



SURVEY OF MINING LEGISLATION

**With special reference to
Asia and the Far East**

MINERAL RESOURCES DEVELOPMENT SERIES

No. 9

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(Reports prepared by the secretariat of the United Nations Economic Commission for Asia and the Far East)

1. Coal and Iron Ore Resources of Asia and the Far East
2. Development of Mineral Resources in Asia and the Far East
3. The Australian Lignite (Brown Coal) Industry in relation to the Development of Low-Grade Coal Deposits in Asia
4. Mining Development in Asia and the Far East, 1953-1954
5. Mining Development in Asia and the Far East, 1954-1955
6. Report of the Study Group of Geologists and Mining Engineers from the ECAFE Region on their visit to the Soviet Union and Western Europe (forthcoming)
7. Lignite Resources of the Region, their Exploration, Exploitation and Utilization
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FOREWORD

The Regional Conference on Mineral Resources Development held under the sponsorship of the United Nations Economic Commission for Asia and the Far East in April 1953 in Tokyo, Japan, noted that while efficient exploitation and utilization of indigenous mineral resources were the concern of all countries of the region, regulations governing the development of their resources varied from country to country. By bringing these regulations together for careful study by an expert body, such as the Sub-Committee on Mineral Resources Development, the Conference considered that experts would be benefited by others' experience so that suitable amendments to existing regulations might be recommended to their governments, and that foreign countries and private concerns would have a better idea of the conditions under which they could invest in the region. It therefore recommended that "the secretariat should compile existing regulations governing mineral development in the region"¹ This recommendation met with the unanimous approval of the Committee on Industry and Trade at its sixth and seventh sessions, and of the Commission at its tenth and eleventh sessions.

In pursuance of the above, a "Preliminary Survey of Legislation Governing Mineral Development of the Region" (ECAFE/I&T/Sub 3/8) was submitted to the Sub-Committee on Mineral Resources Development at its second session, held in June 1956 in Tokyo, Japan. The Sub-Committee requested that the final survey should take into account not only the legislation of the countries of the region but also that of countries outside the region and should include the following aspects of mining legislation: (a) proprietary rights in mineral areas, (b) prospecting and mining licences, mining leases and methods of control over their issuance, (c) government supervision over mining operations, (d) government revenue from exploitation of mineral resources, (e) safety and sanitary rules and regulations, and (f) foreign investments in the exploitation of mineral resources.² It also suggested that the survey should include drafts of model laws on different aspects of mining legislation suitable for adoption by highly developed countries, as well as by under-developed countries which have recently embarked upon a programme to exploit their mineral resources.³

The present report consists of a brief section, general observations, followed by part I, a survey of mineral legislation in countries of Asia and the Far East, based on information supplied by governments.

Part II is concerned with recent petroleum legislation in the following countries outside the ECAFE region: Guatemala, Israel, Italy, Libya, Mexico, Peru, Turkey, Venezuela. Also included in this part are provisions of petroleum legislation supplied to the secretariat by the governments of the following countries within the region: Republic of China, India, Pakistan and the Philippines.

Part III comprises excerpts or summaries of provisions on proprietary rights, prospecting and mining licences, leases and concessions, governmental supervision and control of mining operations, and government revenue as are selected from the mining laws of the following areas outside the ECAFE region: Victoria, Australia, the Belgian Congo, Brazil, Manitoba, Canada, Egypt, Mexico and Peru.

Introductory notes to each section set forth the specific legislation dealt with. Legislation from countries outside the ECAFE region was selected for inclusion in parts II and III on the basis of the ready availability of recent data. Parts II and III provide samples of existing legislative provisions on subjects in which the Sub-Committee expressed interest. No comparative analysis of mining and

¹ United Nations, *Development of Mineral Resources in Asia and the Far East* (sales number 1953 II F 5), part I, "Report of the Regional Conference on Mineral Resources Development", page 17.

² "Report of the Second Session of the Sub-Committee on Mineral Resources Development" (E/CN 11/I&T/128).

³ *Ibid*.

petroleum legislation has been made, and no evaluation of the importance, effectiveness or desirability of the different provisions is intended. The legal framework for mineral and petroleum development in some countries is found in individual arrangements and agreements entered into by the government rather than in legislation. In view of the importance of such agreements, particularly in several petroleum producing countries, the text of one of the most recent is included as an appendix to part II.

The secretariat wishes to indicate the limitations of this survey in the light of the request of the Sub-Committee

Model legislative provisions have not been included. The selection or adaptation of existing legislative provisions as models entails analysis of differing public policies, comparison of economic conditions, mineral wealth, geological features and accessibility of mineral areas in various countries, as well as evaluation of the practical operation and effectiveness of particular legislative schemes. The materials presented in parts II and III may afford some guidance for drafting and revising legislation, provided that economic and policy considerations as well as relevant geological and geographical factors in each country are taken into account. However, the secretariat did not find it possible, in this report on mining legislation, to study the political, economic and practical aspects of mining and petroleum development which would have been necessary to meet the Sub-Committee's request for model texts.

The present report does not deal with rules on safety and sanitation, on which material will be supplied to the Sub-Committee separately by the International Labour Organisation. Foreign investment is dealt with only briefly and to the extent that provisions are contained in the mining laws themselves. The attention of the Sub-Committee is drawn to the earlier report, "Laws and Regulations Affecting Foreign Investment in Asia and the Far East" (ECAFE/L.122)

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GENERAL OBSERVATIONS

Proprietary rights

In most of the countries surveyed in this report, the right to exploit minerals is separate from ownership rights in land, and only the state may authorize the extraction of minerals. State ownership of mineral resources is declared in the constitution and mining laws of some countries¹ In others, no provision establishing ownership is made, but the right to exploit minerals may be obtained only from the state²

A third theory, derived from the English common law rule that minerals are part of the land, has had some effect in dependent territories of the United Kingdom and countries in the Commonwealth Under this rule, ownership of land carries with it ownership of the minerals in or on it³ An outright sale or grant of land (grant in fee simple) was deemed to include minerals The subsoil could however be sold, leased or retained by the land owner separately from the surface land. Where this is the case, there is a distinction for the purpose of government control, regulation, leasing and so on, between minerals "belonging to the state" and those belonging to private persons.⁴

The present tendency in such jurisdiction is to eliminate the distinction and bring minerals under all lands within the scope of mining laws. First, and most commonly, laws provide that grants of state lands are assumed not to include mineral rights⁵ Secondly, the effect of early grants is being minimized. The Victorian (Australia) Mines Act empowers the Minister of Mines to bring any mineral deposit which is unexplored by the land owner under the general provisions of the Mines Act In India, legislation and constitutional provisions are tending to the abolition of private ownership of mineral deposits and to the uniform application of government control.

Proprietary rights of surface owners are subject to taking or occupation for purposes of mineral development on the theory of "public utility" or "public interest".

¹ See part I Republic of China, Philippines, Sarawak, see also section 1 of part III Belgian Congo, Egypt, Mexico and Peru

² Part I Indonesia, Japan, Republic of Korea, section 1 of part II Brazil

³ This common law rule prevails in the United States

⁴ See, for example, part I Ceylon, Malaya, India, Pakistan

⁵ See, for example, part I Ceylon, section 1 of part III Canada (Manitoba)

Grant of mineral rights by the government

The mineral legislation surveyed is largely concerned with the conditions under which private persons or companies may acquire and retain exploration and exploitation rights within a system of permits, licences, leases and concessions Petroleum operations are usually governed by legislation separate from mining laws in view of the considerable differences of technology and finance between petroleum and other mineral development.

Under most modern laws, the mining and petroleum rights relate to exploration and exploitation stages of operations Maximum areas and duration for exploration and exploitation rights are usually specified Some mining laws provide for concessions to run for an indefinite term, subject to fulfilment of the conditions. All the petroleum laws surveyed set a maximum term for exploitation rights.⁶

Most often, the competent government body is given broad discretion, in the initial grant of exclusive rights, both with respect to the places where mining and petroleum operations may be carried on and to decisions on individual applications. However, the right of the discoverer or the locator of a claim is recognized under some mining laws which provide for non-exclusive prospecting permits, or for free prospecting or for "miner's rights"⁷ The discovery of commercially valuable deposits is usually an important prerequisite to the issuance of exclusive mining rights but not for exclusive exploitation under petroleum laws⁸

None of the modern laws provides for the unconditional grant of mining or petroleum rights The retention of exclusive rights is usually made conditional on the fulfilment of obligations contained in the leases or concessions or specified by law Active work in conformity with prescribed regulations and payment of rents and royalties are the most important conditions usually imposed Other obligations relating to refining within the country, employment of nationals, and full production are also prescribed under some laws *Force majeure* provisions preserve the rights of lessees or concessionaires when circumstances beyond their control result in failure to meet obligations

The mining laws surveyed generally provide no special procedure for appeal from governments' decision in with-

⁶ See "terms of exploitation rights" in section 3 of part II

⁷ For example, part I Japan, Philippines, section 3 of part III Manitoba (Canada) and Victoria (Australia)

⁸ See "exploitation rights" in section 3 of part II, also section 3 of part III

drawing or cancelling mining rights beyond the usually available judicial review by competent courts. Arbitration is however commonly provided for in recent petroleum legislation.⁹

There is generally close government surveillance and supervision of operations conducted under licences, leases and concessions. Typical operations may begin only after plans have been approved, and regular inspections are made thereafter. The reports and full disclosures required of mining and petroleum right holders supply the government mining authorities not only with information on compliance with conditions and regulations but also with information on the discovery of mineral resources and the stage of development. In some cases, certain information is kept confidential by the government to protect the interests of the operators. Government authorities are empowered to issue and enforce directions to individual operators with respect to safety and to the efficient and proper utilization of mineral deposits. These directions are enforced by such measures as suspension of operations, penalties and cancellation of the mining or petroleum right.

Special government prerogatives

The government's right of pre-emption (requisition) in the event of national emergency is specified in many laws, as well as the right of the government to require the satisfaction of the domestic needs of the country before those for export. In all such cases, the producer is entitled to receive the market price, the determination of which may be subject to arbitration. Provision is usually made for the equitable sharing among all the producers of the obligation to meet such requirements.

Much of the legislation surveyed is silent on the question of the compulsory acquisition or nationalization of mines and petroleum fields in derogation of the rights under leases and concessions and existing law. In the Libyan Petroleum Law, however, it is provided that the "contractual rights" contained in the concession may be altered only by mutual consent.¹⁰ In contrast, a recent constitutional amendment in India allows the central Government to extinguish or modify by law rights under any agreement, lease or licence for minerals or petroleum. In Egypt, the Government's right to requisition mines and processing plants arises in case of national emergency and is provided for together with the right of pre-emption.

An example of compulsory government acquisition of a given percentage of shares in mining enterprises is the provision in the Belgian Mining Law for the Government's right to subscribe up to 20 per cent of the initial capital and subsequent stock issues.

⁹ See "Mexico" in section 6 of part III

¹⁰ The Libyan Petroleum Law is unique in providing for an international arbitration. See "provisions against unilateral action by the government" and "provisions for recourse in disputes" in section 6 of part II

Mineral development by foreign enterprise

With respect to foreign nationals and companies, some legislation seeks only to ensure that the holders of mineral rights will be susceptible to government control and supervision, and imposes requirements in respect of domicile, registration or incorporation under domestic law. Companies owned or controlled by foreign governments are sometimes expressly precluded from acquiring mineral rights.

Some laws allowing foreign mining enterprise as well as the employment of foreign technicians make special provisions for the employment and training of their nationals. Another type of provision seeks to ensure the participation—and in some instances the preponderance—of domestic capital in the development of mineral resources.

Foreign investment laws concerned with exchange controls and other conditions applicable to enterprises financed from abroad are dealt with in the report "Laws and Regulations Affecting Foreign Investment in Asia and the Far East" (ECAFE/L 122)

Government revenue

Revenue derived by a government from exploitation of mineral resources falls into one of the following classes: fees, rents, royalties, taxes and import or export duties. The usual practice is that fees are charged for a service rendered or an administrative action taken by the government, rents are based on surface area, royalties are fixed at a given percentage of the production, and taxes are levied on income derived from exploitation or on specific incidents of such exploitation.

Provisions on fees, rents, royalties and import or export duties are usually embodied in laws dealing specifically with the exploitation of mineral resources, and provisions levying taxes may be found either in such laws or in general laws on income taxes. Detailed tax systems are usually laid down specially for petroleum operations.

Revenue provisions often operate to make it financially onerous to retain exclusive exploitation rights in the absence of productive work. At the same time, those provisions often confer income tax advantages on the holder of a right. Petroleum legislation in particular appears to be highly developed in this respect.

Government development of mineral resources

Government exploitation, either directly through an organ or ministry of the government, or through a government corporation, or in collaboration with private enterprise, coexists with private development in many countries. Under such legislation, specified areas or particular minerals are reserved to such exploitation or may by decree be so reserved. Decrees reserving minerals or areas to the government under these laws do not affect existing or private rights.

Part I

**LEGISLATION IN THE REGION GOVERNING MINERAL
DEVELOPMENT**

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BURMA

Mining legislation in the Union of Burma is in the process of change. New mining and petroleum laws are under consideration. In the meantime, the existing legislation largely remains in the form promulgated under the British regime. These laws must be read in the light of the constitutional changes which have taken place since the relinquishment of United Kingdom control. The following provisions on mining in Burma were at the disposal of the secretariat:

Mineral Concessions Rules (amended to 16 February 1953),

Mineral Concessions Directions, 1947

The Burma Oilfields Manual, 1938 (corrected to 1 July 1946),

Metalliferous Mines Manual (corrected to 1 May 1941),

The Upper Burma Ruby Regulations Manual, 1928,

Mineral Resources Development Corporation Act 1952

Ownership of Mineral Deposits

As a result of the mandate given to the Burmese Government under chapter III of the Burmese Constitution, the State is the ultimate owner of all lands in the Union of Burma. As a corollary of this power, chapter XIII of the Constitution declares that all mineral lands, minerals, coals, petroleum, other mineral oils, all sources of potential energy and other natural resources are to be exploited and developed by the Government. This is subject to the exception that Parliament may grant the right of exploitation, development or utilization to citizens of the Union of Burma or to companies and associations in which at least 60 per cent of the capital is owned by citizens of the country. Such rights are subject to the condition that they may be amended, altered or repealed by Parliament when it considers that the public interest so requires. They are limited to a period of twenty-five years.

Recent Developments

The most recent development in Burmese mining law has been the promulgation of the Mineral Resources Development Corporation Act of 1952. In addition, a policy statement issued by the Government in 1955 lists mining industries the development of which in partnership with private enterprise or under contract with the Government is considered desirable (ECAFE/L 122, p 27).

The Mineral Resources Development Corporation Act of 1952 sets up a government corporation with power to operate throughout the Union of Burma. The Corporation's Board consists of eight appointees of the President. Three are Ministers of the Government, one is appointed as a Director-General and four other members are selected for their specialized experience in industrial, mineral, commercial or financial matters, applied science or the administration or organization of workers. A ninth member is a representative of the Board of Directors of the Union Bank of Burma. The term of office is four years but any directors may be removed by Presidential order.

The Corporation is charged with promoting the exploitation, development and utilization of mineral resources in the country. Without limiting the general scope of its powers, the Corporation is permitted to carry out these aims as it thinks fit by exploration, and by prospecting, processing, marketing and distributing minerals and their products. It is empowered to provide facilities for training, education and research and to prepare plans for mineral development which are not inconsistent with any general development plan approved by the President.

There is one important proviso to its activities. The Corporation must obtain the prior approval of the President before carrying on any of its activities in association with private enterprise.

General Legislation

The development of mineral resources in Burma is primarily governed by the Lower Burma Land and Revenue Act, the Lower Burma Towns and Village Act, the Upper Burma Land and Revenue Regulations and the Burma Forests Act (all of which were passed before the attainment of independence by Burma in 1948). These enactments vest in the Government of Burma the right to all mines and mineral products, except where such rights have been alienated by grant (such as grants under the Waste Land Grant Rules of 1865) or by leases made by or on behalf of the British Government. The Government has all the powers necessary for the proper enjoyment of its rights to all such mines and mineral products, and may also dispose of any such rights and powers to any persons in such manner as it may see fit. The Government has also the authority to make rules for the extraction of minerals.

Under these enactments, rules have been put into effect for the extraction of stone, steatite, gypsum, clay and other minor minerals. The extraction of petroleum and natural gas (but not oil shale) is to be governed by Petroleum Concessions Rules. Until the new rules are published, the rules in the Mineral Concessions Manual (1924 edition) apply. Concessions for precious and semi-precious stones, oil shale and all the more important oils are regulated under the Mineral Concession Rules, 1946. The extraction of amber and jade from the public forest land in Upper Burma is governed by chapter IX of the Burma Forest Act.

The Burma Mineral Concessions Directions, 1947, deal with Concessions under the Mineral Concession Rules, 1946, with regard to the grant of prospecting licences in all cases. The following major topics are dealt with in the rules and manuals: certificates of approval, prospecting licences, mining leases, special mining areas, safety regulations.

CERTIFICATES OF APPROVAL

An applicant for a prospecting licence or a mining lease must first obtain a certificate of approval from the Financial Commissioner. The certificate of approval is given for a period of approximately one year on payment of a fee. It is renewable on payment of a fee of a smaller amount. It can be granted only to a person who is a British subject or if the person be a company or firm, only if such company or firm is shown to the satisfaction of the Financial Commissioner to be controlled by British subjects¹. The names of persons to whom original certificates of approval are granted must be published in the "Burma Gazette". The main factors governing the granting of a certificate of approval are nationality, previous mining experience and financial liability. If, at any time, the Financial Commissioner considers that a certificate of approval has been obtained by improper means or that the holder is no longer qualified or is not a suitable person or has failed to observe the terms of any concession granted to him, the Commissioner is authorized to call upon the holder to show cause why his certificate of approval should not be cancelled. If the holder's reply is, in the Financial Commissioner's opinion, unsatisfactory, he may cancel the certificate.

PROSPECTING LICENCE

Nature of the prospecting licence

A prospecting licence confers on the licensee the sole right to bore, dig and search for all minerals or any specified minerals in the land specified in the licence and to carry away such minerals not exceeding the amounts prescribed in schedule B attached to the Mineral Concessions Rules, 1946. If the licence holder wishes to carry

away minerals beyond the amount allowed under the schedule, he must obtain the special permission of the Collector on the payment of royalty at rates specified in the Concessions Rules. Every prospecting licence is subject, among other conditions, to the following:

(i) The licence is granted for a maximum of one year. It may be renewed at the discretion of the Collector for a term not exceeding three years from date of the commencement of the original licence.

(ii) The licensee must pay a fee as laid down in the rules.

(iii) The licensee must pay royalties at rates laid down in the rules.

(iv) The licensee must pay reasonable compensation as may be assessed by courts of law for all damage, injury or disturbance which may be caused by him, whether on or outside the land over which the licence has been granted, and must indemnify the Government against all claims which may be made by third parties in respect of any such damage.

(v) The licensee is not allowed to cut or injure any tree on unoccupied or unreserved land without the written permission of the Collector. He is not allowed to enter certain areas enumerated in the rules.

(vi) The licensee is required to keep such records of his prospecting operations and of the minerals discovered as directed by the Financial Commissioner.

(vii) The licensee may, with the previous sanction of the Commissioner, assign his licence or transfer any right or interest under the licence to a person holding a valid certificate of approval and must register it in the office of the Collector after payment of a fee.

(viii) The licensee must plug any holes and fill up or fence excavations in that portion of the land for which a prospecting licence has not been granted.

(ix) The Government has at all times the right of pre-emption with regard to all minerals lying upon the land and the Government must pay a fair price for minerals so pre-empted.

(x) The Government's decision in any disputes which may arise regarding the licence is final, except in regard to the price paid for minerals taken in pre-emption by the Government. In the latter case, two arbitrators, one nominated by the Government and the other by the licensee, and a third arbitrator appointed by the two already chosen, render a decision which is final.

(xi) On or before the termination of the licence, the licensee has a right, firstly, in the case of minerals other than precious stones, to a mining lease in accordance with the terms contained in the Rules for Mining Leases, and, secondly, in the case of precious stones, to the first offer

¹ It may be noted that the Mineral Concession Rules 1946 under which the certificates of approval are granted were put into effect before the attainment of independence by Burma. Changes in this respect have probably intervened since the proclamation of independence.

of a mining lease by the Government. Such lease may comprise the whole or a part only of the area for which the prospecting licence was granted.

Acquisition of a prospecting licence

An application for a prospecting licence has to be accompanied by data regarding the status and identity of the applicant (nationality, whether a corporation and so on), by a description of the land and by a statement of the areas in Burma already held or desired for mining purposes by the applicant. On receipt of an application for a prospecting licence, the Government publishes a notice calling for objections to the granting of such a licence. The application may be rejected if the Government finds that the area is not properly demarcated. Generally, the total area which may be prospected by one person, whether it be under a licence or lease, may not exceed fifty square miles. Exceptions to the foregoing rule may be made by the Financial Commissioner or the Head of the Government, as the case may be.

Every applicant must deposit, as security in respect of a prospecting licence, a sum of Rs 500 per square mile. If a mining lease is eventually granted to the prospecting licence holder, the deposit is placed to the credit of the lessee as part of rental, royalties or deposit money which may become payable under the terms of the lease. In the meantime, the deposit serves as security for surface damage or for penalties in case of a violation of the Concession Rules.

An application for a licence within a stone-tract² as defined by the Upper Burma Ruby Regulations Manual, 1928, may be refused without giving any reasons. Under special circumstances a prospecting licence may be granted for a stone-tract, specifically excluding precious stones.

MINING LEASE

A mining lease may not be granted for an area exceeding fifteen square miles. The duration may not exceed twenty years, but the lease may contain a clause permitting successive renewals at the lessee's option for periods not exceeding twenty years each time.

Every mining lease contains such conditions and stipulations as the Government may in each case consider necessary, including the following:

(i) The lessee must pay a royalty at the rate specified in the lease.

(ii) The lessee must also pay for every year, except the first year of the original period of the lease, a fixed yearly dead rent as laid down in the schedule attached to

² A stone tract means a tract which the local government has by Official Gazette declared to be an area in which precious stones are found.

the rules. However, it may be noted that no lessee is liable to pay both royalty and dead rent in respect of the same lease but only the one of the two, whichever is larger.

(iii) The lessee must pay a surface rent at the rate specified in the rules.

(iv) At his own expense, the lessee must erect and keep in repair boundary marks and pillars according to the demarcation lines shown in the plan annexed to his lease.

(v) The lessee is under an obligation to pay such compensation as may be determined by local courts for all damage, injury, or disturbance, whether on or out of the land over which the lease has been granted. He must indemnify the Government against all claims which may be made by third parties in respect of any such damage, injury or disturbance.

(vi) The lessee must not cut or injure any tree reserved in the lease.

(vii) The lessee may, with the previous sanction of the Government, assign his lease or transfer any right in the lease, subject to the condition that every assignment of transfer is registered within three months in the office of the Collector on payment of a fee.

(viii) The lessee must commence operation within one year from the date of the execution of the lease unless good cause exists for exemption from this condition—a question on which the decision of the Government is final.

(ix) The lessee must, without delay, report to the Collector the discovery of any new mineral not included in the lease.

(x) If the lessee is in default for payment of royalties or rent for two months, the Government may enter and distrain any of the minerals or property and sell the property to satisfy the rent or royalty due. In case of any breach on the part of the lessee of any condition in the lease, the Government may terminate the lease and take possession of the premises, or alternatively, it may accept the payment of a penalty as laid down in the rules.

(xi) The Government has a right of pre-emption on the minerals lying upon the land, provided that a fair market price is paid for minerals so taken. In case of disputes regarding the lease, the decision of the Government is final, except that a dispute with regard to the price of minerals taken in pre-emption must be determined by two arbitrators, one to be nominated by the Government and the other by the lessee. In case of disagreement between the arbitrators, an umpire appointed by the arbitrators renders a final decision.

