Executive Council within thirty days from the date of such order, and the decision of the Governor in Executive Council shall be final.

7 (1) Nothing herein contained shall in any way prejudice the right of any person having a title superior to that of a licensee in respect of any land or part thereof which may be described in the license, to apply to a competent court for an injunction to restrain the licensee from opening, working, or using a mine in such land or part thereof, or to take such other proceedings at law as may be necessary for the protection of his interests.

Injunction to restrain licensee.

(2) In any case in which the court upholds the superior title of such person as against the licensee, the court shall revoke the license, and the same shall thereupon cease to have any force or effect.

Revocation of license by court.

9 A license issued under this Ordinance shall not be transferable, and every licensee shall produce his license whenever he shall be called upon to do so by the government agent of the province or the assistant government agent of the district, or by any person authorized in writing by either officer in that behalf.

Production of license, which is not transferable.

10 The Governor in Executive Council shall from time to time make, and when made may alter, amend, or cancel rules for—

Rules.

- (b) Inspecting and examining into the state and condition, and ensuring the due ventilation, of any mine or any part thereof ;
- (c) Regulating all matters and things connected with, or relating to, the safety of the persons employed in or about any mine ; and
- (d) Every other purpose necessary for carrying out the several provisions of this Ordinance.

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- Proviso.**            Provided that no rule or alteration, amendment, or cancelment thereof shall have effect until the same is duly published in the *Government Gazette*.
- Penalties.**            **11** Any person who shall open, work, or use, or cause or suffer to be opened, worked, or used any mine in breach of, or in any way contrary to, the provisions of this Ordinance or of any rules made under section 10, or otherwise than in strict accordance with the license in that behalf granted under this Ordinance, or after such license shall have been revoked, or who shall refuse to produce any license whenever required to do so, and any person who shall knowingly and wilfully be employed in or about a mine without a permit, shall be guilty of an offence, and be liable on a first conviction to a fine not exceeding fifty rupees, or to rigorous imprisonment not exceeding three months, or both, and on every subsequent conviction to a fine not exceeding one hundred rupees, or to rigorous imprisonment not exceeding six months, or both.
- Confiscation.**        **12** When any person is convicted of opening, working, or using a mine without a license, or contrary to the conditions thereof, or in breach of any of the provisions of this Ordinance, all the gold, silver, gems, or precious stones and mining implements which at the time of the commission of the offence were found on the person or in the possession of such offender shall be liable, by order of the convicting magistrate, to confiscation, and such confiscation may be in addition to any other punishment prescribed for such offence.
- Evidence.**            **13** In any prosecution instituted under this Ordinance against any person for having opened, worked, or used any mine without a license, the burden of proof that he holds a license or permit, as the case may be, shall lie on the party accused and, until the contrary shall be proved, he shall be deemed to have no license.
- Decision of Governor in Executive Council as to mines.**            **14** If any question arises whether a mine is a mine to which this Ordinance applies, such question shall be referred to the Governor in Executive Council, whose decision thereon shall be final.
- Prosecutions when barred.**        **15** No prosecution shall be entertained for any offence under this Ordinance unless the same is instituted within six months from the date of the commission of the offence.
- Informer's share.**            **16** It shall be lawful to the court imposing a fine under the provisions of this Ordinance to award to the informer any share not exceeding a moiety of so much of the fine as is actually recovered and realized.
- Repeal.**                **17** In section 3 of the Ordinance No. 7 of 1882, the words "or upon any land in which the rights of the Crown to gems and precious stones have been reserved," are hereby repealed.

18 This Ordinance shall come into operation on the passing thereof, but its provisions shall not apply to any mine which shall have been opened, worked, or used not less than six months before the passing of this Ordinance, until the first day of October next, from and after which date they shall have full force and effect as regards every such mine as aforesaid.

Commencement.

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SCHEDULE, No. 10 OF 1894.

Form of License.

In terms of section 4 of the Ordinance No. 5 of 1890, I, \_\_\_\_\_, do hereby license \_\_\_\_\_ to open, work, and use one or more mines for the purpose of searching for or obtaining (gold or silver or gems, *as the case may be*) in the land called \_\_\_\_\_, situated at \_\_\_\_\_; bounded on the north, &c. (*state the boundaries of the land*), subject to the following conditions (*state conditions, if any*).

Given at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 18 —.

\_\_\_\_\_  
Government Agent.

26th April, 1890.

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