(xii) The lessee is also at liberty to terminate the lease at any time on giving notice twelve months before such termination. When the lessee exercises his option in this

manner, he may not subsequently be granted a new lease covering only a portion of the land covered by the original lease

(xiii) Every application for a mining lease must contain particulars of

The name, residence and profession of the applicant if he is an individual or, if the applicant is a company, its name, nature and place of business and, if the place of business is outside of Burma, the name and residence of a member or duly authorized agent resident in Burma,

Specification of the mineral,

Description of the mining area illustrated by a map,

A certificate that the applicant has demarcated the boundaries,

A statement showing all areas in Burma already held by the applicant, and

The period for which the lease is required

With the application for a mining lease, the applicant must deposit as security in respect of preliminary expenses, a sum not exceeding Rs 500. If the lease is granted, the deposit is carried to the lessee's credit as part of the rent or royalty which may become payable under the lease. If the applicant fails to obtain the lease, the deposit is returned to him

The lease is granted at the discretion of the Government in all cases unless the applicant is a holder of a prospecting licence for all minerals other than precious stones, in which event he is entitled as of right to a lease from the Government. In cases of precious stones, the first offer of a mining lease by the Government must be made to the holder of a prospecting licence for all minerals other than precious stones

SPECIAL MINING AREAS

The concessions, rules and directions contain special provisions in regard to special mining areas which are those tin and wolfram bearing areas suitable for surface

mining 'without risk of injuring the mineral development of the country'. Persons wishing to exploit these special mining areas must apply for a special licence called disk licence. No prospecting licence or mining lease may be granted in a special mining area. Any number of disk licences may be granted to one person

The application for a disk licence is refused if the applicant is under eighteen years of age, is unable to read, is, in the opinion of the Collector, incapable of understanding the rules, is the holder of a current mining lease, or has been convicted of any offences punishable with imprisonment for a period exceeding six months. The applicant must make a deposit of Rs 25 for each disk licence, which is valid for one claim at a time in the district in which it is issued. In certain circumstances enumerated in the rules, the Government may cancel the disk licence

Any person holding a valid disk licence is entitled to peg a claim within a special mining area. When the registration of a claim is cancelled, the disk licence, if still valid, may be used as authority for pegging another claim. After marking the boundaries clearly, the licensee must apply for the registration of the claim within fifteen days. After the usual period allowed for objection has passed, the claim is registered

The holder of the claim has the sole right to prospect or mine to a depth of not more than fifty feet below the surface by opencast methods for tin and wolfram ores only and to remove all the minerals so required. He is not, however, authorized to carry out underground mining operations. If, in the course of mining operations, he causes any damage, injury or interference to any public road, public work, inhabited site or any sacred place, he is liable to pay a reasonable compensation to be assessed, in case of dispute, by the Collector. He must pay royalties, according to the schedule attached to the rules, on any tin or wolfram which is carried away. The claim may be transferred to another person only with the approval of the Government and such transfer must be registered

CEYLON

The disposal of the mining rights on Crown lands is dealt with in the Land Commissioner's Circular No. A5095 of 12 December 1940

Classification of land

Crown lands are classified under the following categories for the purpose of these instructions

Unencumbered Crown lands,

Lands leased by the Crown,

Lands alienated under the Land Development Ordinance,

Lands alienated by outright grant

The surface rights only, on lands referred to in the last three categories are alienated. The mining rights on these lands may be alienated only to the lessee or owner of the land

Unencumbered Crown lands may be considered under the following heads: lands known to contain mineral deposits worth exploiting, lands, the mineral deposits in which are of uncertain value.

Land known to contain mineral deposits worth exploiting

If the land is known to contain mineral deposits worth exploiting, the lease of the right to mine for a period of

years is put up for sale by tender or auction at an upset price fixed by the Government. The successful tenderer is granted a mining lease for a period of years on a royalty or a minimum rent fixed by the Government

Lands where the mineral deposits are of uncertain value

Prospecting licence A prospecting licence may be granted for lands in this category. A prospecting licence is valid for one year but may be extended for a further period of one year

A prospecting licence does not entitle the holder of the licence to work any mineral deposits that may be discovered, or to remove any of the minerals won in the course of prospecting. All minerals won during prospecting remain the property of the Crown. The holder of a prospecting licence is entitled to a preferential lease of a portion, not exceeding ten acres in extent, of the land described in the licence. No claim to a mining lease under this rule is entertained unless it is made before the prospecting licence expires

Mining lease A mining lease may be granted to the holder of a prospecting licence, or to the successful tenderer for lands the mineral deposits in which are of uncertain value. A royalty on minerals won or a minimum rent, whichever is greater, is levied on all mining leases. The term of a mining lease does not exceed fifteen years, subject to the lessee's option of the renewal for a further term of the same length. A security deposit is payable on all mining leases

Rights of owners or lessees of surface land

Mining rights on lands which have been leased or alienated by the Crown may be granted only to the lessee or owner of the surface land

Supervision of mining operations by government

The Mines and Machinery Ordinance and the rules framed thereunder empower the Inspector of Mines on behalf of the Government to inspect all mines and working places. Provision exists for the prohibition of work in any mine or working place considered unsafe for workmen

CHINA¹

The Mining Law of the Republic of China was first put into operation on 26 May 1950 and was later revised on 15 June 1950. The Law deals with the following major topics: ownership of minerals, mining rights, state-operated mines, the use and expropriation of other persons' land for mining operation, mining taxes, supervision of mining industry by the Government and foreign investments for mining. The prospecting and operating of mineral deposits and subsidiary enterprises thereof are designated as "mining industry". The right of prospecting or operating mineral deposits is a "mining right". A "mining area" is that piece of territory, "which has been entered in the registration for a mining right in accordance with the provisions of the mining law

Proprietary Rights to Mineral Deposits

All the mineral deposits are, under the provisions of the Mining Law, owned by the State. A person may prospect and operate a mine by the acquisition of a mining right from the Government in regard to those minerals which are not specifically reserved for prospecting and operating by the Government under the Mining Law. The Government may also specify regions which are not to be prospected or operated by private citizens

Mining Rights

NATURE OF MINING RIGHTS

There are two kinds of mining rights: the right to prospect and the right to operate. The right to prospect a mine is limited to a period of two years, while the right to operate a mine is for a period not exceeding twenty

years. The Ministry of Economic Affairs has discretion to grant an extension of the right to operate for a period not exceeding twenty years

Mining right is considered a "real right", to which, unless otherwise specified in the Mining Law, provisions of real estate laws are applicable. A mining right cannot be divided by its owner. A mining right for operating a mine can be mortgaged, whereas a mining right for prospecting cannot be mortgaged. Approval of the Ministry of Economic Affairs and thereafter registration of such approval by the provincial authorities are required for the grant, alteration and transfer first of a mining right, and second of the mortgaged right when a mining right is under a mortgage. The termination or cancellation of a mining right and the limitation which may be imposed upon the disposal of such right and the cancellation of mortgage right and limitations imposed upon its disposal are required to be registered with the provincial authorities concerned

ACQUISITION OF MINING RIGHTS

The applicant for a mining right must present an application with maps of the mining area and submit it through the provincial authorities concerned to the Ministry of Economic Affairs for approval. If the application is for permission to operate the mine, a description of the mineral deposits must be attached. The provincial authorities concerned or the Ministry of Economic Affairs in their discretion may send technicians or ask the local

¹This report relates to mining laws and regulations of the Government of the Republic of China applicable to Taiwan

authorities concerned to conduct investigations on matters mentioned in the application. During the consideration by the Ministry of Economic Affairs of the matter, the applicant is free to request the Ministry for an extension or restriction of the mining area mentioned in the original application. When the mining area under application for a prospecting right is deemed suitable for operating, the Ministry of Economic Affairs or the provincial authorities concerned may order the applicant to submit within a specified period an application for operating that area. If such an application is not made within the time specified, the original application may be cancelled, and the application made by another person for operating the same area may be approved. Detailed rules are framed in regard to the question of priority where more than one person applies for the same mining right or when two applications for mining rights appear to be overlapping. The Ministry of Economic Affairs or the provincial authorities concerned, as the case may be, are authorized under the mining laws to grant mining rights. However, the Ministry or the provincial authorities may disapprove the applications for a mining right if its operation is deemed to be detrimental to the public welfare or unlikely to be successful.

ALTERATION AND TRANSFER OF MINING RIGHTS

The holder of a mining right may submit a fresh application for governmental approval should he wish to restrict, expand, amend, amalgamate or divide a mining area already granted to him. When the holder of a mining right finds it necessary, because of the position and shape of the mineral deposits, to dig into the neighbouring area, he must obtain the written permission of the owner of that area or the holder of a mining right, as the case may be, and submit it to the Ministry of Economic Affairs. The owner or the holder of the mining right, as the case may be in the neighbouring area, cannot refuse such a permission without giving proper reasons for his refusal.

If a mining right is transferred, the privileges and obligations attached to that right are also transferred.

CANCELLATION OF A MINING RIGHT

The Ministry of Economic Affairs may cancel a mining right in the following circumstances:

(i) If regular work has not been started for two years or has been held up for more than one year after the commencement of work without sufficient reason,

(ii) If the mining right has been transferred or mortgaged to an alien,

(iii) If the execution of the mining right may be detrimental to public welfare without providing corresponding benefits,

(iv) If the payment of the mining area taxes has been in arrears for one year or more,

(v) If the mining area has been altered without proper reasons and without the approval of the Ministry,

(vi) If the mining right is obtained through fraud as a consequence of which the court has imposed a penalty.

When the mining right is cancelled or given up, the holder may dispose of his mining property within a year. But, in special circumstances, applications may be made to the Ministry for an extension of one year in order to dispose of the property.

MORTGAGE OF A MINING RIGHT

If the holder of the operating right of a mine wants to mortgage his right, he must prepare an application together with the proposed contract of mortgage between him and the mortgagee for the approval of the Ministry of Economic Affairs. After the mining right has been mortgaged, the consent of the mortgagee is necessary if the holder of the operating right intends to amalgamate or enlarge his mining area. The fact that a mining right has been mortgaged does not affect the right of the Government to terminate the right of operating.

State-operated Mines

As has been pointed out, certain minerals are reserved under mining law for state-prospecting and operating. These state-operated mines are administered by the Ministry of Economic Affairs or, with the approval of the Executive Yuan, by other governmental institutions. Private citizens and, in special cases, even foreign nationals may contribute to the investments necessary for the operation of a mine by the State.

A state-operated mining right may be leased to private persons in the form of a contract between the Minister of Economic Affairs and the lessee. The contract must include the period of the lease, the annual rental and on the basis of the actual condition of the mine, the minimum quantity of annual production and the minimum amount of annual investment of capital. Where a state-operated mine has not been leased to a private party by the Ministry, the local government has the priority to lease the mine on the condition already specified. If the applicants are both private citizens, priority will be given to the one who first submitted the application to the Ministry of Economy Affairs. The lessee of a state-operated mine has no right to re-lease, mortgage, pawn or transfer the state-operated mining right. In such cases, the period of the lease is limited to twenty years, at the termination of which the lessee has first option to renew the lease, unless the State itself wishes to operate the mine. The annual rental payable to the Government is laid down in the Mining Law and is based on the total capital to be invested and the net profit which may be obtained. If the State decides to take over the mine upon

the expiration of the lease, it must purchase at a fair price the mining properties and the equipment belonging to the lessee

The lease may be cancelled by the Government if

(i) The lessee re-leases, mortgages, pawns or transfers the state-operated mining right,

(ii) The rental payable to the Government is in arrears,

(iii) Without proper reasons, he fails to set up mining equipment to operate the mine during a period of three years after the grant of the lease,

(iv) Without proper reasons, he fails to start operations for two years after the grant of the lease, or suspends work for more than one year

The provisions of the Mining Law in regard to the nature of the right, or the duration of the right, and the cancellation of mining rights are not applicable to state-operated mines.

Use and Expropriation of other persons' Land for Mining Operations

SURVEYS AND INVESTIGATIONS

Actual or intending applicants for mining rights, as well as holders of such rights, may obtain the permission of the local authorities to conduct surveys and investigations on other persons' land when necessary. Before the owner of the mining right starts conducting surveys and investigations, the owner of the property must be notified. If there are any "obstacles" to conducting surveys and investigations, the mining right holder must try to secure from the owner or occupant of the land permission to remove these obstacles. If the owner refuses to give such permission, the local authorities, after notifying the owner of the land, may grant such permission.

The holder of a mining right is entitled to enter into and make use of the land of another person in case of imminent danger to his mining operations, but prompt notification must be given the local authorities and the owner or occupant of the land, as the case may be. The mining right holder is under a legal obligation to pay fair compensation for any damage caused to the other person's land as a result of his entry. If, because of an emergency, the holder of a mining right has to make use of another person's land for not more than twenty-four hours and does not thereby cause any damage, he must notify the owner or occupant of the land of his purpose one day in advance.

USE OF OTHER PERSONS' LAND

The mining law enumerates specific cases when the holder of a mining right may make use of other persons' land. However, he cannot do so unless he obtains a

permit from the provincial authorities concerned. After granting such a permission, these authorities must issue a public notice and at the same time notify the owner of the land. After being so notified, the mining right holder must start negotiations with the owner of the land and with other people who may have an interest in the land in this connexion. Fair compensation has to be paid by the holder of a mining right to the owner of the land for using the latter's land. If the land of another person is to be used for a period of more than three years or when the quality of the land may change after such use, the owner of the land may ask for the payment of a lump sum of money as compensation. However, if the mining right expires, or if the land in question can no longer be used for mining operations, it will be handed back to the owner. Detailed rules are laid down in the mining law which govern payment of compensation in case of damage to the surface of the land as a result of the construction or repair of routes, gutters, walls, fences and so on.

Mining Taxes

The holder of a mining right has to pay two types of mining taxes: mining area tax and mining production tax. (The lessee of state-operated mining right also has to pay these two types of taxes.) Mining area tax is imposed in addition to land taxes annually at a fixed rate both on mine prospecting areas and mine operating areas. If work is suspended for more than two months because of strikes or for other reasons beyond the control of the mining right holder, the holder may ask for exemption from the tax during that period.

Mining production tax is imposed at a percentage rate on the total price of mining production, which in turn is based on the average market price in the neighbourhood of the production area, to be determined by the Ministry of Economic Affairs and the Ministry of Finance upon the report of the provincial authorities concerned.

Supervision of the Mining Industry by the Government

The Ministry of Economic Affairs or the provincial authorities concerned may, in their discretion at any time request the holder of a mining right to submit for examination his work projects and a report on his mining operations. They may also ask the holder, after such an examination of the projects or reports, to make such alterations as may be necessary.

The holder of the mining right is required to prepare in January of each year a detailed report concerning his mining operations for the past year and to submit it to the Ministry of Economic Affairs and to the provincial authorities concerned. The holder of a mining right is also obliged to employ those technicians who are qualified in accordance with the Technicians Registration Law.

The Ministry of Economic Affairs is authorized to place supervisors in certain mining regions in order to keep mining operations in those regions under observation. The provincial authorities concerned are required to compile annually detailed statistics of the coverage of the mining area, the quantity of production and the amount of mining tax received within their administrative areas, and to submit it to the Ministry of Economic Affairs before April of each year.

When the operation of a particular mining right is considered detrimental to public welfare or unsafe by the Ministry of Economic Affairs or the provincial authorities, the mining right holder may be asked to take preventive measures or to suspend work.

HONG KONG

Mining in Hong Kong is governed by, among others, the following enactments:

- (i) Mining Ordinance, 1954 (as amended),
- (ii) Mining (General) Regulation, 1954 (as amended, 1955),
- (iii) Mining (Safety) Regulations, 1954,
- (iv) Radio-Active Mineral Ordinance, 1948 (as amended, 1954)

The Mining Ordinance, 1954 (as amended) lays down the general rules applicable to prospecting and mining in Hong Kong, and no person may prospect or mine in, under or upon any lands or under any waters within the colony save as provided in the ordinance. Part I of the ordinance defines the minerals to which it applies. The list includes metalliferous minerals, combustible carbonaceous minerals, non-metallic minerals, precious minerals (both precious stones and precious metals) and radio-active minerals. The last mentioned are also subject to special rules contained in the Radio-Active Minerals Ordinance. The Mining Ordinance expressly excludes mineral oils from its scope. Part II of this ordinance contains a provision to the effect that nothing in its wording shall be so construed as to confer any right to prospect for, or to win, any mineral oil. Furthermore, the ordinance confers on the Governor, by notice in the *Gazette*, the power to prohibit all prospecting or mining for any specified mineral. This prohibition applies even to prospecting licences, or mining licences, or leases granted in respect of that mineral prior to the publication of the prohibition, the holder or lessee being entitled, however, to compensation as provided in the ordinance.

The Mining (General) Regulation, 1954 (as amended) and the Mining (Safety) Regulations, 1954, contain detailed provisions made under the authority of the Mining Ordinance, and relating to the topics covered in the ordinance.

The mining law provides for the imposition of penalties on persons who procure mining right through fraud or who transfer mining rights to aliens.

Foreign Investment

After the establishment of a mining right by a national of the Republic of China, aliens may be allowed to become shareholders of a limited company formed for the development of such mining industry, provided that prior approval of the Executive Yuan is obtained through the Ministry of Economic Affairs. It is further provided that, in cases of foreign investment, the holders of more than one-half of the total shares of the company, over one-half of the directors, the chairman of the board of directors, and the general managers of the company must be nationals of the Republic of China.

Proprietary Rights in Mineral Areas

Part II of the Mining Ordinance provides that the entire property in, and control of, all minerals and mineral oils in, under or upon any lands or under any waters within the Colony of Hong Kong is vested in the Crown, save in so far as such property and control may be limited by any express grant by the Crown.

Prohibited Areas and Areas Subject to Special Conditions

Provisions are contained in part II of the Mining Ordinance restricting the areas in which prospecting or mining may take place. The Governor of Hong Kong may, by notice in the *Gazette*, declare any area to be closed to prospecting or mining, either generally or for any specified mineral and for such period as may be specified in the notice or without period assigned. Special permission from the Governor is required before any person may prospect or mine in the closed area or for the prohibited mineral, even if that person is the holder of a prior prospecting licence or mining licence or lease in respect of that area or that mineral. Any person adversely affected by such closure or prohibition is entitled to compensation as provided in the ordinance.

The Mining Ordinance forbids prospecting or mining in areas held to be sacred and nothing in the ordinance is to be construed as sanctioning the injury or destruction of any tree or other thing which is the object of veneration.

Prior consent in writing from the appropriate authorities is required to prospect or mine any land set apart for or used for a public purpose, or land appropriated for, or within one hundred yards of, a railway, or land which is the site of, or within one hundred yards of, any government or public building, any reservoir or catchment area, or any road or thoroughfare. Prospecting or mining may only take place on land under cultivation with the prior written

consent of the owner or lawful occupier, or land which is the site of, or within one hundred yards of, any building, with the prior written consent of all persons having any estate or interest in such land or building

Prospecting

Part III of the Mining Ordinance contains the general rules applicable to prospecting. Further provisions are set out in parts II and III of the (General) Regulations

APPLICATION FOR AND ISSUE OF A PROSPECTING LICENCE

Applications for prospecting licences are made in writing to the Superintendent of Mines in a form prescribed in the (General) Regulations. Any person may apply for a licence, but if a licence is granted to a person not resident in Hong Kong, that person must at all times have a duly authorized attorney, resident in the Colony and approved by the Land Officer, with full power to represent that person in all matters pertaining to his licence

An applicant for a licence must submit, together with other relevant information, a plan of the area he intends to prospect. This plan must meet certain requirements contained in part II of the (General) Regulations. It must, for example, show the position of temporary markers that the applicant is obliged to erect and all important local landmarks and streams. The applicant must also submit a list of the minerals for which he intends to prospect. Prior to making an application, the applicant must give written notice to the owner or occupier of any private land within the area for which he has applied. Applications are accepted only after the appropriate prescribed fee has been paid to the Treasury, and they may be refused if the applicant fails to furnish such other financial security as may be required of him under the Mining Ordinance or the Regulations

A prospecting licence may be granted by the Commissioner of Mines after the applicant has complied with the foregoing procedures. The licence is in a prescribed form, and may be subject to such terms and conditions as the Commissioner of Mines determines

NATURE AND SCOPE OF A PROSPECTING LICENCE

A prospecting licence is not transferable, and any right or interest conferred thereby is not assignable except with the prior consent in writing of the Commissioner. No one person may hold more than one prospecting licence. A licence remains in force for six months, unless previously cancelled under the provisions of the ordinance. If the licence is not cancelled, it may be renewed by the Commissioner for further terms of six months each, on application through the Superintendent of Mines, provided the total period of the original licence together with all renewals thereof does not exceed two years

The holder of a prospecting licence has the right to enter upon and prospect on any Crown land within the area covered by the licence, and also on any private land within the said area, provided the prior consent in writing of the owner or lawful occupier thereof has been obtained. While engaged in bona fide prospecting, the holder may drill dig trenches, sink shafts and generally make the necessary excavations. He is obliged to fill in or otherwise render secure all unproductive shafts and so on. A further prospecting licence to another person in respect of the same area for a different mineral may only be granted by the Governor in Council if he is satisfied that the rights or interests of the holder of any existing licence will not thereby be prejudicially affected

The duties imposed upon the holder of a prospecting licence include the carrying on of all prospecting in a safe and workmanlike manner, the keeping of prescribed books and registers, and the expenditure of certain prescribed sums on prospecting operations. This latter obligation may be suspended by the Superintendent if good cause is shown. If the holder of the licence is not in a position to give continuous supervision to the prospecting of the land within the area of his licence, he must have a responsible agent supervising the operations

Minerals obtained in the course of prospecting are the property of the Crown and may not be removed from the land or disposed of save with the prior consent in writing of the Superintendent of Mines, and subject to such terms and conditions as the Superintendent may impose. However, the holder of the licence may from time to time remove from the land samples of minerals in quantity sufficient for them to be tested or analysed in order to determine the content and commercial value thereof. If the holder of a prospecting licence wishes to retain or dispose of any minerals obtained in the course of prospecting, he must submit an application in prescribed form to the Superintendent, who may authorize him to retain and dispose of the minerals on payment of a prescribed royalty, provided the Superintendent is satisfied that the holder has been conducting only such operations as are reasonably necessary to enable him to test the mining potentialities of the land

CANCELLATION OF A PROSPECTING LICENCE

The Commissioner may, by notice in writing, cancel a prospecting licence if the holder thereof or any attorney, partner, agent, or servant of the holder is convicted of an offence against the ordinance or the regulations, or fails to comply with the same. A licence may also be cancelled if the holder fails to comply with the terms and conditions of his licence, or if he becomes bankrupt, or, without the prior consent in writing of the Commissioner wholly or substantially discontinues prospecting

Mining

The Mining Ordinance provides, in part IV, for the issue of both mining licences and mining leases. Part IV of the (General) Regulations contains further provisions on these licences and leases. It would appear that mining licences are issued in cases where the mineral deposits concerned are not in sufficient quantity to justify the issue of a mining lease.

Mining Licence

Applications for mining licences are governed by the same regulations as applications for prospecting licences. It follows that the requirements set out in the previous section apply, save for the modifications set out below. An applicant for a mining licence must submit an additional plan showing all prospecting done in the area covered by his application, together with a list of the minerals found, and a calculation of the ore reserves.

A mining licence may be granted by the Commissioner to a person applying in the prescribed manner and on payment of the prescribed fee. It is subject to such rentals, fees, royalties, premiums and other payments as may be prescribed and to such terms and conditions as the Commissioner may determine. Like a prospecting licence, it is not transferable, and it is valid for an initial period of six months. The rules regarding renewal are the same as in the case of a prospecting licence, save that, where the holder has previously held a prospecting licence for the same or substantially the same area, the total period of prospecting and mining under the licence shall not extend beyond a period of two years. A mining licence may be cancelled for the same reasons as a prospecting licence.

Finally, the holder of a mining licence must keep five persons, or the equivalent in labour-saving apparatus, continuously employed in mining operations for every ten acres, or part thereof, of the area to which the licence relates. These latter rules may be suspended by the Superintendent of Mines if good cause is shown.

Application for and Issue of a Mining Lease

Applications for mining leases are governed by the same rules and regulations as applications for mining licences.

A mining lease may be granted by the Land Officer to any person applying therefor in the prescribed manner, if the Land Officer is satisfied that the mineral-bearing qualities and quantities of the land in the area applied for are such as to justify the grant of a mining lease. The Mining Ordinance provides that preference should be accorded by the Land Officer, in granting mining leases, to any person who is or has carried out adequate prospecting or mining operations under licence in the area to which the application relates. However, if a person having a

prior claim on the above basis is unable to command sufficient working capital to ensure the proper development of the area applied for, the lease may be granted to another person on payment of compensation, in an amount determined by the Land Officer, to the person having the prior claim. Any applicant must satisfy the Land Officer, it necessary by way of a guarantee, that he has sufficient working capital to ensure the proper development of the area applied for.

The Mining Ordinance provides that a mining lease must specify the area and the minerals in respect of which it is granted, and shall be subject to such rentals, fees, royalties, premiums and other payments as may be prescribed, and shall contain such covenants and conditions as the Land Officer may determine. The Land Officer may grant a mining lease for any period up to twenty-one years, if a longer term is applied for, the consent of the Governor in Council is required. Leases may be renewed, if six months notice is given and if the lessee has observed all the terms of his lease and carried on work in a business-like manner.

Nature and Scope of a Mining Lease

A mining lease (or a licence) confers on the holder thereof the right to carry out mining operations below the surface of the area in respect of which the lease (or licence) is granted, to enter upon, use and carry out mining operations on the surface of any Crown land within the said area, and, with the prior consent in writing of the owner and any lawful occupier thereof, to enter upon, use and carry out mining operations on the surface of any private land within the said area.

The lessee of a mining lease may not assign, mortgage, charge, underlet or otherwise alienate or dispose of any of his rights under the lease, or enter into any agreement so to do without the prior consent in writing of the Land Officer.

Revocation of a Mining Lease

A mining lease may be revoked by the Land Officer for the same reasons as a prospecting or mining licence. However, it may also be revoked if it has been granted in error, whether such error relates to the area or to the boundaries or to any other matter whatsoever. The notice of intention to revoke a lease, with appropriate reasons, must be given in advance by the Land Officer to the lessee, and the lessee may appeal by way of petition to the Governor in Council against the proposed revocation. The decision of the Governor in Council is final.

Supervision of Mining Operations by the Government

Government supervision of prospecting and mining operations is exercised through the various officers whom

the Governor may appoint under the provisions of part VII of the Mining Ordinance. These include a Commissioner of Mines, a Deputy Commissioner of Mines, a Superintendent of Mines, Mines Engineers and Mines Inspectors.

Some of the functions of these officers, who are described in the ordinance by the general term "mines officers", have been set out in the previous paragraphs. General supervision over all mining and prospecting operations is exercised by the Superintendent of Mines, subject to the control of the Commissioner.

The Mining Ordinance empowers any mines officer to require, by notice in writing, that the holder of a prospecting or mining licence, or the lessee of a mining base of any of their employees, appear before the mines officer so requiring at any reasonable time and place to give information in their possession regarding their prospecting or mining operations. A mines officer may also order the suspension of work in any licensed mining or prospecting area until arrangements have been made which, in his opinion, are necessary to prevent danger to life and property. He may exercise all the powers conferred upon inspectors of labour, factories and workshops by the Factories and Workshop Ordinance in so far as they are applicable to prospecting or mining operations. A mines officer is further empowered to enter upon any land on which prospecting or mining is being carried out, or in respect of which a licence or lease has been issued, and inspect the land and any works thereon. He may inspect and take copies of any registers, books, documents and plans connected with such prospecting and mining, and may take samples, make surveys and do any other act or thing necessary for the purpose of discharging his functions under the Mining Ordinance or the Regulations. Detailed provisions regarding the information to be kept by holders of licences and leases in accounts, plans and returns open for government inspection are contained in part IX of the (General) Regulations.

The Mining Ordinance requires, in part VIII, that, if any accident or dangerous occurrence takes place in connexion with prospecting or mining operations, it must be reported to the Commissioner of Mines and to the police. The Commissioner may instruct the Superintendent of Mines to hold an enquiry. Failure to provide evidence, or to answer questions in the course of such an enquiry constitutes an offence.

Further government control of prospecting and mining operations is exercised through the powers of the Governor in Council to make regulations under the Mining Ordinance. Part X of the ordinance enumerates the various matters to which these regulations may apply. They include, apart from topics mentioned in earlier paragraphs,

safety, welfare, health and housing conditions of persons employed in prospecting or mining operations.

Compensation to Surface Owners for Injury or Damage

It is provided in part V of the Mining Ordinance that reasonable compensation for use of the surface of any private land or for any disturbance of the surface rights or for any damage to such land or for anything built, planted, grown or standing thereon caused by prospecting or mining, shall be paid by the person prospecting or mining to the owner of such land and to any lawful occupier thereof. In the event of disagreement on the amount of compensation, the question may be referred to the Commissioner of Mines for determination. If either party is dissatisfied by the Commissioner's decision, he may appeal, within fifteen days of notification of the decision, to the Mining Compensation Board. The Board consists of a Chairman and two other members, appointed by the Governor. The decision of the Board, on appeal, is final. The amount awarded by it must be paid to the Treasury for the account of the person entitled thereto within fifteen days of notification of the decision. If this is not done, the money may be recovered by civil action by the person entitled thereto, a certificate from the Commissioner of Mines or the Secretary of the Compensation Board as to the amount due being conclusive evidence of the amount of compensation payable.

Radio-active Minerals

As mentioned in the beginning of this section, prospecting for, and mining of, radio-active minerals are subject to special rules contained in the Radio-Active Minerals Ordinance.

This ordinance provides that no person shall prospect for or mine, or attempt to prospect for or mine, any radio-active mineral except under and in accordance with a special licence granted by the Governor at his absolute discretion. He need give no reasons for refusing a licence. If such mineral is found while prospecting under an ordinary licence granted pursuant to the Mining Ordinance, the discovery must be notified immediately to the Colonial Secretary, and if any such mineral is discovered in the course of mining operations under an ordinary mining licence or lease, it may not be removed without the consent of the Governor.

Every holder of a special licence must furnish the Colonial Secretary, within the first week of every month, with a true report in writing of the prospecting and mining operations conducted by him in the immediately preceding month with respect to radio-active minerals.

A special licence is subject to such fee and such terms and conditions as the Governor or issuing authority may think fit.

INDIA

Proprietary rights in minerals are governed by provisions in the Constitution of India and by legislation in the states constituting the Union¹ Under the Mines and Mineral (Regulation and Development) Act No. LIII of 1948, the central Government was empowered to frame rules for regulating the terms and conditions for (a) the grant of prospecting licences and mining leases, (b) the conservation and development of minerals (including petroleum and natural gas) and (c) the modification of existing leases and licences.

Pursuant to this act, the Mineral Concessions Rules, 1949, were promulgated to regulate the grant of prospecting licences and mining leases for minerals other than petroleum and natural gas and other than "minor minerals".

The Petroleum Concession Rules are dealt with in part II of this survey

In addition to the above, the Mineral Conservation and Development Rules were promulgated in 1955.

The provisions of the Industries (Development and Regulation) Act No LXV of 1951 relate, among other things, to manufacture and production in the coal and oil industries Atomic energy, and the mineral resources necessary for its development, are dealt with separately in the Atomic Energy Act No XXIX of 1948

The following analysis of Indian mining law is based on the above legislation

Ownership of Minerals

Generally, ownership of minerals is vested either in the central or the provincial governments in accordance with the provisions of the Constitution and various legislative enactments. Certain of these enactments relate to rights² existing at the time when India gained its independence, before which time the rights of ownership in minerals were different in the princely states, the permanently settled *zamindari* areas and the rest of British India

Prior to Indian independence, mineral rights in nearly all the princely states of India were vested in the rulers thereof These rights are now vested either in the governments of the reorganized states into which the former princely states have been incorporated or in the central Government This is clear from articles 295, clause 2, of the Constitution of India, by which property and assets, rights and liabilities, whether arising out of any contract or otherwise, of the former princely states before the commencement of the Constitution, are vested either in

¹ The legislation referred to is comprised of the *zamindari* abolition acts passed by the various states after 1948, and held *intra vires* of the Constitution These acts transferred to the states of the Union concerned the surface and mineral rights vested in the *zamindars*, who held land according to a particular tenure in Hindu law

² These rights are only those existing in "permanently settled areas", and vested in the *zamindars*

the states of which they now form a part, or, if on the Union list, in the Government of India, unless any agreement to the contrary has been entered into by the central Government and the state government concerned

Different rules formerly applied in the permanently settled *zamindari* areas where all mineral rights were confined to the *zamindars* This was of importance because Bihar, which, until 1950, was a *zamindari* area, possesses a large proportion of India's known mineral resources Ownership in minerals was vested in the *zamindars* not only in Bihar, but also in Orissa, Bengal and Madras After 1948, the state government proceeded to abolish the *zamindari* and other similar feudal survivals Under such acts as the Madras Estate Abolition and Conversion into Ryotwari Act, 1948, the Bihar Land Reform Act, 1950, the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, the *Zamindari* Abolition Act, 1950, all estates—including all mines and minerals, together with surface rights—which were vested fully in the *zamindars* were transferred to the state governments concerned from the date of commencement of these acts The constitutional validity of such acts was tested in the various High Courts and in the Supreme Court of India, which declared all the above acts to be *intra vires* of the Constitution The transfer of rights to the states of the Union was facilitated by an amendment to article 31 of the Constitution, to the effect that no acquisition of "property", that has been made under law and compensated for shall be subject to judicial review

In the rest of British India, where no *zamindari* settlements had been made, or land not alienated to persons together with mineral rights, the state had a right to the ownership of minerals But fee simple grants in certain provinces, which were made in the nature of out right sales, divested the state of all rights to minerals in the land granted. At present, under Article 294 of the Constitution, all properties and assets vested in, and all rights, liabilities and obligations arising out of, any contract or otherwise, of Her Majesty for the purposes of the Government of the Dominion of India and also for the purposes of the government of each of the Governor's provinces, are vested respectively in the Union and each corresponding state However, as of 1949 at least, some private ownership of mineral deposits appears to have persisted, since the 1949 Mining Concession Rules contain a chapter entitled "Grant of Mineral Concessions by private persons"

All lands, minerals, and other things of value underlying the ocean within the territorial waters of India are vested, under article 297 of the Constitution, in the Union, and are to be held for the purposes of the Union India's territorial sea, under the Presidential Proclamation issued in 1956, extends for twelve miles from her coast

Rights to Prospect and Mine

CERTIFICATE OF APPROVAL

Before a prospecting licence or a mining lease can be granted for minerals, a certificate of approval must be granted by the provincial government concerned

This may be issued to any "person", who, in the opinion of the provincial government, is in a position to employ an efficient prospecting agency or who possesses special knowledge of geology or mining. If such a "person" is a company or a firm, it must be registered or incorporated in India. The certificate is usually valid for all minerals but it may be restricted to a specified mineral. It is granted only on payment of a fee of Rs 100, and may be renewed on payment of an annual fee of Rs 50.

PROSPECTING LICENCE

Application

Under the Mineral Concession Rules, 1949, the provincial government can grant prospecting licences, upon application, to a holder of a certificate of approval. If the applicant is an individual other than an Indian citizen, approval of the central Government must be obtained. The application for a prospecting licence must contain, among other things, a description showing as accurately as possible the situation, boundary and area of the land in respect of which the licence is required, the period for which the licence is required, and the minerals to be prospected. The application is to be accompanied by a fee of Rs 50 for the first square mile and Rs 10 for each additional square mile or part thereof. No prospecting licence is to be granted for coal, gypsum, vanadium ores, beryl, ilmenite and other titanium ores, monazite and thorium minerals, pitchblende and other uranium ores, columbite, samarskite and other minerals of the "ore-earths" group and zircon, except with the approval of the central Government. Further, no such licence can be granted in respect of any mineral or class of minerals which the central Government, by order, may communicate to the provincial government concerned.

Duration

The duration of a prospecting licence is not to exceed two years, except in the case of mica, for which the period is not to exceed one year. However, the licence for minerals other than mica may be renewed for one or further periods not exceeding one year each and in any case not more than four years from the date of the commencement of the licence. The licence for mica may be renewed for a period not exceeding one year.

Rights conferred

A prospecting licence confers the right to search for any mineral specified therein by quarrying, digging or otherwise by conducting prospecting operations. It does

not confer on the licensee a right to carry away minerals for commercial purposes, except for gold, silver, precious stone or mica, which a licensee may carry away in any quantity during the course of prospecting, on the payment of royalty, which is fixed at 5 per cent of the value in case of gold and silver, 20 per cent of the value in that of precious stones and which vary from annas 2 (125 naye paise) to Rs 218 (Rs 250 in the new currency) per maund for mica, depending on its quality. In regard to other minerals, he may carry away any quantity within the limits specified in the second schedule of the concession rules without any payment and any quantity exceeding those limits, on payment of royalty at the rates specified in the first schedule of the rules.

The holder of a prospecting licence has a right to a mining lease or leases over the whole or part of the area covered by the prospecting licence in accordance with the rules governing the granting of such leases prevailing at the time.

MINING LEASE

Application

A mining lease is granted by the provincial government to a holder of a certificate of approval. However, the expiry of the certificate does not affect the right of the holder of a prospecting licence to apply for or to obtain a mining lease. A mining lease is granted for all minerals covered by a prospecting licence. An application for a mining lease must give the same information as that for a prospecting licence, and must be accompanied by a sum of Rs 200.

Area covered

When the holder of a prospecting licence applies for a mining lease, the lease is to cover the whole or such part of the land covered by the prospecting licence as the applicant may desire, but the provincial government may, for any special reason and with prior approval of the central Government, reduce the area or exclude a portion therefrom. In any case, no lessee by himself, or with any other person, can hold in the aggregate more than ten square miles under a lease in respect of one mineral or related group of minerals within a particular province. Where the applicant applies directly for a mining lease without previously having taken a prospecting licence, the area covered may be such as the provincial government deems fit.

When a mining lease has been granted, a survey and demarcation of the area granted under the lease must be undertaken by the lessee at his own expense.

Duration

Mining lease for coal, iron-ore and bauxite are for a period of thirty years and are renewable at the option of

the lessee for one or two periods, each not exceeding the duration of the original lease in the case of the latter two minerals. In respect of any other mineral, except mineral oils, the lease is for twenty years and can be renewed at the lessee's option, but only for one period not exceeding the duration of the original lease. In all these cases, it is open to the lessee to ask for a shorter period for the original mining lease. When a renewal is granted, the royalty and surface rent and dead rent are to be charged at the rates in force at the time of the renewal.

Rights to minerals

The lessee may win and dispose of the minerals specified in the lease. Should any other mineral or minerals be discovered in the leased area, the lessee must apply for a further lease covering the discovered mineral or minerals within twelve months.

Right to surface land

Under the Mineral Concession Rules, 1949, a lessee may make use of any surface area for mining purposes at the specified surface rates. The lessee has a right for the purpose of his mining operations to construct buildings and roads, use water and take timber and use land for stacking purposes.

Working obligations

A holder of a mining lease must observe the conditions of his lease. He must commence mining operations within one year from the date of the execution of the lease unless the provincial government, for good cause shown, permits him to do otherwise. Mining operations are to be carried on in a "proper skilful manner". Such operations include the erection of machinery, laying of a tramway, construction of a road in connexion with the mine. Mining operations may not be carried on within fifty yards of any railway line, reservoir, canal or other public works and buildings. A lessee must keep accurate records of all trenches, pits, drillings and borings that are made by him, and allow any officer authorized by the provincial or central government to inspect them. Under the rules of 1955, when work is started on a new trial shaft or bore-hole exceeding a depth of fifty feet from the surface, or on a new shaft or bore-hole commencing from underground working, the owner, agent or manager of the mine must send a notice to the Director of the Indian Bureau of Mines within fifteen days after the commencement of such operations. Further, all cores and specimens of different types of rocks and minerals obtained during drilling or sinking operations have to be preserved intact, except as may be necessary for purpose of analysis. An account of the quantity of all minerals obtained or dispatched from the mine, all numbers of persons employed therein and the complete plan of the mine has to be kept and their inspection allowed to the inspection officers of the central or provincial government.

In the case of the abandonment of a mine, or part of a mine, or of the discontinuance of work thereon for a period exceeding one year, the Director of the Indian Bureau of Mines has to be informed within three months of the date of abandonment, or within fifteen months from the date of the discontinuance of the operations.

The lessee has to work the mines in strict accordance with the conditions laid out in the Mines Act, 1952. All facilities for the comfort of the labourers, for their health and for their protection against accidents must be made in accordance with the terms of the act. Hours of work, payment of wages and over-time, and yearly leave are all to be in strict accordance with the act.

The Chief Inspector of Mines appointed by the central Government, and the Inspectors of Mines subordinate to him, are to inspect the mines in order to ensure that the provisions of the Mines Act and Mining Concession Rules are observed. They are to be afforded all reasonable facilities for making any entry, inspection, survey, measurements, examination or inquiry under the act. However, all copies of records appertaining to the mine and all other information acquired by these inspectors, are confidential and cannot be disclosed to any person or authority unless the Chief Inspector considers such disclosures necessary to ensure the health, safety or welfare of any person employed in the mine.

Termination for cause

Under the Mineral Concession Rules, if the lessee does not allow entry by inspectors to his mining area to examine the buildings and so on, or if he prevents inspection of his records of minerals mined, persons employed, pits, trenches or drilling made, and minerals encountered in the process, the provincial government may cancel the lease and forfeit the whole or part of the security deposit made by him. In the event of other breaches of the conditions of the lease, the provincial government shall ask, in writing, that the lessee remedy the breach. If he fails to do so within thirty days of such a notice, his lease may be terminated. In the event of dispute as to the existence of a breach, or as to the severity of the penalty, or as to the question whether a breach is unremediable or not, the matter has to be referred to arbitration within thirty days of the above notice. The issue is settled by two arbitrators, one nominated by the provincial government, the other by the lessee. In case of disagreement in the panel, an umpire, appointed by the arbitrators, decides. His decision is final. Arbitration can also be resorted to if any right is claimed by the lessee, any dispute arises as to the amount of royalty or rent payable and if any other matter connected with the lease, so requires. The same provisions apply in respect of prospecting licences.

Government Prerogatives

COMPULSORY ACQUISITION OR MODIFICATION OF LEASE

Under the 1948 Mines and Minerals Act, the central Government may, by notification in the Official Gazette, make rules to modify or alter the terms and conditions of any lease, to bring it into conformity with the rules promulgated under the act. The rules for modification of leases must provide for (a) giving previous notice to the lessee, and, where the Government is not the lessor, to the lessor as well, in order to afford them an opportunity to show cause against the proposed modification or alteration, (b) payment of compensation by the party benefited by the change in the existing lease to the one adversely affected by it and (c) the principles on which, the manner in which, and authority by which the said compensation is to be determined. Any rule providing for these latter matters must be approved by the House of the People before it can come into force.

An amendment of 27 April 1955 to article 31A of the Constitution allows the Government to extinguish or modify "any rights occurring by virtue of any agreement, lease or licence for the purpose of searching for, or winning any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence", and any such law, "provided such law is not one passed by the Legislature of a State", shall not be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the fundamental rights, conferred by articles 14, 19 or 31 of the Constitution. This clause applies to "any rights", occurring through "any lease, or licence".

CLOSING AREAS TO MINING

In order to conserve and develop minerals, the act of 1948 empowers the central Government, by notification in the Official Gazette, to make rules to prohibit the exploitation of minerals from any mine or in any area. The Government can also make rules as to "the manner in which, and persons by whom, any mineral or any area, as respects which the grant of mining leases is prohibited, may be developed or worked".

RIGHT OF PRE-EMPTION

In case of minerals, other than petroleum and natural gas and minerals producing atomic energy, the provincial government has at all times the right of pre-emption of all minerals won from the land in respect of the lease granted, provided that the fair market price prevailing at the time of pre-emption is paid to the lessee by the provincial government.

CONTROL OF DISTRIBUTION AND SALES

Under the Industries (Development and Regulation) Act, 1951, industries which are engaged in "the

manufacture or production" of coal, crude oils, kerosene oil, motor and aviation fuels, iron and steel are subject to regulation of production, distribution and sales by Development Councils set up under the aegis of the central Government.

Government Revenue. Fees, Rents and Royalties

FIXED CHARGES DURING EXPLORATORY PERIOD

For minerals, such prospecting fee as may be fixed by the provincial government must be paid. However, the fee shall not be less than two annas (12.5 naye paise), and not more than one rupee per acre for each year, or portion of a year of the period for which the licence is granted or renewed. The special charges applicable to an "exploring licence" for petroleum are contained in part II of this survey.

FIXED CHARGES DURING EXPLOITATION PERIOD

For minerals, the lessee is to pay for every year, except the first year of the lease, a yearly, dead rent at the following rates specified in the third schedule of the rules.

	Minimum (rupees per acre)	Maximum
Coal	1	5
Iron ore	1	5
Bauxite	1	5
Mica	2	8
Gold, silver, platinum and other precious metals and precious stones	a	a
All other minerals ^b		10

^a Rates to be determined according to the circumstances of each case.

^b Except petroleum, see part II of this survey.

If the lease covers more than one mineral in the same area, a separate dead rent in respect of each mineral may be charged. This is all subject to a proviso that the lessee is to pay either the dead rent or royalty, whichever is higher, in respect of each mineral, but not both.

In the case of minerals and petroleum, if the surface area is used by the lessee, such surface rent is payable as may be specified by the provincial government in the lease at rates not exceeding the land revenue ad rates assessable on the land.

ROYALTIES

Royalties on mineral dispatched from the leased areas, are to be paid to the provincial governments at rates specified in schedule one of the Mineral Rules. They are assessed as percentages of the sale value, at the pithead of the mineral extracted, as in case of coal, manganese ore, chromite, precious stones and gold, silver and precious metals, or at rates assessed by weight, as in case of mica and iron-ore. The royalties payable on petroleum are set out in part II of this survey.

Mining of Radio-active Minerals

Atomic energy and mineral resources necessary for its development are dealt with in the Atomic Energy Act 1948, which confers on the central Government the right to control the development of industries connected with the production and use of atomic energy and which refers to uranium, thorium, plutonium, neptunium or beryllium or any other substance which in the opinion of the central Government can be used for the production of atomic energy. In 1953, the control was extended by notification to cover radium, zirconium, graphite, lithium and deuterium. The Atomic Energy (Control of Production and Use) Act, 1953, further extended control over certain minerals, pitchblende, columbite, smarskite, uraniferous illinite, monazite and uranium bearing tails left over from ores after the extraction of copper, gold, ilmenite zircon, rutile and beryl. Under the Act of 1948, the central

Government may by order "prohibit except under a licence granted by it, the working of any minerals specified in the order", or "the acquisition or production" of "any mineral specified in the order" from which, in the opinion of the central Government, atomic energy can be obtained.

Furthermore, the central Government may itself undertake the work of discovering or mining any mineral from which in its opinion atomic power can be produced. It can also compulsorily acquire any minerals from which atomic energy can be produced after notice has been served on the owner, lessee or occupier of the land or mine, and after payment of compensation.

Finally, the Act of 1948 asserts the right of the central Government to do any work, over or below the surface of any land, which it considers necessary in order to discover or obtain minerals capable in its opinion of producing atomic energy.

INDONESIA

"The Netherlands East Indies Mining Law" 1899 (as amended in 1910, 1918, 1919) and the Mining Ordinance (1930) remain in force in Indonesia. However, a parliamentary resolution adopted in 1951 effectively banned the grant of new licences or concessions pending the adoption of new legislation on mining and on petroleum.

A draft foreign investment law approved by the Cabinet is before the Indonesian legislature. The government foreign investment policy and the provisions of the proposed bill are discussed in the report prepared by the secretariat on "Law and Regulations Affecting Foreign Investment in Asia and the Far East" (ECAFL/L 122).

The following paragraphs summarize the principal provisions of the "Netherlands East Indies Mining Law" with some references to the Mining Ordinance.

Proprietary Rights to Mineral Deposits

The Mining Law contains no statement on the ownership of minerals in the subsoil. It provides that the surface owner has no right to dispose of the minerals governed by the law (section 1). Such minerals are enumerated in two categories in subsections 1a and 1b of section 1, respectively:

"(1a) precious stones, graphite (black lead), platinum, osmium, iridium, gold, silver, mercury, bismuth, molybdenum, tin, tungsten, lead, copper, zinc, cadmium, nickel, cobalt, chromium, iron, manganese, antimony, arsenic and strontium, either native or as ore and also other minerals, if they are found together with those above-mentioned in the same sedimentary deposits or formations and consequently have to be worked together,

minerals which can be worked on account of the sulphur they contain, or for the making of alum and vitriol,

phosphates, which are used for manuring purposes and saltpetre (potassium nitrate), rocksalt and all the salts found with same in the same sedimentary deposit, "(1b) anthracite (glance coal) and all sorts of pitcoal and browncoal (lignite), petroleum, bitumen, mineral wax and any other kinds of bituminous substances, solid as well as liquid and inflammable gases, the latter if not of young formation (marsh gases), iodine and its compounds."

Mining of these minerals on a small scale by natives is exempt from the provisions of the law (section 6).

Otherwise, prospecting and exploitation rights are acquired only from the Government. In the case of minerals enumerated in section 1 (1a), such rights are obtained by licences and concessions, concessions for rocksalt may be acquired only for places not subject to the salt monopoly (section 5). In the case of minerals enumerated in section 1 (1b) exploitation is subject to a contract with the Government authorized in each case by law, see sections 28 (2) (1) and 5 (1).

Areas and Minerals reserved to Exploitation by the Government or under Contract with the Government

Under section 5 (1) of the Mining Law, areas may be reserved by decree, for government prospecting or exploitation of any specified mineral or minerals, provided that such works would not be contrary to existing rights of licensees or concessionaires. In addition, all minerals enumerated in section 1 (1b), including petroleum, are reserved to government exploitation, see mining law, section 28 (21).

The Government may either carry on the exploration or exploitation work itself or it may enter into agreements

with qualified persons or companies Any such agreement, except one solely for exploration, must be specially authorized by law, see section 5 (a)

Prospecting Licence

NATURE AND SCOPE OF LICENCE

The right to prospect for minerals is acquired by licence. The deed of licence covers a specific area which may not, save in exceptional circumstances, exceed 10,000 hectares The licence is granted for an initial term of three years, subject to two renewals of one year each If more than one application is received for the same area, the earliest has priority, subject to exceptions in the public interest or on equitable grounds A licence may be transferred only after government approval (Mining law, section 7, Mining Ordinance article 19).

Prospecting is not allowed in areas which are reserved to the State or closed to prospecting for reasons of public interest, or in areas on which there are fortifications, public buildings, graveyards, roads, canals, or railroads, or in areas which are by belief and custom considered sacred Prospecting may not, without consent of the legal owners of the surface, extend to within 50 metres of homes or factories (Mining Law, section 8, Mining Ordinance article 87)

The licensee has the exclusive right to do all the work necessary on the prospecting field for the exploration of minerals or for the purpose of judging the mineral deposits discovered Minerals within category 1a of section 1 obtained during exploration work may be freely disposed of (Mining Law, section 10)

Reports of geological prospecting activities must be submitted to, and are kept secret by, the government authorities for one year (Mining Ordinance, article 83)

TERMINATION OF LICENCE

A licence lapses automatically when its term expires or if the licensee or his heirs ceases to fulfil the requirements of nationality or domicile (Mining Law, section 11)

The licence must be cancelled if the work has not begun within twelve months from the time it was granted or if the surface owners have not received the indemnity or guarantee to which they are entitled The licence may be cancelled if the licensee fails to satisfy any conditions which were attached to its grant, or if the licensee requests the cancellation (Mining Law, sections 7(6), 12)

Concessions

ISSUANCE OF A CONCESSION

Mining concessions are granted only with respect to the minerals enumerated in article 1 (a) Before a concession

is issued for any mineral or minerals, the existence of a natural deposit from which extraction of minerals is technically possible must be proven (Mining Law, section 12 (2))

The discoverer of any mineral named in section 1 (1a) who made his discovery while in possession of a valid licence or concession covering the area in which the discovery was made has the right to a concession for its development This right is subject to the provision that any concession may be denied in regions or areas where, in the opinion of the Governor-General, mining operations should not be permitted in the public interest. No such right of discovery exists with respect to the minerals enumerated in section 1 (1b), although remuneration may be arranged (Mining Law, section 28)

Where exploration undertaken by or on behalf of the Government discloses minerals suitable for development, the area is reserved by the Governor-General and concessions within the area may be granted only after public tender The reserving of the area does not prejudice the Government's right either to undertake exploitation itself or to enter into agreements pursuant to section 5 (a) for exploitation by private persons or companies.

Concessions are granted only after the interested parties have had an opportunity to present objections These objections are investigated and the applicant for the concession given an opportunity to answer A decree rejecting an application must state the reasons for the decision (Mining Law, section 14, Mining Ordinance, articles 41, 49)

NATURE AND SCOPE OF A CONCESSION

A mining concession is considered to be improveable (real) property and may be mortgaged and alienated, provided that the transferee meets the citizenship or domicile requirements for concessionaires (section 18)

An application for a concession may request only one united area, the boundaries of which correspond with the discovered mineral deposits The maximum area, save in exceptional circumstances, is 1,000 hectares (Mining Ordinance, articles 34 and 35)

The concessionaire has the exclusive right, within the mining field, to acquire all minerals mentioned in his concession and to construct all works necessary to his operations Minerals other than those covered specifically in the concession may be mined only if a further concession is obtained, unless such other minerals are found in a combined form and cannot be extracted separately from the minerals specified in the concession (Mining Law, section 16)

A mining concession has a period of seventy-five years Three years before its expiration, the concessionaire may apply for a new concession for which the Government may

set conditions. If the concessionaire does not accept the conditions, the new concession may be granted only after public bidding. The Government has the right to deny an application for a renewal if it wishes to undertake the mining itself, or to enter into contracts for exploitation as provided for in section 5 (a) (Mining Law, section 34)

TERMINATION OF A CONCESSION

A concession is forfeited if the concessionaire either fails to begin work after being instructed to do so within the time fixed or if he fails to comply with instructions to resume work after suspension. The concession is also forfeited if the concessionaire delays or neglects to fulfil the conditions of the concession or if he fails to carry out instructions given by the competent authorities relating to his operations (section 37). A concession lapses by law should the concessionaire or, if deceased, his heirs, cease to fulfil the citizenship or domicile requirements (section 39). A concessionaire may request withdrawal of his concession.

A forfeited concession or one which is requested to be withdrawn may, at the request of the former concessionaire, be put up for sale at public auction at his expense and for his benefit (Mining Law, section 38). If the public sale has no results, the concession is cancelled. In that event, the Government acquires full and free disposal of the mining field, and of all that serves to preserve and protect the mine. A fixed period is allowed in which the former concessionaire may remove installations and buildings other than those preserving or protecting the mine, after that period, whatever has not been removed becomes the property of the Government (Mining Law, section 41). The concessionaire must place at the Government's disposal all maps, plans and sketches relating to the mine works (Mining Law, section 42).

Rights of Surface Owners

Surface owners and third persons concerned must allow prospecting, provided they have been informed beforehand by the licensee of the time and place of the operations and provided they receive indemnification or guarantee of indemnification (Mining Law, section 9). The same is true where a concessionaire requires the use of surface land for no longer than three years. If the

ground is needed by the concessionaire for a longer period and no agreement is reached, the provisions regulating expropriation of land for public benefit are applied (Mining Law, section 21). Permission is granted by the Government on such conditions as are determined by it for construction of roads and waterways and for building-leaseholds for the necessary installations on state-owned land (section 22). Concessionaires are obligated to compensate surface owners or third persons concerned for any damage caused by prospecting or exploitation operations (section 24).

Rents and Royalties

On each prospecting licence, the Government levies every year

- (a) A land tax payable in advance, amounting to £0 02½ (a half penny) per hectare.
- (b) A gross production tax to the amount of 4 per cent on the gross proceeds in excess of the amount exempt from tax by Ordinance (Mining Law, section 35 (1)). The Mining Ordinance provides that, in calculations of the taxable gross proceeds, 5,000 guilders are exempt from tax (article 164).

On each concession the Government levies annually

- (a) A land tax payable in advance, amounting to £0 25 (five pence) per hectare
- (b) A gross production tax, amounting to 4 per cent of the gross proceeds.

If the concessionaire proves that in the exploitation for the year he suffered a loss, the amount of the gross production tax may be reduced, but in no case may it be less than one per cent of the gross proceeds, see Mining Law, section 35 (2).

The gross proceeds are deemed to be the average market value during the previous six months of the marketable products obtained in the course of operations. Where minerals are treated by the concessionaire, the market value of such manufactured products is reduced by the cost of manufacture before the gross production tax is applied, see Mining Law, section 36 (2). That tax may, with special permission, be paid in kind. It may also be paid under an arrangement by which its total amount is reduced, if it is paid in advance, see Mining Law, section 36 (5).

JAPAN

Mining Law No 289 sets out to establish "the fundamental system of mining, in order to contribute to the promotion of public welfare by rationally developing mineral resources"

In addition to this law, the secretariat has received the following texts

The Atomic Energy Basic Law (Law No 186, 19 December 1955)

The Nuclear Fuel Corporation Law (Law No 94, 4 May 1956)

The Law concerning Temporary Measures for Expediting Development of Nuclear Source Materials (Law No. 93, 4 May 1956)

Under the Mining Law, may minerals be mined or obtained only under mining rights or mining lease granted by the State.

Mining Rights

NATURE OF MINING RIGHTS

A mining right is "the right to mine and obtain the minerals" in a tract of land registered with the Government. It comprises the right to prospect and the right to dig. The duration of a mining right is of two years from the date of the registration of the right, which may, upon its expiration, be prolonged only twice for a period of two years at each time. The Government may grant mining rights in regard to both public land and privately owned lands. Mining rights are regarded as "real rights" and, unless otherwise provided by law, the provisions concerning immovable property apply to them. Only Japanese citizens and public companies incorporated under Japanese law are allowed to become mining right owners. However, a treaty between Japan and another country may provide for exceptions to be made to this rule.

ACQUISITION OF MINING RIGHTS

In order to acquire a mining right, both for prospecting and digging, a person must apply to the Chief of Bureau of International Trade and Industry in accordance with procedures laid down in a special ministerial ordinance. The application must specify the location and the dimensions of the area, the name of the mineral and the name of the applicant. If the application is only for the acquisition of a digging right, it must contain a description of the mineral deposits and their location and also a statement on the extent and nature of the damage, which may result from mining operations. If the application for a mining right or a mining lease concerns land owned by a private citizen, the Chief of Bureau of International Trade and Industry notifies the person and affords him an opportunity to submit his written opinion, giving a proper period for such submission. Detailed regulations are set forth with regard to the priority to be given, when more than one person applies for the same land either for prospecting or for digging.

Once a mining right is granted by the Government and is registered, all changes in the area of the land, and the transfer, extinction, or the limitations on the disposal, of the mining right must be submitted for approval to the proper authority and registered. Should the right be transferred, the rights and obligations of a mining right are attached to it and transferred with it.

CANCELLATION OF MINING RIGHTS

The Chief of Bureau of International Trade and Industry is, in the following cases, invested with the authority to cancel a mining right previously acquired

(i) When the mining right holders fails to start operations within six months from the date of the registration of the establishment or the transfer of the mining right, unless the failure is due to reasons beyond his control

(ii) When the mining right holder fails to conduct operations in accordance with the plan of operations submitted previously to the Government

(iii) When the mining of the mineral is not conducted in accordance with Mine Safety Law (Law No 70 of 1949)

(iv) When the mining right holder fails to follow the directions of the Chief of Bureau of International Trade and Industry in regard to the increase or decrease of the mining area or when the Chief of Bureau finds that the land is unsuitable for digging

Mining Lease

NATURE OF A MINING LEASE

Under the law, mining lease means "the right to mine and obtain a mineral which is the object of a mining right, in other persons' mining area,¹ based on an act of establishment". (The act of establishment certifies that the prospective lease holder is a holder of a mining right). A mining lease is granted for the mining of a specific mineral, whereas a mining right relates to the mining of all minerals which may be found in a specific tract of land. The duration of a mining lease may not exceed five years from the date of registration and may be renewed, at the discretion of the Government, for another period not exceeding five years. A mining lease is regarded as a "real right", and the provisions concerning the immovable property apply *mutatis mutandis* to the lease, unless otherwise provided for by this law. The acquisition, change, extension of period of duration, transfer by means of inheritance or other succession in general and extinction of mining lease are registered in a Mining Book kept by the Government.

ACQUISITION OF A MINING LEASE

A person, who intends to become a mining lease holder, must submit for the approval of the Chief of Bureau of International Trade and Industry, a request setting forth the reasons. The applicant must also submit a written "contract" between the prospective lease holder and the owner of the land, or holder of the mining right as the case may be, containing particulars on the location and dimensions of the area, the name of the mineral to be mined, the period of duration, time, amount and place of payment of fee and the name of the applicant, as well as a map of the area. Within thirty days from the date of the receipt of the lease, the lease holder must pay a registration tax in accordance with rules outlined in a ministerial

¹A mining area is a tract of land registered with the Government as such an area

ordinance Should the lease holder fail to pay the tax, the lease loses its validity Detailed regulations are set forth in regard to an area already under a mining lease when fresh applications for the grant of digging rights are received by the Chief of Bureau of International Trade and Industry A mining lease holder may not abandon his mining lease unless he gives advance notice of six months or unless he pays six months of mining lease fee in advance.

CANCLLATION OF A MINING LEASE

The Chief of the Bureau of International Trade and Industry may cancel a mining lease when

(i) The lease holder fails to start operations, or has suspended operations for a continuous period of six months,

(ii) He has conducted operations which are not in accordance with the plan submitted to the Government,

(iii) The mining is not conducted in accordance with the safety regulations provided under the law,

(iv) The lease holder fails to make a security to ensure prompt payment of compensation in case of damage to neighbouring lands as required by the Chief of the Bureau, and when the latter, as a result, orders the suspension of operations

Use and Expropriation of Land for Mining Operations

SURVEY AND SPOT INVESTIGATION

The mining law provides for the issue of a permit by the Chief of the Bureau of International Trade and Industry to enter upon another person's land for the purpose of surveying or for conducting spot investigation relating to mining Before the issuance of the permit, the owner of the land is afforded an opportunity to submit his "opinion" in writing. After obtaining the permit from the Chief of the Bureau, the permit holder must notify the land owner in advance and make the permit available for inspection when the owner so demands The permit holder is liable to compensate the land owner for any damage which may result from such an entry

UTILIZATION OF LAND

If, during the course of mining operations, a mining right holder or lease holder finds it necessary to utilize for mining purposes another person's land, he may apply to the Chief of the Bureau for the grant of such a permission. The purpose for which the land may be utilized must be one of those enumerated in the Mining Law After the receipt of the application, the Chief of the Bureau holds a hearing with the representatives of the local authorities concerned, as well as with the mining right holder or the lease holder as the case may be, and the owner of the land, after they have been notified sufficiently in advance of the facts in the application. During the course of the hearing, these persons may submit "evidence and opinion"

concerning the application The Chief of the Bureau is invested with the power under the Mining Law to grant or to refuse permission When permission is granted, it must be made public.

COMPLNSATION FOR DAMAGES

When damages are sustained by other persons in the enjoyment of their property as a result of mining operations, the mining right owner or mining lease holder, as the case may be, is under a legal obligation to pay compensation for the damage resulting from the mining operations Provision is made for apportioning of damages when the mining area concerned has more than one mining right holder or a lease holder The Chief of the Bureau is authorized, after consultation with the Local Mining Damage Compensation Standards Council (a body established under the Mining Law to investigate compensation cases), to draw up fair and appropriate general standards for the limits and methods of compensation of damages and to make them public These standards are not binding The Standards Council, unless otherwise authorized by the Chief of the Bureau, determines which standards, out of the set of standards mentioned above, should be applied in each case

In addition to setting up the Standards Council, the law provides that the Chief of the Bureau must publish a list of persons known as "intermediators" who may be asked to resolve disputes over compensation for damage If a person is dissatisfied with the findings of the Standards Council and the solution recommended by an intermediary he may apply for a decision by the Minister for International Trade and Industry After holding a public hearing with the parties concerned, the Minister gives his decision, which is made public

The Mining Law requires that every mining right holder or lease holder shall deposit a certain sum of money with the Government to ensure the payment of compensation for damages, as discussed in the previous sections With regard to coal and lignite, the mining right owner or lease holder is required to deposit a sum of money proportionate to the quantity of coal or lignite mined in the preceding year in accordance with procedure laid down in a ministerial ordinance, within the limit above-mentioned, the Chief of the Bureau of International Trade and Industry decides on the exact sum of money to be so deposited.

With regard to minerals other than lignite and coal the Chief of the Bureau may ask the mining right owner or lease holder to deposit a sum of money to be determined by the Chief of the Bureau, up to a maximum of one per cent of the value of minerals mined in the previous year in the mining area A person, who suffers damage to his property as a result of mining operations has

preferential right to the money so deposited. Special rules are laid down for the prosecution of claims in this regard. Provision is made for the return of the money to the depositor in cases where no damage is sustained during a period of ten years or where the depositor has paid, independently, for any damage incurred. Failure to deposit the security with the Chief of the Bureau may lead to the immediate suspension of mining operations.

Nuclear Source Materials

Under the Atomic Energy Basic Law, nuclear source materials may be excepted from the provisions on mining rights and leases contained in the Mining Law.

A corporation, wholly owned by the Japanese Government is established by the Nuclear Fuel Corporation Act in order to "conduct comprehensively and efficiently the exploitation of nuclear source materials, the production of nuclear fuel materials and the control over those materials." The corporation is empowered to perform the following activities:

- (i) Prospecting, mining and dressing of nuclear source materials,
- (ii) Importing, purchasing and selling of nuclear source materials,
- (iii) Producing and processing nuclear fuel materials,
- (iv) Importing, exporting, purchasing, selling, and leasing of nuclear fuel materials,
- (v) Selling of by-products produced through the execution of the businesses mentioned in items (i) to (iii)."

The Corporation may, with the approval of the Prime Minister, carry on other activities consistent with its purposes.

An "Annual Plan for Prospecting of Nuclear Source Materials" is provided for under the Law concerning Temporary Measures for Expediting Development of Nuclear Source Materials. Prospecting is encouraged by bounties and awards. Holders of mining right are subject to special directions by the Minister with respect both to prospecting and digging.

KOREA¹

Decree No. 234 of 23 December 1951 contains the mining laws of the Republic of Korea. The purpose of the decree is "to regulate the essential mining system and to advance the national industry with the logical development of the underground resources." The decree deals with mining rights, national mining, the use and expropriation of land for mining operations, the liability of the mining right holder for damage to other persons' property, and the supervision of mining operations by the Government.²

Mining Rights

NATURE OF MINING RIGHTS

The term "mining right" under the law means "the right to mine the registered minerals and the other minerals occurring in the same veins or beds within specified registered districts of land (herein called mining claims)." No person may commence mining operations without the acquisition of a mining right. The Government is authorized to grant mining rights in accordance with the provisions of the Mining Law.³ A mining right may however be obtained only by (a) citizens of the Republic of Korea, (b) companies incorporated under the Law of the Republic of Korea, in which more than half of the capital and voting right belong to citizens of the Republic of Korea, (c) foreigners or companies

incorporated under foreign law, specially authorized by the Government of the Republic of Korea.

The mining right is regarded as a "commodity right" and the provisions of civil law governing immovable property are applicable to such mining rights, unless otherwise provided under the Mining Law. The rights and duties of the mining right holder specified in the law are attached to the right and are transferred when the right itself is transferred.

A mining right is granted for a period not exceeding twenty-five years at one time. The holder of the right must start work within one year from the date of the grant of the right or the transfer of the right.

ACQUISITION OF MINING RIGHTS

An application must be made to the Minister of the authorized Ministry, with a map of the mining area indicating the mineral mining point and providing an explanation of the vein or bed as well as a sample of the mineral. If the mining right applied for is with regard to more than one mineral, separate applications must be submitted for each mineral. Only one mining right is granted for each mining area. Rules dealing with the priority to be given in the case of submission of more than one application for the same mining right are laid down in the mining law. The Minister of the authorized Ministry may, in his discretion, require the applicant for a mining right to submit the proposed plan of operations if he considers that the grant of a mining right may cause damage to the area in question or to the adjoining property.

¹ This report relates to mining laws and regulations in southern Korea.

² The decree does not deal specifically with prospecting — see however, section below on "survey and field inspection".

³ The Government is authorized to transfer some of its authority to administer this law to the provincial governors in accordance with presidential ordinance.

The mining right will have no validity if the registration tax is not paid within thirty days from the receipt of the grant of the mining right

CANCELLATION OF MINING RIGHTS

The Minister of the authorized Ministry may cancel a mining right, already granted, in the following cases

(i) When the Minister recognizes that the operation of the mining right would be harmful to the public interest.

(ii) When the mining right holder fails to commence operations within one year from the date of the grant or the transfer of a mining right without adducing adequate reasons for such a failure

(iii) The operation of the mining right does not yield any mining products during a period of three years from the date of the registration of the mining right or the transfer of the mining right

(iv) When the mine is not operated in accordance with the plan submitted to the Government.

(v) When the Minister of the authorized Ministry deems that the operation of a mining right is interfering with the operation of another mining right and he may order that either the interference be stopped or that the mining operation itself must cease

National Mining

The Mining Law provides for mining operations by the Government itself ("national mining"). The Minister of the authorized Ministry controls the Government operations in this respect. Under the Mining Law, the Government may also create a separate juridical personality under the company law of the country and make that company responsible for national mining. However, more than half of the investment in such a company must be made by the Government. The rest of the investment may be contributed by citizens of the Republic of Korea, in which case the shares of the private citizens enjoy rights of priority with regard to profits from this investment

Use and Expropriation of Land

SURVEY AND FIELD INSPECTION

For the purposes of survey and field inspection, the Minister of the authorized Ministry may, in his discretion, grant permission to a person who intends to apply for a mining right or to an applicant for a mining right, or a

mining right holder, to enter another person's land and to remove the obstacles in that person's land. The Minister may, however, grant such a permission only after holding a full hearing, in which the objections of all parties concerned, and in particular of the owner of the land, are heard. Once the permission is granted, the holder of the permit must communicate with the owner of the land before he enters or removes the obstacles concerned

In case of imminent danger to his mining operations, a mining right holder has the right under the mining law to enter and to use another person's land, without notifying the land owner first. However, such entry must be communicated without delay. The mining right holder is under a legal obligation to compensate the land owner for the damage which he might have caused as a result of such an entry.

USE AND EXPROPRIATION OF OTHER PERSONS' LAND

The Mining Law sets out separately the purposes for which another person's land may be used or expropriated by a mining right holder, who must first obtain the permission of the Minister of the authorized Ministry. The Minister can grant such a permission only after a full hearing at which the objections, if any, of the land owner or any other person, who has a right to that land, are heard.

The Land Expropriation Law is applicable to the use and expropriation of another person's land for mining purposes.

LIABILITY OF THE MINING RIGHT HOLDER FOR DAMAGE TO OTHER PERSONS' PROPERTY

The mining law provides for instances and methods for compensating the damage suffered by the owner of adjoining land as a result of the operations of the mining right holder. Ordinary courts of law are authorized to adjudicate on disputes in this regard

Supervision of Mining Operations by the Government

In accordance with a special presidential ordinance, every mining right holder must submit a production report which must include an underground survey map of the mine. The Minister of the authorized Ministry is given the authority to grant funds, in order to encourage mining right holders whose production reports show progress

LAOS

The following enactments are taken into account in giving a summary of the mining legislation in Laos

Regulations governing mineral resources
development in Laos (introductory note),
Act No 93 of 30 March 1951,

Mineral Prospecting Licence (Letter No 108/ECC
dated 5 January 1948),

Royal Ordinance No 98 of 17 April 1951,
Act No 92, 30 March 1951, on Mining Dues,
Royal Ordinance No 136 of 18 May 1953,

Law No 140 of 24 April 1953 determining dues payable for extraction of sands and gravels from waterways in Laos,

Supplementary convention relating to transfer of departments under the authority of the Plan Adviser

The Franco-Laotian agreement of 1949 transferred the responsibility for the mineral development of the country to the Laotian Government, which is now engaged in drafting a new legislation on mining. The regulations governing the development of mineral resources of Laos may be summarized as follows

A personal authorization to acquire mining rights is given by a decree of the Prime Minister of Laos. All requests for authorization must be forwarded through local officials. The authorization, whether it be for a mineral prospecting licence or a concession, extends to the entire territory of Laos for a period of five years and is renewable at the discretion of the Prime Minister for another five years. The authorization may be given to any person regardless of his nationality or to any corporation if the latter has been organized according to legal provisions in

force in the kingdom of Laos. The request for an authorization may be refused without explanation. The fees for different authorizations are prescribed under the regulations

The mineral prospecting licence gives exclusive right to the holder to prospect a measured area of nine square kilometres. The licence is valid for three years. The holder of the licence may freely dispose of all minerals found during this prospecting activities. The mineral prospecting licence gives the right to the holder to obtain a mining concession. The area for which a concession is granted may not be less than 100 hectares and not more than 900 hectares. Mining concessions are perpetual, provided that the concessionaire fulfils his obligations and conducts his operations according to established practices and regulations

Laotian citizens are permitted to extract all minerals freely up to ten cubic metres for their personal use. They are not allowed, however, to re-sell the mineral so obtained. Certain local officials and governmental organizations are allowed the same privileges without limit as to the amount they may extract.

MALAYA

"The Mining Enactment and Rules of the Federated Malay States", as amended to 19 February 1953, comprise a code relating to the search and exploitation of minerals in the Federation

Proprietary Rights in the State-controlled Land

The entire property in state lands and control thereof is vested solely in the Rulers of the states

Where there is alienated land, no search or exploitation, except for oil shale or mineral oil deposits, can take place without the initial permission by the owner for prospecting on his lands. Special provision is made for ancestral mining land in the state of Perak

Where ancestral mining land was held prior to the commencement of the Mining Enactment of 1899, the holder or holders of these rights have an ancestral right to mine alluvial tin deposits

Prospecting

No prospecting can take place in the Federation, save in accordance with part VI of the Mining Enactment. Part VI provides for prospecting without licence on certain lands, for prospecting permits and prospecting licences

PROSPECTING WITHOUT LICENCE

The proprietor, or any person holding the written consent of the proprietor of any land alienated otherwise than for mining purposes and not included in a Malay

Reservation, may at any time prospect such land for metals or minerals, provided one week's notice of his intention to do so is given to the Senior Inspector appointed under the enactment. Only such work may be done, under this provision, as is reasonably necessary in the opinion of the inspector to enable the testing of the mineral-bearing qualities of the land

PROSPECTING PERMIT

The Mining Enactment also provides that it shall be lawful for the Collector, with the approval of the Ruler in Council, to grant permits to prospect state land, or land reserved for a public purpose for metals, minerals, oil shales or mineral oils, upon such express conditions as may be set forth in the permit and for such period as the Ruler in Council may think fit. Unlike a prospecting licence, a prospecting permit conveys no right to obtain a mining lease

PROSPECTING LICENCE

Prospecting of state land, or of such land together with alienated land, may take place under licence. The Mining Enactment provides that it shall be lawful for the Collector, with the approval of the Ruler in Council, to grant licences to prospect for metals or minerals state land, or state land and with the consent in writing of the lawful occupier thereof alienated land, or to grant licences to prospect any land, whether alienated or not, for oil shales and mineral oil

Every application for a prospecting licence must be in writing and should contain particulars on the position, approximate area and boundaries of the land in respect of which the application is made, the metal or mineral or the oil shales or mineral oil for which it is proposed to prospect, and the extent of the area in respect of which the applicant desires the prior right to receive a mining lease. The licence is granted for such period as the Ruler in Council thinks fit, and is not transferable, save upon the death, bankruptcy or other legal disability of licensee. The period of a licence may be extended upon application before its expiration if the licensee can prove to the satisfaction of the Ruler in Council that he has good and sufficient reason for not having completed the work of prospecting.

A prospecting licence may, at any time after the expiration of three months from the date of issue thereof, be cancelled by the Ruler in Council if the licensee has failed to make a bona fide commencement to prospect the land specified in the licence or, if he has altogether abandoned prospecting for such period as is set forth in the licence.

Under the licence, the licensee may only undertake and continue such work as may, in the opinion of the Senior Inspector, be reasonably necessary to test the qualities of the land in respect of the metal or mineral or the oil shales or mineral oil specified in the licence. The licensee, subject to laws for the time being in force, may remove from the land, and dispose of, all metals or minerals raised in the course of prospecting operations, upon payment of such royalty or export duties as the law requires.

If a prospecting licence contains no express terms to the contrary, it confers, apart from those already mentioned, the following rights and privileges on the licensee

(a) the exclusive right to prospect within the area specified in the licence for the metals or minerals or the oil shales or mineral oil specified therein,

(b) the prior right to select from any part of the state land described in such prospecting licence such an area as may be set forth in the prospecting licence, and to receive a mining lease for the same upon such terms and conditions as the Ruler in Council may direct if the Ruler in Council is satisfied that the licensee has at his own charges done a sufficient amount of prospecting work to entitle him to such land. This is subject to the proviso that, if the Ruler in Council is not satisfied that the licensee has done a sufficient amount of prospecting work to entitle him to a lease for the area stated in the licence, the Ruler in Council may either refuse to authorize the issue of such a lease to him or may authorize the issue of a lease for such smaller area as the Ruler in Council may determine, provided further that such prior right

to select shall be exercised within three months from the date of the expiration of the original prospecting licence or of any extension granted thereto. If the prospecting licence expressly authorizes the prospecting of land other than state land, the licensee's prior right to a mining lease may include such land, other than state land, if the following conditions are met

(i) In the case of alienated land, the licensee has acquired all the rights of other persons in that land,

(ii) In the case of land reserved for a public purpose, the reservation has been revoked

Mining Lease

In the absence of any express provision to the contrary, every mining lease vests the following rights in the lessee

(1) The right to win and obtain all metals and minerals, other than mineral oil and oil shales found upon or beneath the land. This is subject to the proviso that the lessee must not remove beyond the boundaries of the land for any purpose (except for the extraction of metal or mineral ore) timber or certain forest produce, gravel, stone, coral, shell, guano, sand, loam or clay, or any bricks, lime, cement or other commodities manufactured from these materials.

(2) The right to roast and calcine (but not to smelt, except in the case of gold) all such metals or minerals found on the land

(3) The right to use such portions of the land as may be required for the purpose of erecting houses, lines, sheds or other buildings, or of growing such plants and vegetables, or of keeping such animals and poultry as may, in the opinion of the Senior Inspector, be reasonable for the purposes of the mine, or for the use of the labourers

The enactment requires a number of implied conditions in each lease. The most important of these provides that the lessee must begin mining operations within one year from the date on which the mining lease is issued. Within the next six months, the lessee must employ the requisite number of labourers or mining machinery as are required by the fourth schedule of the enactment. Thenceforward, the lessee must maintain mining operations and employ the requisite labourers or machinery for each period of twelve consecutive months

If deposits are being worked by alluvial mining, and deposits of minerals are discovered in the form of lodes, beds, pockets, stockworks or similar deposits, the lessee may be required by the Ruler in Council to work them. Failure to do so within twelve months from the receipt of such requisition entails the surrender of the lease, if the Ruler in Council so directs. If such forfeiture is enforced,

the lessee must be paid reasonable compensation. This compensation, however, does not include any sum for the mineral deposit which the lessee has failed to work.

If deposits of oil shales or mineral oil are found on the land under the lease, the lessee must, on one month's notice from the Ruler, surrender to the Ruler such portion of his lease holding as the Ruler in Council may direct. Compensation must be made, but not for the value of the oil shales or mineral oil.

The lessee is required to make reasonable facilities available to government officers, who are empowered to have access to the leased land at all reasonable times, and to officers delegated by the Senior Inspector who can make examinations of the land, which may include boring operations.

No transfer, sublease, or charge of a mining lease or mining certificate, and no transfer of a sublease or charge shall be registered until all arrears of rent are paid.

PAKISTAN

The act entitled "Regulation of Mines and Mineral Development (Federal Control) Act, 1948" empowers the central Government to promulgate rules regulating mines, oilfields and mineral development. In addition to this act, the secretariat had at its disposal the Petroleum (Production) Rules, 1949 (see part II below) and the Pakistan Mining Concession Rules 1949, as amended in 1950, which govern the granting of licences and concessions for the exploitation of mineral resources with the exception of petroleum. The Mining Concession Rules deal with certificates of approval, prospecting licences, mining leases, supervision of mining operations by the Government, the investment of foreign capital.

Certificate of Approval

Any person may apply in writing for a certificate of approval. The grant of a certificate of approval implies the approval by the Government in respect of a mineral or minerals specified in the certificate, and no prospecting licence or a mining lease will be granted except to a person holding a valid certificate of approval. Every application for a certificate of approval must state the address, nationality and occupation of the applicant. The certificate of approval is generally valid for a period not exceeding one year and is renewable at the discretion of the licensing authority for an additional year. The granting of a certificate of approval, or its renewal, is published in the Official Gazette.

Prospecting Licence

A licence to prospect for minerals confers on the licensee the sole right to mine, quarry, bore, dig and search for and carry away any specific mineral or minerals lying or being within the land specified in the licence. Prospecting licences can be granted only to persons holding a valid certificate of approval, and the prospecting licence is not granted in respect of an area of more than ten square miles. The licence is valid for one year and may be renewed for a period of twelve months.

The licensee who has applied for a mining lease before the expiry of the prospecting licence has the right to a

renewal of the prospecting licence until the mining lease applied for has been granted or refused.

The licensee must, in respect of the areas covered by each licence, carry out with due diligence such schemes of prospecting as are approved by the licensing authority. He has to pay an annual fee and royalties at the rates specified in the third schedule attached to the rules.

The licensee is under an obligation to pay compensation, as determined by courts of laws, for all damage, injury or disturbance which may have been incurred by him in the exercise of the powers granted by the licence and to indemnify the Government against all claims which may be made by third parties in respect of such damage, injury or disturbance. The central Government has at all times the right to pre-emption on the minerals lying upon the land, provided that a fair market price is paid to the licensee on all minerals taken in pre-emption. If required by the licensing authority, the licensee must disclose confidentially to that licensing authority all information acquired in the course of the operations carried on under the licence regarding the minerals contained in, or the geological formation of any area not taken up by him under the mining lease.

Mining Lease

The Government may grant a mining lease for a mineral or minerals on the land specified in the lease, provided the applicant holds a certificate of approval in respect of such mineral or minerals for that area. The lease is not granted in respect of an area of more than five square miles, except in cases where special exemption is approved by the central Government. The initial term of a mining lease is thirty years, but every lease contains a clause permitting renewal, at the discretion of the Government, for a further period not exceeding thirty years on payment of rent specified in the rules. The rules also specify the rates of royalty, a yearly dead rent and surface rent payable by the lessee. The lessee must commence operations within one year from the date of the execution of the lease and must thereafter carry them out effectually in a proper manner. Without adducing sufficient cause, he may not abandon the mine for a period exceeding three

years. He must erect at his own expense and maintain and keep in repair boundary marks and pillars, according to the demarcation lines shown in the plan annexed to his lease. He is not allowed to cut or injure any tree reserved in the area under the lease. He must keep correct accounts showing the quantity and particulars of all minerals obtained from the mine, the number of persons employed and complete plans of the mine and must allow any officer authorized to examine at any time such accounts and plans. At the end or determination of the lease, the lessee must deliver the premises and all mines in a proper and workmanlike state, except in respect of any working the abandonment of which the licensing authority may have sanctioned.

Supervision of Mining Operations by the Government

Notwithstanding the rights conferred on the licensee under any type of licence mentioned above, the Governor-General has the power under the Rules to require, at any time, the exclusion from the lands mentioned in the lease of any area which may from time to time be required for public purposes. Persons authorized by the licensing authority are entitled to enter into the mining area for the purpose of examining the wells, plants, appliances, to inspect and check the accuracy of the weighing or measuring appliances, to inspect the accounts or to execute any works which the licensing authority may be entitled to execute, in accordance with the provisions of the licence.

If and whenever any of the yearly rents or royalties payable to the Government are in arrears for the period of two calendar months, the licensing authority may enter the premises and seize and sell any mining products, engines, machines, tools. In the event of the existence of a state of war or of a grave national emergency, the Governor-General may take possession or assume control of the works, plants, machinery and premises of any licensee and the licensee must obey all direction given by or on behalf of the Governor-General regarding the use or employment of such works, plants or machinery.

Investment of Foreign Capital

The Mining Concession Rules allow investment of foreign capital in mining operations. Every application for a prospecting licence or a mining lease in respect of minerals enumerated in the rules, if such an application is by an alien or a company incorporated outside Pakistan, must be addressed to the Department of Mineral Concessions, Central Government, Pakistan. A certificate of approval, a prospecting licence or a mining lease may not be granted to or held by any person who is or becomes controlled directly or indirectly by a national of or by a company incorporated in any country the laws and customs of which do not permit subjects of Pakistan or companies incorporated in Pakistan to acquire, hold and operate

mining concessions under conditions which, in the opinion of the Government, are reasonably comparable with those existing in Pakistan. In the case of an application by an alien or a foreign incorporated company, or in the case of an application by a licensee or lessee for the Government's consent to the assignment of a licence or lease to a foreign person or foreign company, such certificate, licence or lease can only be granted or assigned to a company incorporated in Pakistan for the purpose of receiving and working any such certificate, licence or lease.

The Government has the right to require the licensee or lessee to meet the internal requirements of Pakistan to the satisfaction of the central Government before any mineral products are exported to other countries. The Government may require the licensee or the lessee to associate Pakistan capital to the extent of 51 per cent of all classes of capital and debentures issued by him from time to time. The Government may further require the licensee to employ nationals of Pakistan in his organization in all grades and in all branches including technical and administrative units and to arrange for the training in Pakistan or abroad of the nationals of Pakistan to fill up these appointments. The number of Pakistan nationals to be employed or trained will be determined in consultation with the central Government. The holder of a mining lease may be required to employ Pakistan nationals as follows:

For the first four years of the lease—one-sixth of the total number of employees in various grades.

For the next four years of the lease— one-third of the total number of employees in various grades.

For the next four years of the lease— At least three-quarters of the total number of employees in various grades.

For the next four years and thereafter— 100 per cent of the total number of employees.

The Government has the right to enter the premises and to require the licensee to submit, at the end of every year, statements of accounts audited by an approved auditor. Any question or dispute regarding the licence or lease may be referred to the central Government in the appropriate Ministry whose decision is final except that the right of the licensee to the prospecting licence or mining lease, or the cancellation of such licence, or the price of minerals preempted by the Government, or the compensation payable to the lessee for any loss or damage, or the price of plant purchased by the Government must be determined by two arbitrators, one to be nominated by the Government and the other by the lessee. In the event of disagreement between the arbitrators, a judge of the Federal Court of Pakistan appointed by the arbitrators will render the final decision. These provisions relating to the settlement of disputes also apply to mining right holders of Pakistan nationality.

PHILIPPINES

General legal provisions bearing upon mining rights and the exploitation of mineral resources are found in the Constitution of the Republic of Philippines. The Mining Act of 7 November 1936, as amended, regulates the mining of all inorganic substances found in nature excepting coal, petroleum and other mineral oils and gas which are governed by special laws, namely, the Petroleum Act of 1949 and the Coal Lands Act of 1917, as amended¹

Proprietary Rights

The Constitution provides that all mineral land of the public domain belongs to the State (article XIII, section 1). The Mining Act provides that all valuable mineral deposits within its purview, in public or in private land, and the land in which they are found are free and open to exploration, occupation, location and lease under the conditions set forth in the act (section 10). It also provides that the ownership of land for any purpose other than mining does not include the ownership of the minerals which may be found on or under the surface (section 4).

Eligibility for Mining Rights

The Constitution reserves the disposition, exploitation, development or utilization of mineral lands to citizens of the Philippines or to corporations or associations at least 60 per cent of the capital of which is owned by such citizens. A constitutional amendment of 9 April 1947 provides that, until 3 July 1974, all mining rights on mineral lands of the public domain which are enjoyed by Philippine citizens or organizations are extended to citizens of the United States and to all forms of business enterprises owned or controlled directly or indirectly by citizens of the United States. Under the Mining Act, government officers and employees whose duties are related to the administration or disposition of mineral resources are not allowed to prospect, locate, lease or hold directly or indirectly mineral lands in the Philippines (section 25).

Classification of Minerals

Under the Mining Act, minerals are classified for mining purposes into five groups, as follows (section 15): metals, or metalliferous ores, precious stones, fuels, salines and mineral waters, building stone in place, clays, fertilizers and other non-metals.

Prospecting

Prospecting may be carried on within public or private lands, no prospecting licence is required. Prospecting on private land can only be carried out with the written permission of the private owner and after the previous deposit of an amount for compensation for any damages

which may result from the prospecting. Refusal of the owner to grant permission or to accept the compensation offered will leave to the intervention of the Director of the Bureau of Mines in order to settle the differences between the prospector and the surface owner. Questions which are not settled through this procedure are referred to a competent court, pending a decision of which the prospector may be permitted to enter upon the private land providing he deposits a sum jointly agreed upon by him and the Director of the Bureau of Mines or as decided by the court (section 27).

No prospecting is allowed in mineral land reservations set aside by the President of the Republic, nor is it allowed on lands covered by patented mining claims or in which minerals have already been discovered and located by other prospectors or in places near or under buildings, cemeteries, bridges, highways, waterways, railroads, reservoirs, dams or any other public or private works (section 28).

Location of Mineral Claims

The right to locate a mineral claim is based on the discovery of the mineral therein. "Location" of a mineral claim consists in marking the land where the mineral has been discovered in the manner and under the conditions set forth in the act. A location can be made of a lode deposit or a placer deposit. A lode deposit is that found in the form of a vein, ledge, lens or mass of ore, while a placer deposit is one which does not come under this definition (sections 29 to 31 and 39 to 45).

A prospector must locate his discovery within thirty days after making it. On his failure to do so, his claim is deemed to have been waived (section 33). Location of a lode mineral claim is made by staking posts on the ground at a certain distance covering the area along the finding and, in addition to a post, marking the exact location of the discovery.

Maximum areas of mining land and number of claims for the purpose of locating are provided according to the classification of five groups of minerals and depending on whether the locator is an individual, a corporation or an association and whether the claim is on lode or placer deposits (sections 35, 37, as amended, and 38).

All declarations of location must be recorded with the local mining recorder within sixty days after location (section 34). Declarations of location and accompanying documents are recorded in the order in which they are filed for record and they thereafter constitute notice to all persons of the contents of the same (section 56). The effect of a valid location is to exclude the location of the claim by others, until the original locator abandons or forfeits his claim (section 60). The locator of a mining claim acquires

¹ Legislation on petroleum is dealt with in part II of this survey.

the exclusive right to explore and occupy the claim from the date of registration. He does not have the right to exploit the claim before obtaining either a temporary permit or a lease. The located claim is deemed to have been abandoned after four years unless the locator applies for a mining lease (sections 62 and 68). Conflicts and disputes in connexion with locations are determined by decision of the Director of Mines, which may be appealed against to the Secretary of Agriculture and Natural Resources and is finally subject to review by the competent court (section 61).

Temporary Permit

If the locator applies for a lease and attaches a survey plan and technical description of his claim, and if it is found upon investigation that no adverse claims are pending, he is entitled to obtain a temporary permit before the lease is granted to him. This temporary permit allows the permittee to mine, extract and dispose of minerals from the claim for commercial purposes, subject, however, to the payment of royalties provided for claims covered by the lease. The temporary permit may be cancelled for violation of laws and regulations after due hearing, and without any responsibility for the Government as to expenditure made by the permittee for the development of the claim (section 62, as amended by Republic Act 746). Exploitation of a mine without either a temporary permit or a lease is subject to penalty as a criminal offence (section 100, as amended by Republic Act 746).

Lease

ISSUANCE OF LEASE

The location of a claim for a mineral qualifies the locator for a lease for all other minerals in the same group but not for minerals in other groups. He has, however, a preferential right to lease mineral deposits belonging to other groups which are found within his location. The same principle and privilege applies to the location of placer deposits in relation to lode deposits (sections 38 and 78).

Where locations conflict, priority of discovery, followed by continuous occupation and prospecting of the land, prevails for the purpose of determining the right to lease the claim (section 32).

An application to lease a mining claim located on private lands must be accompanied by the written authority of the owner of the land. Should he refuse to grant such authority, it may be granted by the court as soon as the applicant deposits the amount fixed as the value of the land and as compensation for any resulting damage or reasonable rental for the use of the land (section 67).

After the survey of the mineral land applied for is made under the supervision of the Bureau of Mines, notices concerning the filing of the application are posted in

newspapers and the bulletin board of the Bureau of Mines. On the expiration of the period of publication, no adverse claim from third parties may be heard, and the lease must be granted to the applicant within forty-five days (section 72). The filing of an adverse claim within the period of publication stays proceedings, unless the publication and filing of an affidavit thereon, provided that the adverse claim is fully documented and has not been previously decided by the Bureau of Mines. The adverse claimant has to commence judicial proceedings within thirty days and to prosecute them with a reasonable diligence with a view to securing final judgement. Failure to do so may be considered as a waiver of his claim. The judgement of the court is filed with the Director of Mines, and a lease on the claim in controversy may be granted forthwith to the party whose right is established by the court (section 73, as amended by Act 7466).

The maximum areas and number of claims which may be held depend on whether the minerals contained in the claims belong to the first, second, fourth or fifth groups and on whether the holder is an individual, a partnership or a corporation (section 76, as amended by Act 225). Leases of mineral lands are given under the Constitution (article XIII) for a maximum period of twenty-five years and may be renewed only once for another like period. Leases may be sublet or assigned with the prior consent of the Secretary of Agriculture (section 74).

RIGHTS OF THE LESSEE

Under sections 78, 86, 89, 90, 91 and 92 of the Mining Act, the lessee has the following rights for the exploitation of the mineral lands covered by his lease:

(a) The right to exploit all mineral deposits of the group for which the lease has been granted within the boundary lines of the claim continued vertically downward, and to use the lands covered by the lease for such purposes.

(b) Gratuitous water and timber rights on water and timber, within his mining claim, for the development and operation of his claim, without prejudices to the existing rights of third parties acquired under the forestry and water laws and regulations (sections 89 and 90).

(c) The right to locate and lease unoccupied land of the public domain not known to contain valuable mineral deposits, to a maximum extent of nine hectares when such land is necessary or convenient for mining or milling purposes and subject to payment of the same rental as provided for mineral leases (section 86).

(d) The right of way, entry and possession upon mining claims or other lands held by third parties, when his mine is so situated that a road, a railroad, tramway, electric transmission, telephone and telegraph lines, aeru

transportation, ditch, canal, pipeline, flume, cut, shaft or tunnel may be necessary for the better work of his mine. Easements for such purposes are declared to be for the public use or benefit for which the right of public domain may be legally exercised. Accordingly, if the lessee is unable to acquire the necessary right of way by agreement with the third parties concerned, he may commence and maintain an action under Act 190, as amended, which provides for the exercise of the power of eminent domain by the Government and its subdivision (sections 91 and 92).

OBLIGATIONS OF THE LESSEE

The lessee is subject to the obligations provided for in sections 77 to 83 and 87 of the Mining Act. These obligations are as follows:

(a) Compliance with rules and regulations for the policing and sanitation of mines, easements, drainage, disposal of waste or tailings, water rights, right of way, right of government survey and inspection and other necessary means to the economic utilization of the mines as well as rules insuring reasonable diligence, care and skill in the mining operations (section 77).

(b) The lessee must perform every year not less than 200 pesos worth of labour or of improvements on each mining claim of the first and fifth groups, and 100 pesos worth of labour or of improvements on each claim of the second and fourth groups. Failure to comply with this obligation constitutes abandonment on the part of the lessee and his claim becomes subject to relocation by other persons (section 81). Only the actual expenditure on, and cost of, mining improvements on the surface or underground, having a direct relationship to the development of the claim are included in the estimate of assessment work. Improvements such as buildings or machinery are not included, unless they are clearly essential to the practical development of the claim (section 82). The lessee must file every year with the mining recorder an affidavit and the record thereof constitutes *prima facie* evidence of such performance (section 83).

CANCELLATION OF LEASE

Failure of the lessee to comply with the provisions of the Mining Act, the rules and regulations promulgated hereunder, or the provisions of the lease contract may cause the cancellation of the lease by the Secretary of Agriculture or by a competent court. The lessee in such a case is liable for all unpaid rentals and royalties up to the time of cancellation. Within thirty days after the date of cancellation, notices thereof must be posted by order of the Director of the Bureau of Mines, and the mining land covered by the lease thereby becomes open to relocation (sections 84 and 85).

Rents, Royalties and Taxes

For the privilege of exploring, developing, mining and disposing of the minerals from the lands covered by his lease, the lessee must pay to the Government the following rentals, royalties and taxes:

Rentals on all mineral lands of the first, second, fourth and fifth groups, one peso per hectare or a fraction thereof. The rentals are due and payable in advance on the date of the granting of the lease and on the same date each year (section 79).

Failure to pay rental for a period of ninety days after demand causes the lease to lapse and the claim concerned to be open to relocation, and the delinquent lessee remains permanently disqualified for relocation of that claim (section 80).

Royalties on all minerals extracted from, or mineral products of, mineral lands of the first, second, fourth and fifth groups, royalties of 1½ per cent of the actual market value of the gross output thereof (section 79).

The term "gross output" is interpreted as the actual market value of minerals or mineral products or bullion from each mine or mineral lands operated as separate entities. That value is not subject to any deduction from mining, milling, refining, transportation, handling, marketing or any other expenses. However, if minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under *c i f* terms, the actual cost of ocean freight and insurance may be deducted (section 79 and section 246 of the National Internal Revenue Code, as amended by Republic Act 834). Royalties are reduced by 5 per cent on mining carried out on private lands, and these deductions are paid by the lessee to the private owner. All royalties are due and payable sixty days after the shipment of the mineral or mineral products from the mine. Before the minerals or mineral products are removed from the mines, the Collector on Internal Revenue must be notified of such removal (section 79). Failure to pay royalties for a period of ninety days after demand causes the lease to lapse and the claim concerned to be open to relocation, and the delinquent lessee remaining permanently disqualified for relocation of the same claim (section 80).

All buildings and other improvements built in the land leased, other than machines, instruments and appliances, are subject to an annual real estate tax paid at the rate and in the manner of all other real estate taxes under the law (section 79).

New mines, and old mines which resume operation, are exempted from the payment of income tax during the first three years of actual commercial production. However, a complete return of capital investment at any time within the said period makes successive returns

taxable from that year (National Internal Revenue Code, section 243, as amended by Republic Act 909)

Coal Lands Act

Coal lands are excluded from the purview of the Mining Act, and are regulated for mining purposes by the Coal Land Act No. 2719, approved on 14 May 1917 and brought up to date by Republic Act No 740 of 18 June 1952. Regulations thereunder are issued by the Secretary of Agriculture and Natural Resources. Principles contained in the coal legislation are similar to those of the Mining Act as regards proprietary rights (Coal Lands Act, section 1), eligibility for lease (C.L.A., section 2), maximum period of lease (C.L.A., section 3), authorization from the private owner of the land (C.L.A., section 2A), the right of lessee to exercise the power of eminent domain (C.L.A., section 13), and cancellation of leases (C.L.A., section 12). Some of the procedures and principles of the coal legislation deviate from the provisions of the Mining Act or are more explicitly established, as indicated below.

APPLICATION OF LEASE

No location is required. After the application is filed, accompanied by sufficient bond to secure fulfilment of the lease, an authorized survey is made and the land is registered. The application is then published in newspapers and posted on the land for three weeks. Upon expiration of the period of publication, the Secretary of Agriculture and Natural Resources may award the lease to anyone of the persons or corporations which has applied and which, in his opinion, is best qualified (regulations of 26 May 1922, section IV). Failure of the applicant to prosecute his application with reasonable diligence and to have the land surveyed within one year from the date of application is deemed to constitute a waiver of such application (C.L.A., section 3).

DETERMINATION OF AREA AND MAXIMUM NUMBER OF LANDS FOR LEASE

The area for lease may not be less than 50 and not more than 200 hectares and shall be demarcated in a manner which, in the opinion of the Secretary of Agriculture and Natural Resources, allows the economic development and exploitation of the coal deposits. The maximum number of tracts in a province which may be granted in lease is also fixed (C.L.A., section 2).

OTHER REQUIREMENTS AND POWERS RESERVED BY THE GOVERNMENT

Under the regulations of 26 May 1922, there must be a minimum annual investment in actual mining developments and in such other work as may be essential to the opening and operation of the mine (section IV). These regulations also prescribe that the Secretary of

Agriculture and Natural Resources may prohibit any practice or process of operation that may result in undue waste of coal (section IV)

EXPLORATION WORK BEFORE THE GRANTING OF A LEASE

The applicant may perform exploration work before the lease is granted. This temporary authorization, however, does not entitle the applicant to remove, or dispose of, coal from the deposits applied for (regulations of 22 May 1926, section IV)

RENTS AND ROYALTIES

For the privilege of mining, extracting and disposing of coal in the lands covered by his lease, the lessee must pay royalties and rentals. The royalty may not be less than 10 centavos a ton of 1,016 kilogrammes, and is due and payable upon removal of the coal from the locality where it is mined. The rental is determined at the rate of 2 pesos and 50 centavos a hectare, or fraction thereof, for each year for the first ten years, and five pesos a hectare, or fraction thereof, for each year thereafter. Rentals are credited against the royalties as they accrue for each year. The rentals or royalties are also credited against the specific tax on coal assessed at 25 centavos a metric ton under the National Internal Revenue Code (Coal Lands Act, section 3).

REVOCABLE COMMERCIAL PERMIT

In order to provide for the supply of local and domestic needs for fuel, the Secretary of Agriculture and Natural Resources may issue to any qualified applicant not more than three commercial revocable permits granting the right to prospect for, mine, and dispose of coal belonging to the Government on specified tracts not to exceed four hectares. No person or association obtaining such a permit may operate in any coalfield for a period of more than 10 years. This permit may be granted, whether or not the applicant is also an applicant for, or holder of, coal leases. The permit is granted on such conditions as, in the opinion of the Secretary of Agriculture and Natural Resources, will promote the coal industry and safeguard the public interest. The permittee must pay a royalty of fifty cents a ton of the coal mined in lieu of the specific tax on coal (Coal Lands Act, section 10)

EXPLOITATION OF MINES BY THE GOVERNMENT

The Government, in recognition of the relation of the coal resources of the country to its general welfare, has reserved the right to organize and exploit coalmines by itself or to organize and promote coal mining corporations by becoming either the exclusive or majority stockholder therein. In such enterprises, the Government is not bound by any provision in the law restricting holdings either territorially or otherwise (Coal Lands Act, section 14).

Supervisory and Developmental Government Activities

The Bureau of Mines was created by Act No 136 of 7 November 1936 under the Department of Agriculture and Natural Resources with a Director at its head. The Bureau of Mines is required to

- (1) Make topographic and geological surveys of the country
- (2) Collect and disseminate information and conduct pertinent investigations concerning mining operations.
- (3) Conduct studies of mining practices and matters relating to the protection of life and property and to the economy of operations
- (4) Conduct investigations with regard to new processes
- (5) Perform work on assaying and smelting
- (6) Establish and operate a refining plant
- (7) Keep records of mining locations, leases, patents and permits

(8) Receive semi-annual reports from mining operators and generally supervise all the operations. Semi-annual reports from mining corporations or associations must contain an itemized account for the previous semester with complete statements on disbursements and receipts, all liabilities incurred, the number of employees, their functions and wages, a full statement of the work done in the mine, of ore extracted, the amount sent to the mill, and its assay value. Copies of these reports must be furnished to stockholders or members. Mining concerns must also make available to stockholders and members full reports under oath of all discoveries in the mine and their assay value, as well as accounts, reports and correspondence from the superintendent of operations.

The bureau has been instrumental in establishing safety regulations and publishing a mine safety bulletin. The bureau may perform any work for private parties for a fee. Its officers and employees have police authority over mineral lands and have the power to execute its decisions relating thereto.

SARAWAK

The Mining Ordinance of 1949 governs the development of mineral resources in Sarawak. The ordinance does not apply to (a) radio-active minerals, since the operation thereof is governed by a special ordinance, (b) mines operated by the Government on Crown land, (c) the mining of mineral oils and the operation of Sarawak Oilfields, Limited. Under the ordinance, the Governor of Sarawak promulgated the Mining Rules, 1949, which deal with the payment of fees, rents, royalties, deposits and the returns from the rest of the mining operations in Sarawak. The ordinance of 1949 deals with mining leases, prospecting licences, panning and fossicking licences and safety regulations.

Mining Lease

NATURE OF A MINING LEASE

The property in, and the control of, all minerals throughout the colony of Sarawak is vested in the Crown. The Government is authorized under the ordinance to lease Crown land for mining purposes for a period not exceeding twenty-one years in return for the payment of such annual rent as may be stated in the mining lease, and it may impose such conditions as it may find necessary. The mining lease must specify the minerals which the lessee is entitled to mine within his lease, but the Government, if the applicant so desires, may add to or vary the minerals included in the regional lease.

The mining lease may be issued only to an individual person who is not a minor, to a company authorized by its constitution to hold mining land and incorporated under

the current provisions of Sarawak law regulating companies, to a company incorporated outside the colony which has complied with the provisions of the company law of Sarawak or to a body corporate incorporated by any law currently in force or constituted by royal charter or Letters Patent of His Majesty.

ACQUISITION OF A MINING LEASE

Applications for a mining lease must be made in writing, in accordance with a specially prescribed formula, and deposited at the land office of the district within which the tract to be leased is located. If the application is approved, the land will be surveyed and marked by an official of the district (the Superintendent). The latter may require the applicant to make a deposit in order to cover the cost of emplacement or survey. During the consideration of the application for a mining lease and before the survey is completed, the applicant may be granted a mining certificate which gives him the same rights as to a lessee. He may then enter upon, occupy and commence mining operations in accordance with the terms of the mining certificate. On completion of the survey, the applicant may be granted a mining lease duly signed and sealed. The lease must be registered with the Government.

RIGHTS OF THE MINING LEASE HOLDER

The possession of a valid mining lease vests certain rights in the lessee.

(1) The right to enter and the exclusive right to mine and to remove and dispose of the minerals specified

in the lease and to do all other things necessary for the mining operations

(2) The right to roast and calcine all such metals or minerals found on the land

(3) The right to erect such structures as may be necessary for the satisfactory conduct of mining operations.

(4) The right to all timber and forest produce of the land, although he may not remove any of such timber or forest produce from the land except for the extraction of minerals.

OBLIGATIONS OF THE MINING LEASE HOLDER

There are also enumerated various obligations on the lessee, such as that of paying rent and royalties as required under the provisions of the ordinance, maintaining of all boundaries in proper condition, commencing mining operations within a period of one year from the date of issue of the lease, employing the number of labourers and labour-saving devices provided under the ordinance, continuing mining operations for a period longer than six months, reporting to the Director the discovery of any mineral other than that for which his lease has been granted and observing safety regulations. The ordinance also requires the lease holder to allow a right of way to those desiring to enter from the adjoining land, if such right of way does not interfere with mining operations.

Failure to pay rent or non-observance of certain conditions in the mining lease renders the lease liable to forfeiture.

Prospecting Licences

The regulations contain provisions regarding prospecting. The owner of land alienated for other than mining purposes or any person holding the written consent of the owner may prospect such land for metals or minerals, provided he gives one week's notice to the government inspector. The Governor is authorized to grant, at his discretion, prospecting licences for metals or minerals upon such conditions and limitations as are stated in the ordinance and upon such express conditions as the Governor may impose. The licence holder is liable to make compensation in the case of alienated land to the owner of the land for any disturbance or damage caused by such prospecting operation. The local courts are empowered to adjudicate between the parties in this respect.

The prospecting licences granted by the Governor may be either a general prospecting licence or an exclusive prospecting licence. The Governor may refuse to grant a general prospecting licence and is obliged to refuse an exclusive prospecting licence for unalienated land until rights which the native people of Sarawak may have, in respect of such land, have been investigated and recorded to his satisfaction.

EXCLUSIVE PROSPECTING LICENCE

An exclusive prospecting licence authorizes the licensee to undertake and continue such work which may be, in the opinion of the Governor, reasonably necessary to test the qualities of the land in respect of the metal or mineral specified in the licence. Every exclusive prospecting licence is granted for a specified metal or mineral only. It also conveys to the licensee the exclusive right to prospect within the areas specified in the licence for the metal or mineral specified and the prior right to select from any part of the unoccupied land described in such licence such an area as may be set forth in the prospecting licence and to receive a mining lease for that land. The granting of such lease is at the discretion of the Governor, who must satisfy himself as to whether or not the licensee has done a sufficient amount of prospecting work and whether the rights of the native population would not be adversely affected. The Governor, in granting an exclusive prospecting licence, may direct that the licensee is liable to pay compensation to persons who may be injuriously affected. The licensee is under an obligation to report the discovery of any mineral deposits other than the mineral mentioned in the licence. He must, at all times, allow governmental inspection and submit specified reports in regard to his prospecting operations.

Every application for an exclusive prospecting licence must contain the position, approximate area and boundaries of the land and the metal or mineral for which it is proposed to prospect. The licensee may remove, with the written permission of the Senior Inspector, all metals and minerals raised in the course of prospecting operations, upon payment of such royalties or export duties as may be fixed by any current law.

GENERAL PROSPECTING LICENCE

A general prospecting licence conveys to the holder the right to prospect on all land specified in the licence for all minerals or metals other than those expressly excluded by the licence. The holder may undertake and continue such work only as may, in the opinion of the Senior Inspector of the Government, be reasonably necessary to enable him to test the qualities of the land in respect of metals or minerals for which he is entitled to prospect. A general prospecting licence is personal to the holder and any servant or agent prospecting must hold a separate licence.

Panning and Fossicking Licences

The ordinance authorizes a Senior Inspector or any officer authorized by the Chief Inspector to grant to any person a licence to pan¹ or to fossick², on payment of the prescribed fees. The licence will not be granted in respect

¹ To pan means to wash or sift for the purpose of obtaining minerals

² To fossick means to rake or scratch the surface of the soil for the purpose of obtaining minerals

of a forest reserve or protected forest without the consent in writing of the Conservator of Forests. Panning licences may be issued for any period not exceeding one month and fossicking licences may be issued for any period not exceeding six months and both of them are non-transferable. Both licences confer upon the holder the right to take and dispose of all minerals obtained by him under the authority of the licence. He has no right to pan or fossick over occupied land, or mining land or land in respect of which an exclusive prospecting licence has been granted without the consent of the occupier, lessee or licensee as the case may be, and he has no right to take minerals other than those specifically mentioned in the licence.

Safety Regulations

Every lessee of mining land upon which more than twenty persons are employed is required to notify the Chief Inspector of the name and address of the manager of such mine. In default of such notification, the lessee will himself be presumed to be the manager. Gunpowder, explosives and inflammables may not be stored on any mining land except in such places and quantities as may be

prescribed by law. There are detailed regulations governing the reporting and investigation of accidents. The ordinance requires that every manager should frame such regulations as are necessary for the conduct and guidance of persons employed for the mining operations, and a copy of such regulations must be sent to the Senior Inspector immediately. The Senior Inspector may suggest changes in the regulations within thirty days after receipt. Even if a lessee is in possession of a valid lease, the digging of shafts or pits must be done under a special licence. Any kind of hydraulic mining may be performed only under the provisions of a special licence in this respect which is granted for a period not exceeding twelve months, and the Chief Inspector is authorized to cancel or to suspend such licences upon proof that the licensee has failed to comply with the conditions of the licence. The Director of Mines is authorized to consider claims by people who have suffered damage or injury during the mining operations and to order the licensee to pay such compensation as may appear reasonable. A party dissatisfied with the decision of the Director may appeal to the Governor, whose decision is final.

THAILAND

The development of mineral resources in Thailand is regulated by the Mining Act of 1918 (as amended, 1950).

Mining operations by private individuals are allowed only in the southern regions running from the province of Chumphorn to the Malayan border. Areas other than those mentioned above, including islands, except the island of Phuket, are reserved exclusively for prospecting or mining by the Government. Gold, oil and coal, wherever they may be found, may not be prospected or mined by private individuals. The following major topics are dealt with in the act: general prospecting licences, exclusive prospecting licences, mining concessions. According to the mining law, the Government claims the exclusive ownership of all mineral substances upon, in or under the surface of public domain or privately owned land. The Government may grant prospecting licences to private individuals. These licences are divided into two categories: general prospecting licences and exclusive prospecting licences.

General Prospecting Licence

Applications for general prospecting licences must be made on the prescribed form and filed with the appropriate District Mines Office specifying the kind of minerals as well as the location in which prospecting work is intended to be done. Every application must be accompanied by a fee prescribed by regulations.

The licence is issued at a small cost and is valid for one year. The licensee is entitled to prospect for such minerals only within such areas as are specified in the

licence. A general prospecting licence holder may explore vacant land, or land in the lawful possession of others with the consent of the owner of the land. The licence is non-transferable and allows the holder only to prospect with the purpose of testing the metalliferous qualities of the ground but not to remove or sell any minerals found. The licence must at all times be presented for inspection upon demand by an officer of the Government.

Exclusive Prospecting Licence

Application for an exclusive prospecting licence must be made on the form prescribed by the Government and filed with the appropriate District Mines Office. At the same time, the applicant must deposit a sum of money. He must submit, with the application, a map of operations, a detailed statement of the purpose for prospecting and specification of the kind of minerals being searched. The map must show the location of the land upon which prospecting work will be conducted giving particulars as to its connexion with other survey marks, concession areas or land marks. The total area of land for which the application may be made must not exceed 3,000 rai¹.

The licence is non-transferable and confers upon the holder the same rights as are acquired under a general prospecting licence, with the difference that no person other than the holder or his employee will be entitled to prospect for minerals in the area covered under the licence. However, it confers full exploring rights to the holder, with the privilege of employing as many assistants as required.

¹Two and a half rai equal approximately one acre.

without applying for any additional licence. It confers no right to remove or to sell any mineral found. The licence is valid for one year, upon the expiration of which the Royal Department of Mines may in its discretion renew the lease if the holder shows to the satisfaction of the Department that he has completed a reasonable amount of prospecting and complied with the regulations.

Mining Concessions

ACQUISITION OF THE CONCESSION

Mining concessions may be granted only to holders of general prospecting licences or exclusive prospecting licences, and they are valid only for the kind of minerals and for the area specified in such licence. The prospecting licence must be in force at the time at which the application for the concession is submitted.

Applications for mining concessions must be made on a prescribed official form and must be submitted together with a deposit covering fees, expenses which may be incurred in the cutting of boundary lines, and certain other expenses connected with the issuance of the concession. The map must show the location, angles, direction and area of the desired mining concession. The area of the concession may not exceed 100 rais in the case of a lode, and 300 rais in the case of alluvial ground. The applicant must also submit particulars as to the kind of mineral which he desires to mine and as to the method of mining which he intends to adopt. He must also satisfy the District Mines Office that he has at his command sufficient capital to carry out the mining operations required under the concession. After carrying out the preliminary survey and the erection of boundaries, the applicant is entitled to a temporary working permit which confers the same rights as a mining concession. Such permit is valid for a period of six months only.

Under the Ordinance No 3 of 6 March 1952 of the Government of the Republic of Viet-Nam, the mining regulations which were in force in Indochina at the time of the introduction of the Convention of 8 March 1949 are declared to be temporarily applicable until the promulgation of national statutes in this field.

Under the ordinance, the powers which were conferred on the French authorities under the mining regulations will henceforth be exercised by the Chief of State concerning matters which previously lay within the competence of the President of the French Republic, by the President of the Republic of Viet-Nam, in cabinet meetings concerning matters which were previously within the competence of the Governor-General or the High Commissioner after due hearing in the permanent cabinet committee, by the Minister in charge of mining concerning matters which previously lay within the competence of the

NATURE OF THE CONCESSION

The only minerals which the concession holder is entitled to mine are those specified in the concession granted. If other kinds of minerals are to be mined, prior authorization must be obtained. Mining operations must be carried out within the area specified in the concession. The concession does not convey to the holder any right of ownership on any land but conveys only the right to carry out mining operations within the defined area. Prior authorization must be obtained from the District Mines Office for the construction of any buildings for mining purposes.

The Government may give permission to any person to fell timber, burn wood, charcoal, or collect other forest produce within the mining area. The concession holder has no power to stop the grant of such permission. Moreover, the Government reserves the right to take or to authorize any person to take from the concession area such stones, earth or sand as may be required for governmental purposes. In cases where the Government is in need, for an official purpose, of a plot of land within the concession, the concession holder has no power to demand any compensation for the value of minerals unmined within such mining area. The concession holder has no right to destroy, obstruct or conduct any mining operations on any communications line, even if such line is lying within the concession, unless special authorization is granted by the Department of Mines for the purpose. It is unlawful for any concession holder to mortgage or pledge a concession in any manner whatsoever prior to obtaining permission from the Government.

The concession holder is liable to pay rent and royalties as specified in the schedule attached to the mining law on minerals.

VIET-NAM¹

Governor-General or the High Commissioner subject to recommendations by the Inspector General of Mining and Industry, by the regional governors for those matters which previously lay within the competence of the heads of local authorities, and by the local and provincial officers in regard to those matters which previously lay within the competence of the resident mayors and provincial officers.

The jurisdiction which was recognized under the mining regulations as belonging to the French courts will henceforth be exercised either by the Viet-nameese courts or by the Joint courts according to the rules of jurisdiction defined in the judicial convention of 30 December 1949 implementing the Franco-Viet-nameese agreement of 8 March 1949. It is understood that new mining regulations are being prepared.

¹ This report relates to mining laws and regulations in southern Viet Nam.

Part II

COMPARATIVE SURVEY OF RECENT PETROLEUM LEGISLATION

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INTRODUCTION

This section covers, grouped under subject headings, the provisions in recently enacted laws governing the development of petroleum resources in countries outside the ECAFE region. It also includes provisions dealing with particular aspects of government regulation and of development.

The following laws are surveyed:

Guatemala	Petroleum Code, 1955
Israel	Petroleum Law 5712-1952, as amended by Petroleum (Amendment) Law 2717-1957, Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations 5716-1956
Italy	Law Governing Exploration and Production of Liquid and Gaseous Hydrocarbons, No. 6 of 1957, Law for Establishment of the National Hydrocarbons Agency (ENI) No. 136 of 1953
Libya	Petroleum Law No. 25 of 1955
Mexico	Petroleum Law, 1941
Peru	Petroleum Law 11780 of 29 February 1951
Turkey	Petroleum Law No. 6326 of 1954, as amended by Law No. 6558 of 1955
Venezuela	Law of Hydrocarbons, 1943, as amended, Income Tax Law, 1955

The section also includes provisions, dealing specifically with petroleum, of China (Taiwan), India, Japan, Pakistan and the Philippines, with a view to providing a comparative picture. It should be noted that, of these countries, only the Philippines has a comprehensive petroleum law comparable to those of non-ECAFE countries included in the compilation: the Philippine Petroleum Act of 1949, Republic Act No. 387.

India and Pakistan are in a similar position, since they have petroleum rules promulgated under brief enabling

legislation. These rules cover substantially the same subjects as legislation in other countries, for example, the Indian Petroleum Concession Rules, 1949, as amended up to 1955, and the Pakistan Petroleum (Production) Rules, 1949, as amended up to 1954. In addition to the latter rules, provisions have been included from the Pakistan Income-Tax Act, 1922 (XI of 1922), as amended by the Finance Act, 1956.

Petroleum development in China (Taiwan) is separately dealt with in a brief set of regulations (No. 7098) Regulations Covering the Exploring and Mining of Petroleum Mines, promulgated by the Executive Yuan in 1954.

In Japan, under the Law of Temporary Measures for Expediting Exploration of Petroleum Resources, 1954, petroleum operations in certain districts are excepted from the otherwise generally applicable provisions of the Japanese Mining Law, and the Japanese Petroleum Exploration Company Law No. 152 of 1955 establishes a partially government-owned corporation to develop petroleum resources.

Except for Mexico, whose constitution prohibits the grant of petroleum concessions, the legislation of the countries surveyed in this part envisages petroleum development by private enterprise subject to regulation, supervision and surveillance of the Government. Most such legislation also refers to exploration and exploitation by the Government itself, although the relevant legislative provisions are less detailed.

Appended to this part is the text of the agreement between the Government of Iraq and the Iraq, Mosul, and Basrah Petroleum Companies dated 3 February 1952 and ratified by Special Law No. 47, 17 February 1952.

PETROLEUM AREAS: DISTRICTING, OPEN AREAS, NATIONAL RESERVES

Provision is sometimes made in petroleum legislation for the division into districts or zones of national territory either for the purpose of administration and supervision of petroleum operations or for the purpose of providing different terms for different regions according to the difficulties of operation in each. Applicable regulations and conditions for concessions may vary according to the one.

Areas are also distinguished as open areas, in which concessions are granted according to the regular procedures set forth in the law, or as reserved areas, in which

concessions are granted only in accordance with special procedures, sometimes only after competitive bidding (see section below on grant of direct exploitation rights, provision for competitive bidding). In several laws, reserved areas are defined as including tracts previously held under a licence, and thus already explored, which have reverted to the State.

Some legislation designates areas as available exclusively for government petroleum operations.

Israel The Petroleum Law provides that the Minister, after consultation with the Petroleum Board, may determine

and redetermine petroleum districts. He may further declare the whole, or any part, of a petroleum district open for petroleum exploration and production or close any open area (sections 4 and 5). However, no changes of the boundaries of a district or open area may affect a right held under a permit, lease or licence (section 79).

The Minister may also designate land which may be leased only after competitive bidding (section 28).

Italy The Act establishing the National Hydrocarbons Agency (ENI) designates a zone in the Po Valley within which ENI, subject to then existing rights, granted exclusive exploration and exploitation rights (Law No 136, 10 February 1953, article 2).

The remaining areas are available for permits and concessions in accordance with the law governing exploration and exploitation of liquid and gaseous hydrocarbons (Law No 6 of 11 January 1957).

Areas reserved to the State comprise corridors adjacent to the perimeter of each concession and tracts becoming available through the reduction, expiration and forfeiture of concessions. Concessions in such areas if not granted to ENI are awarded after competitive bidding at public auction (Law No 6 of 11 January 1957, article 29).

Libya Under the Petroleum Law, the territory of Libya is divided into four zones, the limits of which are described in article 5.

Peru For the purpose of the application of the Peruvian Law, the national territory is divided into four zones, one of which is the continental shelf, and the boundaries of which are described in article 14. No one concession may lie in more than one zone. The Peruvian law also provides for national reserves as follows:

"Article 59. There are designated as National Reserve Areas, those territorial extensions which, in conformance with the provisions of this law remain exempt from the ordinary system of concessions, allocation of which can only be made by called for bids.

"Article 61. Reserved Areas are:

1. Those areas reverting to state ownership in conformance with the provisions of Articles 47 (areas of exploration concessions not included in areas of exploitation) and 130 (areas of concessions affected by nullification, caducity or which have expired).

2. The zone designated as the continental shelf, and
3. Those areas expressly reserved by Supreme Resolution, issued with the approval of the Council of Ministers.

"Article 66. The Executive Power, when it deems such action advisable, may, by means of Supreme Resolution issued with the approval of the Council of Ministers, remove from reservation the areas specified in Article 61, indicating clearly the location and boundaries of the liberated zone."

Philippines Under the Philippine Petroleum Act of 1949, the Secretary of Agriculture and Natural Resources is authorized to divide the prospective petroleum lands of the Philippines into prospective petroleum regions. Under this authorization, six petroleum regions were established (Mines Administrative Order No V 3).

The Act further authorized the establishment of petroleum reservations, which the Government itself or persons under government contracts of service may explore, develop and exploit (article 13).

Free areas are open to application for exploration concessions under the regular procedure of the act. National reserve areas are areas previously included in a concession but no longer covered by any petroleum right and for which concessions may again be granted only after published request for applications (articles 14 and 15).

Turkey Areas for division into districts or which are to remain open are decided upon by the Council of Ministers under article 45 of the Turkish Law, which reads as follows:

"(1) For the purposes of this Law, Turkey may be divided by decision of the Council of Ministers into several districts. Such districts may be modified and redetermined. A district may not comprise less than 3,000,000 hectares.

"(2) By decision of the Council of Ministers, the whole or any part of a district may be declared opened to licence or lease, or an open area may be modified or may be closed in whole or in part.

"(3) No decision under the foregoing subarticles shall adversely affect acquired rights."

The Council of Ministers may also designate areas subject to lease by competitive bidding (article 64). The Council divided the country into nine districts by a decision dated 4 April 1954.

RIGHTS TO CONDUCT PETROLEUM OPERATIONS

Necessity of Grant by Government; Governmental Discretion

Generally, three stages of operations are distinguished in petroleum legislation: first, preliminary investigation (reconnaissance) involving surface exploration, geological and geophysical surveys and core drilling, but excluding test drilling; second, exploration or prospecting including test drilling; and third, production.

In all recent legislation surveyed, all exploration and exploitation operations require a permit, licence, lease or concession with the exception, in some legislation, of preliminary surface exploration or "reconnaissance".

Israel Thus, for example, the Israeli law provides that "no person shall explore for petroleum except under a preliminary permit, licence, or lease. No person shall produce petroleum except under a licence or lease" (article 6).

Libya The law provides that "no person shall explore or prospect for, mine or produce petroleum in any part of Libya unless authorized by a permit or concession under this Law" (article 1)

Philippines The law provides that "the right to explore for, exploit, develop or utilize the petroleum resources described in article 3 hereof¹ may only be granted to duly qualified persons by means of concessions in accordance with the provisions of this Act" (article 5)

Turkey The law provides that "no petroleum operation may be conducted except under a permit, licence, lease or certificate granted under this law" (article 5)

The initial grant of petroleum rights is discretionary with the government. General statements on the standards of discretion are sometimes included in the petroleum law or indicated in the information required of the applicant and considered by the authorities (for example in Turkey). Some laws provide that the government petroleum authority may exercise discretion, not only in deciding whether or not to grant a petroleum right, but also in granting petroleum rights on terms or conditions different from those set forth in the law (for example in Venezuela, Philippines)

India The Petroleum Concession Rules provide that licences and leases are granted by the central Government only to persons holding certificates of approval for petroleum. Certificates of approval are issued by the central Government and applications must contain, among other things, a statement showing the previous experience of the applicant in the search for and development of petroleum and such other particulars necessary to satisfy the Government of the applicant's financial and technical competence to hold the certificate

Pakistan Agreements for concessions deviating from the regular rules are provided for in the Petroleum (Production) Rules, 1949

"41 The Governor-General may enter into agreement with any of the oil companies incorporated in Pakistan or outside Pakistan to explore, mine and refine petroleum in Pakistan, and if any of the terms of such an agreement are in conflict with any of the provisions of the foregoing rules, the terms of the agreement shall prevail"

Philippines The Petroleum Act states that the granting of concessions is discretionary with the Government, except in cases where the application is made for a concession to which the applicant has an inherent right by virtue of a concession already held. Evidence of the applicant's financial resources, organization and skills to conduct the operations is considered (articles 6 and 31)

¹ Mineral oil, hydrocarbon gas, bitumen asphalt, mineral wax and similar or naturally associated substances except coal, peat bituminous shale and other stratified mineral fuel deposits

In cases of applications for exploration or exploitation concessions within the national reserves or in cases of conflicts of applications, the Secretary of Agriculture and Natural Resources may require such benefits for the Government beyond those required in the act as bonuses, cash payment, increased royalties and work obligations, undertakings for promotion of education, public health, and the like (article 19)

Turkey The law provides in article 4 that

"The grant or rejection of an application for a petroleum right shall take into consideration

(1) the applicant's furtherance of the national interest and the objective of this Law

(2) the applicant's

(a) compliance with applicable laws, regulations, and instructions,

(b) previous activity indicating his intent to operate in furtherance of the objective of this Law,

(c) previous experience in the conduct of similar operations,

(d) financial ability to conduct the contemplated petroleum operation

(3) in choosing among applications equally eligible under the foregoing subarticles, priority of application"

Venezuela The law provides, in article 5, that the Federal Executive has generally discretionary power in granting concessions and is authorized to stipulate special advantages to the nation with any applicant, including the obligation to refine in Venezuela, payment of higher taxes and so on. Applicants in their petitions are to state whether they are applying subject to the ordinary procedure or are offering special advantages. Under article 105 of the law, special advantages to the concessionaire may be granted in the discretion of the Federal Executive in order to encourage manufacture and refining in Venezuela

"For that purpose, the Federal Executive may enter into special agreements with the titleholders of concessions conducive to the improvement of existing plants or the increase of their refining capacity, to the installation of new plants and to the improvement of ways or means of transportation, but this without detriment to agreements already entered into for the same purpose

"In the said agreements, in exchange for the obligation which the concessionaire assumes for manufacturing or refining within the country of all or part of the substances which he may extract from his concessions, all or any of the following benefits may be granted to him

"1—Exonerations and exemptions from taxes and duties covering the importation of materials, implements, machinery, installations, buildings, utensils and other articles or things destined especially for manufacturing or refining and transportation activities

"2—Exoneration from import duties on crude petroleum which enters destined to be refined in the Republic and on the raw materials and elements which are employed in refining

"3—Special rules, regulations and customs facilities in favour of such enterprises"

Conditions for granting Petroleum Rights to Foreign Companies

Foreign companies, not incorporated under domestic law, are eligible for petroleum rights under some legislation, with such provisos as the exclusion of companies controlled by foreign governments, for example, in Turkey and Venezuela, prohibition against political activity, in Libya, approval by the government, in China (Taiwan) and association of domestic capital, in India.

Legislation in other countries requires incorporation under domestic law or registration prior to acquisition of petroleum rights (Italy, Pakistan, Peru, Philippines), some of these laws also require or reserve the right to require that a given percentage of domestic capital be associated in the enterprise (Philippines and Pakistan)

China (Taiwan) Foreign companies recognized by the Government may receive a petroleum mining lease (Petroleum Regulation, article V 5).

Italy Only nationals of Italy or companies whose company offices are in Italy may obtain petroleum rights (Law No. 6 of 11 January 1957, articles 2, 29).

India The Petroleum Concession Rules require that the name and residence of a duly authorized agent resident in India be given in the case of an applicant whose place of business is outside India (rules 7 and 12). The rules also provide for association of Indian capital in the enterprise to the extent agreed on between the licensee or lessee and the central Government where the licensee or lessee is not an Indian national or a company incorporated in India. This compulsory association of capital may be required by the central Government at the time of granting a licence or a lease not preceded by a licence (rule 60).

Pakistan Under the Petroleum Production Rules, an alien or a company incorporated outside Pakistan must, unless the central Government orders otherwise, be incorporated in Pakistan for the purpose of receiving any licence or lease. Any application for a lease or licence by an alien or foreign company must give the particulars on the company which will be incorporated for the purpose of receiving the licence or lease (rules 4 and 10).

No licence or lease may be granted to any person controlled directly or indirectly by a national of a country where Pakistan nationals or companies are not accorded reciprocal rights to hold petroleum concessions (rule 9).

A licensee or lessee may be required to associate Pakistan capital to the extent of 25 per cent of all classes of capital and debentures issued by him from time to time (rule 39b)

Peru The law distinguishes as follows between national companies and foreign companies

“Article 6 For the effects of this law, a national company is considered as one constituted in conformance with the dispositions of the Commercial Code, 60 per cent of whose capital is owned by native or naturalized Peruvians always providing that, in the latter case, they have resided for at least twenty years in the national territory, that they are actually domiciled in Peru, and have Peruvian descendants and heirs. Furthermore, when these are corporate companies, at least two-thirds of the members of the board of directors shall be native or naturalized Peruvians, with the requisites set forth in this law.

“The shares shall be registered shares and may only be transferred to persons or private companies who meet the requisites set forth in this article

“Article 7 Foreign companies, in order to apply for concessions, must be registered in the Public Registers of Peru, have their legal domicile in the capital of the Republic and appoint a representative of Peruvian nationality.

“Foreign persons must be registered in the Public Registers as businessmen and have their domicile in Lima

“Article 62. The reserved areas shall be explored or exploited

(a) directly by the State

(b) by the State associated with national capital

(c) by national persons and private companies, and

(d) by those who obtain them under conditions stipulated in chapter VI (bids)

“The areas reverting to the State in conformity with Article 47 (exploration areas not taken up for exploitation) and those becoming null due to lapse of the term, if not utilized for the objectives set forth in clauses (a) and (b) shall be offered only to national persons or private companies prior to applying the provision established in clause (d) of this article”

Philippines. Under the law, only Philippine individuals or partnerships or corporations constituted under Philippine law, 60 per cent of whose capital is owned by Philippine citizens, are eligible to apply for petroleum rights. Citizens of the United States enjoy the same rights under the act as Philippine citizens by virtue of the ordinance appended to the Constitution of the Philippines (article 31)

Libya The law states that “Before the grant of a concession, the Commission may require the applicant to abstain from all political activity in Libya” (article 9, section 2)

Turkey The law provides, in article 12, that

“No person existing by virtue of law in which a foreign state holds a financial or beneficial interest of such extent or in such form as directly or indirectly to influence his actions, and no person acting for or on behalf of a foreign state may (a) hold a petroleum right or conduct a petroleum operation, (b) purchase, hold or retain a right or interest in movable or immovable property necessary to a petroleum operation, or (c)

establish or operate installations incidental to or forming part of a petroleum operation. By a decision of the Council of Ministers, an exception to this Article may be permitted."

Venezuela Article 6 of the law provides as follows

"Persons or companies either Venezuelan or foreign that are legally competent to assume obligations may acquire the concessions to which this law relates; but in no case, not even through an intermediary, shall foreign governments or states, or corporations dependent on them, or foreign companies not legally domiciled in Venezuela, be permitted to acquire concessions"

Preliminary Exploration (Reconnaissance) Rights

In most of the laws surveyed, preliminary exploration work on a non-exclusive basis may be carried out prior to the taking up of exclusive rights of exploration over defined areas. Normally, a permit is required for this preliminary work, but in Venezuela no more than a notification to the Government is needed. Such permits accord only the privilege of carrying on reconnaissance work and do not grant exclusive rights to acquire licences or leases (for example in China, Peru, Philippines, Libya and Turkey)

India and Pakistan differ in that preliminary exploration operations are carried out under an exclusive licence which carries with it the right to obtain a licence for the later stage of exploration²

China (Taiwan) The Petroleum Regulations provide that an eligible organization or company intending to prospect for petroleum should apply for permission to the Ministry of Economic Affairs which should designate a certain area for such prospecting. This permission is not considered as a franchised right for exploring and has a time limit of one year (section VII, 1)

India An exploring licence under the Petroleum Concession Rules accords the exclusive right to search for oil-bearing structures by geological and geophysical surveys and allows drilling of core holes for geological information, but not test drilling. The licence is granted for a period of two years and may be renewed for two periods of one year each. Refusal by the provincial government to renew the licence requires the prior approval of the central Government. A holder of an exploring licence has the exclusive right to a prospecting licence over such of his licensed area as he wishes (rules 3 and 20 to 23)

Israel Preliminary exploration is prohibited except under a preliminary permit, licence or lease. A preliminary permit may be granted, on application to the Petroleum Commissioner, in respect of such area and on such conditions as the Commission deems fit. The permit is accorded for preliminary investigation, not including test

² Both the Indian and Pakistan petroleum rules term the licence covering the preliminary exploration stage an "exploration licence", while the later exploration stage is covered by a "prospecting licence"

drilling to ascertain the prospects discovering petroleum. The permit holder may enter any land, but not buildings or courtyards, to carry out the specified investigation. He is responsible to the owner of the land for any damage or loss caused by his activities, and must give security or guarantee for the compensation for which he may become liable (sections 7 to 12)

Libya Surface investigation is allowed only under a preliminary reconnaissance permit valid for one year and renewable. This may be granted in respect of any specified area and entitles the holder to carry on preliminary exploration and surface reconnaissance but not drilling. Reports describing the work done are required at the end of the year. Such reports are treated as confidential. The permit does not in itself entitle the holder to a concession in the area (article 6 and schedule 1)

Pakistan Preliminary exploration including geological and geophysical surveys and geological core drilling is subject to an exclusive "exploration licence". The "exploration licence" provided for under the Pakistan Petroleum Production Rules usually precedes, and gives rise to, a right to the "prospecting licence". An exploration licence may cover an area of no more than 5,000 square miles and no less than 100 square miles, unless special exemption is granted. The initial term is of three years, renewable for periods of one year up to a total maximum of six years. If the licence is renewed, the area must in the fifth year be reduced by at least one-third, and in the sixth year by at least two-thirds (rules 15 to 20).

"Pre-exploration surveys" covering an area greater than 5,000 square miles may be permitted on such conditions as the central Government determines. Permission for such surveys does not give rise to any right to an oil exploration or oil prospecting or oil mining lease over the area covered (rule 14 A)

Peru Reconnaissance is the object of a permit

"Article 20 The Executive Power may grant permits, either simultaneously or successively, for carrying out reconnaissance surveys in the same or different free or reserved areas, to one or more persons or private companies, either national or foreign who, in its judgment, are technically competent and financially solvent.

"Permits confer only the privilege of reconnaissance of the land which is the object of the permit, and are for an indefinite period, subject to cancellation at any time by the Executive Power

"Permits for the reconnaissance of territories located within fifty kilometres of the frontier shall not be granted

"Article 21 For reconnaissance purposes, plans may be drawn up, and topographical and geodetical surveys and geological prospecting carried out by any method, as well as all other work of investigation allowed by the regulations of this law and which does not directly pertain to concessions of exploration

"Article 22 The Ministry of Development will issue regulations covering reconnaissance works, shall set forth the information to be supplied by the petitioners and shall permanently control the work carried out"

Philippines Under the Petroleum Act, a "non-exclusive exploration permit" is required for the right to undertake within Free Areas surface geological or geophysical investigations, not including exploratory drilling. This permit is granted for a period of two years, renewable for another two years at the discretion of the Secretary of Agriculture and Natural Resources. The holder of a non-exclusive exploratory permit has no right, priority or preference with respect to an exclusive exploration or exploitation concession in the area investigated. Provision is made for the rights of a discoverer who, having registered his discovery, is entitled to royalties from a subsequent concessionaire (see section below on exploitation rights). Entry on to private property in connexion with operations under the permit is subject to the consent of the owner or legal occupant of the land (articles 35 to 37).

Turkey A non-exclusive permit for geological investigation may, after application to the Petroleum Administration, be granted for such term and under such conditions as the Petroleum Administration deems fit. A permittee is liable to the owner or occupant of land for damage or loss occasioned by the investigatory work (articles 46 to 49).

Venezuela No permit is required for surface exploration. Any person who would be eligible for a concession may, after giving notice in writing, freely undertake surface exploration or free areas including core drilling not exceeding 100 metres. Zones in which unrestricted exploration is prohibited may be established by the Federal Executive. Such surface exploration may be undertaken on privately owned lands with the permission of the owner or occupant. Failing such consent, application may be made to the Minister of Development (Fomento) who may authorize the procedure for acquiring temporary occupation in accordance with the Law of Expropriation for reason of Public Utility (Law of Hydrocarbons 1943, section 2, as amended by Law of 24 August 1955).

Exploration Rights

Under the modern petroleum legislation surveyed, exploration operations require a licence or concession, which is in all cases exclusive³. The shape and area covered by an exploration right is prescribed in most laws; some also place a limit on the total holdings held by any one person or company. However, no such limit is provided in Venezuela. Exploration rights are subject to a time limit under all laws.

³In certain countries (Pakistan and India) the exclusive exploration phase is divided into two stages, first "exploration", followed by "prospecting" each covered by a separate licence. The first stage may be omitted if the applicant so desires. The exclusive "exploration licences" in India and Pakistan are described above in section on preliminary exploration (reconnaissance) rights.

AREA AND SHAPE OF TRACT UNDER EXPLORATION RIGHTS

China (Taiwan) Under the Petroleum Regulations there are two alternative methods of defining the area subject to an exploration right. The area may be either 50 per cent of the area covered by the prospecting (reconnaissance) right already held by the applicant, or the whole petroleum producing area may be divided into a north and a south section, either of which may be assigned to one application (article VIII).

Israel The law prescribes a maximum of 400,000 dunams (40,000 hectares) for any one exploration licence and provides that "no licence shall be granted unless its area conforms with such requirements as to contiguity, compactness and ratio of length to width as may be prescribed by regulations." (article 17). The regulations provide, among other things, that the maximum length of the area applied for should not exceed seven times its maximum width (Petroleum Regulations, 5713-1953, section 10). No person may hold more than three exploration licences or more than one million dunams (100,000 hectares) in each of the four petroleum districts (article 17).

Italy. The law provides that

"The exploration area shall be square or rectangular in form, excepting any side coinciding with the boundary of the State. If of rectangular form, the shorter side shall not measure less than one-fourth the length of the longer side." (Law No. 6, 1957, article 6).

An exploration permit may not be granted for an area in excess of 50,000 hectares (article 3), the area is reduced by 25 per cent each time the permit is renewed, except if the area to be measured would be less than 3,000 hectares (article 12). No one individual, agency or corporation may directly or indirectly acquire exploration permits totalling more than 300,000 hectares in the whole of Italy, or 150,000 hectares in any single region, or may acquire permits for contiguous areas (article 3).

Pakistan Under the Pakistan Petroleum Production Rules, exploration, including test drilling, is subject to an oil prospecting licence. The area covered in such a licence may cover an area of no more than 1,000 square miles, in the case of alluvial areas, or 100 square miles in other cases, unless special exemption is granted. The area for which the licence is granted must be compact and either limited by well marked physical boundaries, or bounded by straight lines, the shape being determined by the geological setting (rules 20 to 22). No one person may hold more than 2,000 square miles under a prospecting licence in West Pakistan or 2,000 square miles in East Pakistan (rule 6).

Peru The law sets a maximum of 20,000 hectares for any one exploration concessions in the coastal and sierra zones, and 50,000 hectares in the eastern zone. The area is to be rectangular where possible and "the sides of the

rectangle shall be in a proportion of 1 1 to 1 4 with orientation from north to south and from east to west" subject to certain exceptions (articles 27 and 31).

"One concessionaire may request and obtain the area corresponding to 20 concessions of exploration in each zone. Any excess over this area shall be granted only by calling for bids as established in chapter VI and for each bid only up to 10 concessions in the coastal zone, and 20 concessions in the sierra and eastern zones shall be granted." (article 28)

Philippines Under the Petroleum Law, exploration concessions are granted in lots as compact as possible, and either rectangular or bounded by natural boundaries or other concessions already granted. The length of the rectangle should be no more than five times the width. No lot should be larger than 100,000 hectares or smaller than 20,000 hectares. No one person may hold more than 500,000 hectares in any one petroleum region (of which there are six) or more than 1,000,000 hectares in the whole of the Philippines (article 44)

Turkey The law prescribes a maximum of 50,000 hectares for one licence and provides that "A licence area shall be bounded by north-south and east-west straight lines. The ratio of length to width of these areas, their contiguity to other areas, and their compactness shall conform to the provisions of the Regulation" No more than eight licences may be held in each of the nine petroleum districts. (articles 53 and 54) The regulations place no restriction or contiguity (article 88) and provide that licences shall be "reasonably compact" with a length/width ratio not exceeding 1 7 (article 89)

The Libyan and Venezuelan laws are similar in having exploration-exploitation concessions

Libya The law provides that "the boundaries of every concession granted hereunder, shall conform as far as possible to the grid lines of the official map of the Commission" (article 9, section 7) No specific maximum area is set for any single exploration-exploitation concessions, they are, however, subject to area reduction over a period of years (see below section on exploitation rights) Restrictions on total holdings by any one person are provided for as follows

"The maximum number of concessions and the total areas which may be held at one time by any person are as follows

(a) three concessions in each of the First and Second Zones and four concessions in each of the Third and Fourth Zones provided that

(i) the Commission may grant concessions in excess of the maximum number permitted hereunder and shall give reasonable consideration to applications submitted for that purpose,

(ii) no concession in which there is an oil or gas well shall be included in computing the number of concessions held by a concession holder,

(b) 30,000 square kilometres in each of the First and Second Zones and 80,000 square kilometres in each of the Third and Fourth Zones.

"If the Commission deems it to be necessary in order to develop areas not included in any pending application or existing concessions, the Commission may cause to be published in the Official Gazette a notice inviting applications for concessions in respect of those areas and may grant concessions in accordance with the provisions of this Law to persons who submit such applications and, for the purpose of this paragraph, such applicants shall be deemed not to hold any concessions in the Zone concerned at the time of such application" (article 9, sections 8 and 9).

Venezuela The law sets 10,000 hectares as the maximum area originally covered by any single exploration-exploitation concession and stipulates that the map accompanying the application for exploration-exploitation concessions shall show a lot having a "rectangular form and oriented by the astronomical north-south and east-west lines, save in cases where it adjoins other concessions the shape or position of which does not permit the said demarcation, or where the applicant chooses to make use of some natural boundary." (articles 7 and 12)

DURATION OF EXPLORATION RIGHTS

China (Taiwan) Under the Petroleum Regulations, exploration rights are granted for a two-year period and may be renewed for another two years

India. Under the Indian Petroleum Concession Rules, a prospecting licence is granted for a maximum period of three years renewable for two periods of one year each. The provincial government may refuse renewal for special reasons (rule 34)

Israel The law provides for a three-year term renewable as follows

"(1) So long as the licensee has not made a discovery in the licensed area, the Commissioner may extend the term of the licence if it appears to him that there is good and satisfactory cause for doing so, and he shall do so if no discovery has yet been made in that petroleum district and the licensee is doing test drilling with due diligence, provided that the total term of the licence shall not exceed seven years

"(2) Where the licensee has made a discovery in the licensed area, the Commissioner shall extend the term of the licence for such time as will give the licensee a sufficient time, not exceeding two years, within which to define the petroleum field" (section 18)

Italy Under the Italian law, the initial term of an exploration licence is three years. The licensee is entitled to two extensions, each for two years, if he has complied with the exploration requirements (law No. 6, 1957, article 7).

Libya There is no such specific provision for the time in which the holder of a concession must present a plan for exploitation. Provision is made for the automatic reduction of the concession area over a period of ten years to one-quarter or one-third of its original size (article 10, see below).

Pakistan Under the Petroleum Production Rules, the initial term of an oil prospecting licence may be no longer than four years, plus one year renewal, and in the discretion of the Government further renewals for periods of twelve months each for so long as necessary to enable the licensee to hold areas in a geologically related group until they are tested in accordance with a programme approved by the Director of Petroleum (rules 24 and 25).

Peru The law provides that

"Concessions of exploration confer the right to explore exclusively determined areas during a period of three years in the coastal zone, five years in the sierra, and six years in the eastern zone. These periods may be successively extended twice, by extensions of one year each in the coastal zone, and by two years each in the sierra and eastern zones. Such extensions shall be granted if the applicant has complied with the provisions of articles 41 (undertaking of works and structures prescribed by regulations) and 121 (deposit)" (article 23).

Philippines Under the Petroleum law, the maximum initial term of an exclusive exploration concession is four years, renewable, provided that there has been compliance with the concession contract and regulations, for a two further periods of three years each, making the maximum total ten years (article 46).

Turkey The law provides for a six-year term for an exploration licence, renewable for periods of two years if exploration is carried out diligently up to a total period of ten years from the original effective date. When a licensee makes a discovery on his licence area, the petroleum administration shall extend his licence term for a period of no more than five years, but sufficient for the licensee to define the petroleum field (article 55)

Venezuela The law provides that a holder of an exploration-exploitation concession must apply within three years (with a possible six months extension) for exploitation rights over specific parcels of land within his original holdings. (It should be noted that in Venezuela preliminary exploration is free and subject to no time limit, see section above on preliminary exploration rights)

Exploitation Rights

EXTENT OF EXPLOITATION RIGHTS INHERENT IN EXPLORATION RIGHTS (AREA REDUCTION)

The petroleum laws surveyed assure the holder of an exclusive exploration right that he will be permitted to proceed to exploitation operations on compliance with the

applicable law and regulations. Where exploitation follows exploration by the same concessionaire or licensee, one type of provision prescribes a given fraction, most usually one-half, of the exploration area which the licensee or concessionaire has an inherent right to exploit (for instance, in Libya, Peru, Philippines, Turkey, Venezuela). Under another type, the exploration right carries with it the right to obtain a concession or lease to exploit any area within the exploration area, subject only to the generally applicable maxima for leases or exploitation concessions (Israel, India, Pakistan).

China (Taiwan) Under the Petroleum Regulations, the area covered in a petroleum mining right may be up to 50 per cent of the exploration area already held by the applicant (article VIII)

India Under the Petroleum Concession Rules, a prospecting licensee has the exclusive right to a mining lease for petroleum over any part of the land covered in his licence, subject only to the generally applicable maximum of 1,000 square miles for total lease holdings (rule 37).

Israel An exploration licensee, having made a discovery, is entitled to a lease of any area within his licensed area subject to the maximum prescribed for any one petroleum lease, that is, 250,000 dunams (sections 26 and 27)

Italy. The law provides that an exploration permit holder who has found liquid or gaseous hydrocarbons in commercial quantity shall be granted one or more exploitation concessions within the area in which the well is located, provided that he applies and presents a development plan within 130 days of the date of the discovery (Law No 6, 1957, articles 13 and 14).

Libya Exclusive exploration and exploitation are covered in one concession, and the following provision is made

"Within a period of five years from the date of a concession, the concession holder shall reduce the concession area to 75 per cent of its original size, within eight years from the said date, the concession holder shall further reduce the concession area to 50 per cent of its original size and within ten years from the said date the concession holder shall further reduce the concession area to 33-1/3 per cent of its original size in the case of areas located in the first and second zones and to 25 per cent of its original size in the case of areas located in the third and fourth zones, provided however that in no case shall the concession holder be required at any time to reduce the concession area to less than 3,000 square kilometres each in the first and second zones and to less than 5,000 square kilometres each in the third and fourth zones" (article 10, section 1)

Pakistan A prospecting licensee is entitled to an oil mining lease of any or all of the area covered in his prospecting licence not exceeding 100 square miles, save where special exemption is granted by governments. Up to one-

tenth of the mining lease area may be sited outside the prospecting area, provided it adjoins the remainder of the lease (rules 29 and 30)

Peru The concession of exploration confers the inherent right to obtain a concession of exploitation, comprising a total area of no more than 50 per cent of the area of the exploration right (article 26)

Philippines Under the Petroleum Law, an exploration concessionaire is entitled to an exploitation concession covering one or more parcels of land covered by his exploration concession. The total area of the exploitation concession to which the exploration concessionaire has a right may be no larger than one-half of his exploration block (article 53)

Turkey An exploration licensee has the right to a lease (granting exploitation rights) on the terms in force at the time the related licence was granted and covering areas selected by him which covering not more than one-half of his licence area (article 63)

Venezuela An exploration-exploitation concession covers both rights, the parcels which the concessionaire has an inherent right to select for exploitation may total no more than one-half the original area (article 18). The resolution approving the concessionaire's plan showing exploitation parcels accords to the holder of an exploration-exploitation concession the right to exploit. With respect to the remaining one-half, which becomes part of the national reserve, he has the same right to bid as any other bidder, except that he is entitled to a preference as against a bidder offering equal terms (articles 7, 22 and 25)

GRANT OF DIRECT EXPLOITATION RIGHTS PROVISIONS FOR COMPETITIVE BIDDING

Under the law of some countries, the acquisition of direct exploitation right not preceded by an exploration right, is separately provided for. It appears that direct exploitation rights are typically granted in areas which have been previously covered by an exploration right usually and which have reverted to the State as part of the National Reserve.

In some legislations no direct exploitation right may be granted other than after competitive bidding (Turkey, Israel). Under others the bidding procedure is limited to the acquisition of direct exploitation rights in the National Reserves, and not to other areas (Peru, Venezuela). And under the other laws, exploitation rights may be directly applied for in the ordinary course (India, Venezuela).

India The Petroleum Concessions provide that anyone holding a certificate of approval may apply directly for a mining lease. No provisions are made for special procedures in cases where mining leases are not preceded by prospecting licences (rule 57)

Israel The law makes the following provision for competitive bidding for leases of lands not covered by existing exploration or exploitation rights

"(a) The Minister may, after consultation with the Board, announce by notice published in *Reshumot* that land in respect of which no petroleum right subsists, and which is not included in a pending application for a petroleum right, shall be available for competitive bidding for a lease, while such a notice is in force, no petroleum right in respect of such land shall be granted, other than a lease by competitive bidding

"(b) The procedure for competitive bidding and for the grant of a lease in pursuance thereof shall be prescribed by the regulations

"(c) Bids for a lease by competitive bidding shall be brought before the Board, the Board, after considering the bids, shall forward them, with its recommendations, to the Commissioner, who shall consider them and decide thereon, the Commissioner shall not make a decision deviating from the recommendations of the Board, except with the approval of the Minister

"(d) There shall be no obligation to accept the highest or any bid

"(e) Where it has been decided to grant a lease by competitive bidding, such lease shall be issued by the Commissioner" (section 28)

Italy Exploitation concessions in reserve areas (i.e. areas composed of corridors between concessions and areas available through reduction, or expiration of concession) are awarded at public auction, to which state owned corporations are not admitted (article 24)

"Article 30—Reserved Areas—Auction—Notices.

Auctions shall be called by means of notices published in the *Official Hydrocarbons Bulletin*, referred to in article 43 below. The notices shall specify

(a) Particulars of the area put up at auction,

(b) Amount of the base price on the basis of which bids should be submitted,

(c) Time allowed to the bidders—not less than 15 days and not more than 60 days—for taking cognizance of all data on the size of the deposit and structures, and for (filing) a tentative working plan showing the financial means that the concession holder is required to possess, and the basic works he is required to carry out,

(d) The time allowed to the awardee for starting drilling work, which shall in no case exceed 15 months from the date on which the concession is awarded at auction,

(e) The time, of not less than 30 days, and the conditions for the filing of the application and sealed bid, and the office to which the latter must be sent or submitted,

(f) The documents required for admission to the auction and the bidder's affidavit to the effect that he possesses the requirements for obtaining the concession,

(g) The bond, equal to the amount of the fixed basic auction price, which the bidders are required to post, and the procedure for posting it,

(h) The day and place where the provisional awarding shall be made

“Article 31—Reserved Areas—Auction—Opening Bids

On the day and at the place specified in the auction notice, a Commission appointed by the Minister of Industry and Trade, after having decided which bidders are to be admitted to the auction on the basis of their possession of the necessary requirements and of the regularity of the application, shall open the sealed bids and award the concession to the highest bidder.

A *procès verbal* of the auction proceedings shall be prepared.”

Peru The law provides for applications for direct exploitation concessions in the same form as for exploration concessions except in respect to reserved areas. Included in the national reserves are areas of exploration concessions not taken up for exploitation by the concessionaire or reverting to the State for other reasons. Such lands are open for competitive bidding if not explored or exploited directly by the State, or by the State associated with national capital, or by Peruvian persons or companies (articles 67 to 74). Bids are submitted as sealed proposals for the improvement of the areas established for concessions. The law provides for the following procedure after receipt of the sealed bid

“The Ministry of Development will duly announce through the newspapers the qualifications for acceptance of the most advantageous proposal for the State, which shall remain in the Bureau of Petroleum at the disposal of the interested parties, and shall set the day, hour and place when the bids shall be reopened for the purpose of receiving verbal improvements on the said offer, allowing for this purpose a period of not less than sixty days.

“On resumption of the proceedings, those bidders who have made written proposals shall be invited to improve verbally the proposal which has been qualified as the most advantageous for the State, offering premiums in cash as many times as they deem it convenient until closing the bids. Detailed notarial minutes shall be drawn up of the proceedings which may be signed by the interested parties present.

“Within the thirty days after the close of the bids, the Ministry of Development, by Supreme Resolution, issued with the approval of the Council of Ministers, shall determine the proposal which has been accepted and shall arrange for the granting of the respective contract which shall be converted into a public deed within the period of thirty days” (articles 70 to 72).

Philippines. Under the Petroleum Law, an exploitation concession may be granted directly without a prior exploration concession to the discoverer of a natural deposit or seep or natural gas emanation, if this discovery is registered with the Bureau of Mines. If a concession is granted, within a period of ten years subsequent to registration of the discovery, granted to a person other than the discoverer, the discoverer has nonetheless the right to 10 per cent of the royalties payable by the concessionaire

to the Government for a period of ten years from the time commercial production is begun from any well within the discovery area (articles 53 and 65)

Exploitation concessions may also be granted directly to persons not holding exploration concessions for areas within the national reserves, which are composed of land previously covered by exploration concessions. Exploitation concessions in national reserve areas may be granted only after the Secretary of Agriculture and Natural Resources has published notices describing the lands open for applications. The concession is granted, in the discretion of the Minister, to the applicant whose offer best serves the interest of the Government. Such offers include offers of additional benefits beyond those prescribed in the Law (articles 15, 19 and 56)

Turkey The law provides that “A lease may not be applied for or granted except in the ways set forth in articles 63 and 64” (article 61). Article 63 deals with the right for an exploration licence holder to acquire a lease (see above section on extent of exploitation rights inherent in exploration rights). Article 64 reads as follows

“(1) By decision of the Council of Ministers, an area as to which no exploration or exploitation right is in effect may be declared subject to lease by competitive bidding. All or part of an area previously declared subject to lease by competitive bidding may be declared no longer subject to such bidding.

“(2) No licence or lease may be granted except by competitive bidding on an area previously declared subject to lease by competitive bidding without revocation of such declaration.

“(3) Competitive bidding mentioned in subarticle (1) shall be conducted by the Petroleum Administration in accordance with the Regulations

“(4) An offer of an area for competitive bidding shall not involve obligation to accept the highest or any bid.”

Venezuela The law provides for direct exploitation concessions as well as for the exploration-exploitation concession described above. Exploitation rights in national reserves, including areas proceeding out of prior concessions, must be the subject of sealed bidding. The proposition most favourable to the national interest is accepted subject to the preference accorded to the holder of the exploration-exploitation concession previously covering the land bid upon (article 25).

MAXIMUM AREA OF EXPLOITATION RIGHTS AND RESTRICTIONS ON TOTAL HOLDINGS

Provisions affecting the shape and compactness of areas under an exploitation lease or concession are made as in the case of exploration licences or concessions. Maximum areas for exploitation are prescribed in some legislation which are in all cases less than the maximum for exploration.

TERMS OF EXPLOITATION RIGHTS

China (Taiwan) Under the petroleum regulations, if the method of one-half apportionment is not used (if, that is, the area for exploitation is to be not more than one-half of that for exploration or one-quarter of that for prospecting), the alternative is to divide the petroleum producing area into north and south sections each of which may be the subject of one exploitation lease

India No maximum area for any one mining lease is prescribed in the Petroleum Concession Rules. No one person may hold, solely or jointly, mining leases totalling more than 1,000 square miles (rule 44)

Israel The law provides that no single lease may be larger than 250,000 dunams and no one person may hold leases totalling more than 750,000 dunams in any one petroleum district (article 27)

Italy An exploitation concession may not exceed 3,000 hectares. A corridor, adjacent to the perimeter of the concession, is reserved to the State. This corridor is one kilometre wide if the concession is for 3,000 hectares, and is proportionately reduced to a minimum width of 500 metres, if the area of the concession is less than 3,000 hectares (law No. 6, 1957, article 14). No one person, agency or corporation may hold more than 80,000 hectares under exploitation concessions (article 15)

Pakistan Under the Petroleum Production Rules, no oil mining lease may, except where special exemption is granted, exceed 100 square miles. No one person may hold under mining leases a total of over 500 square miles, except in East Bengal (rules 5 and 30)

Peru The law provides that the maximum extension of any direct exploitation concession shall be 10,000 hectares in the coastal and sierra zones and 25,000 hectares in the eastern zone. Ten concessions may be obtained in each zone (article 53)

Philippines The Petroleum Law provides that the total area of an exploitation concession may be not more than 50,000 hectares nor less than 10,000 hectares. No person may hold more than 250,000 hectares of exploitation area in any one petroleum region, or more than 500,000 hectares in the whole of the Philippines (articles 57 and 58)

Turkey The law provides that a lease area shall be not more than 25,000 hectares and that no one legal person may directly or indirectly hold lease areas totalling more than 150,000 hectares in one district (of which there are nine), (articles 61 and 74)

Venezuela The law does not set a maximum which may be covered in a direct exploitation concession title. Title to such concessions where they are national reserves are granted in accordance with the plans of the previous concessionaire, and one title may cover several demarked parcels, each of 500 hectares, corresponding to the same exploration plot (articles 7 and 25).

China (Taiwan) Under the regulations, an exploitation lease is initially granted for a twenty-year term renewable for another twenty years (VII-3)

India Under the Petroleum Concession Rules, a lease is initially granted for no longer than twenty years, renewable for no longer than the original period. Royalty, dead rent and surface rent are charged at the rates in force at the time of renewal (rule 51)

Israel The law provides that

“(a) The term of a lease shall be thirty years from the date of the grant thereof, except that where a lease is granted pursuant to a licence extended after a discovery in the licensed area, the said term shall run from the date on which the licence would have expired but for such extension

“(b) Where a lessee has complied with his obligations as such, his lease shall be renewed for an additional term of twenty years on reasonable terms fixed by the Commissioner, after consultation with the board.” (section 29)

Italy The law provides as follows

“Article 18—The duration of the concession shall be of twenty (20) years

“After the expiration of two-thirds of that period, the concession holder shall be entitled to receive a ten-year extension, provided that he has fulfilled the production programme and complied with all other obligations deriving from the concession

“The extension shall be granted by Decree of the Minister of Industry and Trade, after hearing the views of the Technical Committee on Hydrocarbons”

Libya The law provides that

“Concessions shall be granted for the period of time requested by the applicant, provided that such period shall not exceed fifty (50) years. A concession may be renewed for any period such that the total of the two periods does not exceed sixty (60) years.” (article 9, section 4)

Pakistan The Petroleum Production Rules provide that the initial term of an oil mining lease should be thirty years renewable for another thirty years on a yearly and surface rent not more than twice that payable under the original lease (rule 34). Royalty on renewal is that in force on the day after expiry of the original term of the lease

Peru The law provides that

“Exploitation concessions confer the right to exploit exclusively the substances to which this Law refers, in certain areas and for a period of forty years when in the coastal zone, forty-five years when in the sierra, and fifty years when in the eastern zone. These periods may be extended according to the judgement of the Executive Power for a term of twenty years when on the coast and twenty-five years when in the sierra and east; always providing that the concessionaire has complied with the disposition of articles 122 and 123 (deposit and compliance with laws and regulations).” (article 42)

Philippines. The Petroleum Law provides that the initial term of an exploitation concession may be not longer than twenty-five years, renewable for another twenty-five years at the option of the concessionaire (article 72).

Turkey The Law provides as follows

“Article 65 (1) The term of a lease shall be forty years from its effective date.

(2) If a licence has been extended for development under subarticle 4 of article 55 after a discovery (see above) on the licence area, the time of such extension shall be credited as part of the term of the lease.

(3) Upon application by a lessee who has complied fully with his obligations, his lease may be renewed by a

decision of the Council of Ministers for a total term not exceeding twenty years on reasonable terms set forth by the Petroleum Administration”

Venezuela The law provides that exclusive exploitation rights have a term of forty years (article 26) with provision for a possible extension on current terms for a like period (article 80). Where the exploitation right was accorded to the holder of an exploration-exploitation concession, the forty-year period commences from the date when the resolution of approval (see above) became final. In the case of a direct exploitation concession, the term is forty years from the date that title became effective (article 26).

OBLIGATIONS OF PETROLEUM RIGHT HOLDERS

Working Obligations

Modern legislation surveyed usually provides that a petroleum right shall be withdrawn unless operations are begun promptly. Furthermore, operations must be carried out with diligence, technical efficiency and in conformity with the regulations.¹

Most of the laws set deadlines for the commencement of operations. Some legislation further specifies criteria for diligence such as minimum expenditure or minimum numbers of employees (Libya, Pakistan, Philippines). Holders of more than one licence or concession are, under certain laws, relieved of the duty simultaneously to fulfil working obligations on all their holdings, and are permitted to concentrate on one particular concession or licence area for a given time (Philippines, Turkey)

Provisions for regular reporting and submission of maps, plans and other data including discoveries are made in all laws, and some make provisions for keeping confidential certain data thus supplied (Venezuela, Israel, Libya).

India The Petroleum Concession rules require that the “lessee shall commence work within one year of the execution of the lease and shall thereafter carry them on in a proper, skilful and workmanlike manner”

Accounts on production, employment and plans and records of operations must be kept available for inspection. Any discovery in the leased area of any mineral other than petroleum or natural gas must be immediately reported to the provincial government (rule 54)

Israel The law requires the exploration licensee to commence petroleum exploration within four months from the day on which the licence is granted and to continue with due diligence so long as the licence is in force. Test drilling must begin within two years, and no more than

four months may elapse between the completion of drilling on one well and the start of it on another (articles 20 and 21).

Leases may expire after due notice if petroleum production in commercial quantities does not begin within three years, or if commercial scale production is interrupted for more than three years (article 29)

Licenses and lessees must make regular reports, in such detail as is prescribed. Information relating to the prospects of discovering petroleum and information relating to operations in a leased area is kept secret at the request of the licensee or lessee (articles 22, 23 and 37)

Italy. The law (No. 6 of 1957) provides as follows with respect to exploration working obligations

“Article 8. The permit holder shall be required to start geological and geophysical prospecting and drilling operations within the dates established in the permit. Prospecting shall not be started later than six months from the date of notification of the granting of the permit, and drilling operations not later than thirty months from the date on which prospecting started

“Article 9. The permit holder shall

(1) Carry out a programme of operations within the times set forth in the permit.

(2) Report to the mining authorities, within the times and in accordance with the procedure set forth in the permit, on the geological and geophysical prospecting surveys conducted, as well as submit in advance the drilling programme of each well for the approval of the mining authorities, supplying information as to the progress of work and the results obtained.

(3) Notify the mining authorities, within fifteen days of the date of discovery, of the finding of hydrocarbon deposits.

(4) Supply the mining authorities with all technical, financial and other data requested by them.

(5) Store, in the ways set forth in the permit, the samples of solid, liquid and gaseous materials found during the work, as well as the samples of minerals found

(6) Deliver to the mining authorities any samples requested by them.

¹ Minimum production quantities are provided for the Agreement between the Government of Iraq and the Iraq Petroleum Company, Limited, Mosul Petroleum Company, Limited, and Basrah Petroleum Company, Limited, article 5, see the appendix

(7) Comply with the provisions of Laws and Mining Regulations, as well as with the provisions set forth in the permit, and with such directions as may be issued by the mining authorities for the purpose of ensuring the proper conduct of the programme”

With respect to exploitation working obligations, Italian law provides that

“Article 20 The concession holder shall

(1) At all times carry out production in accordance with sound technical practice, so that deposits are not damaged, performing an integrated development of the production programme without unjustified interruptions

(2) Advise the mining authorities, within the times and with the procedures set forth in the concession, of progress of operations, results obtained and further exploration conducted within the perimeter of the concession

(3) Furnish all technical and financial data and such other information as may be requested by the mining authorities

(4) Store, in the manner indicated in the concession, the samples of solid, liquid and gaseous materials taken during further exploration, and samples of the minerals found

(5) Deliver to the mining authorities all samples requested by them

(6) Comply with the provisions of Laws and Mining Regulations, and also with the provisions established in the concession and with the directions which may be issued by the mining authorities in connexion with the requirements set forth in paragraph (1) above”

Libya The law specifies expenditure necessary to meet the working obligations under a concession (covering both exploration and exploitation)

“Article 11

(1) The holder of any concession granted under this Law shall, within eight months of the grant of such concession, commence operations to explore for petroleum with the concession area. He shall diligently prosecute all his operations under the concession in a workmanlike manner and by appropriate scientific methods. In furtherance thereof he shall spend in Libya, or elsewhere, not less than the following sums or their equivalent on, or in connexion with, the said operations including general organizational, overhead and administrative expenses connected therewith

(a) In respect of all concessions in the first and second zones. During the first five years at the average rate, over the period and over the total area held in the zone, of one and a half Libyan pounds (£1½) per square kilometre per annum, during the next three years at the average rate, over the period and over the total area held in the zone, of three and a half Libyan pounds (£3½) per square kilometre per annum, and thereafter during each successive five-year period at the average rate over such period of six Libyan pounds (£6) per square kilometre per annum

(b) in respect of all concessions in the third and fourth zones. During the first eight years at the

average rate, over the period and over the total area held in the zone, of one and a half Libyan pounds (£1½) per square kilometre per annum, during the next four years at the average rate, over the period and over the total area held in the zone, of three and a half Libyan pounds (£3½) per square kilometre per annum, and thereafter during each successive five-year period at the average rate over such period of six Libyan pounds (£6) per square kilometre per annum

“(2) Any sum spent during any of the working periods specified above in excess of the minimum sum prescribed for that period shall be carried forward as a credit to the Company against the expenditure requirements for the following period or periods”

Pakistan Under the Petroleum (Production) Rules, diligence in carrying out exploration and development work is required of all licensees and lessees in accordance with approved plans. With respect to oil exploration licences (preliminary exploration), the licensee must provide a minimum outlay of 5,000 rupees per 100 square miles, a prospecting licensee must provide a minimum annual outlay of 50,000 rupees per 100 square miles. Excess expenditure in any year may be carried forward (rules 19 and 20)

Peru With respect to the commencement of work by exploration concession holders, the law is as follows

“The works and structures which the exploration concessionaire must undertake with indication of the period of time within which he must execute the same, shall be established in the Regulations of the present Law” (article 41)

With respect to work by exploitation concessionaires

“Technical conditions and requisites to be complied with by exploitation concessionaires shall be established in the Regulations of this Law” (article 56)

Philippines The Petroleum Law requires that all concessionaires shall begin work promptly and continue with reasonable diligence according to good oilfield practice, and that conservation measures be taken in accordance with any rules or regulations or orders controlling the rate of production (articles 24 and 108 to 110)

An exploration concessionaire must present each year a programme of work to be undertaken. For the first year, the expenditure for exploration work must reach 50 centavos and increase 50 centavos per hectare each year for the total period of the concession. Any amount spent for exploration in one year in excess of the minimum may be credited to expenditure requirements for future years. If the concessionaire fails to comply with the minimum for one year, he must pay the deficiency to the Government. Continued failure results in cancellation (article 47).

An exploitation concessionaire must begin drilling operations within one year of the grant of the concession. Work by a concessionaire holding more than one exploitation concession in the same petroleum region may, with approval of the Secretary of Agriculture and Natural Resources, be concentrated on one concession if conducted

with diligence and with sufficient expenditure. But no one concession may remain without drilling operations for more than five years. Once production is established, production operations may not be suspended for more than six months without prior approval of the Secretary of Agriculture and Natural Resources. Only in the event of *force majeure* may suspension of operations be authorized for more than two years (articles 60 to 62)

Concessionaires must submit all information as required by the regulations, including well formation records, logs, test results, production reports and so on, technical and accounting data (articles 25 and 106)

Turkey Exploration licence holders must begin work in accordance with the following provisions

"Article 57 The licensee shall commence exploration on his licence or geological investigation outside of the same bearing on the petroleum prospects thereof within one year of the effective date of his licence and continue exploration with due diligence so long as the licence is in effect

"Article 58

(1) A licensee shall commence exploratory drilling on any one of his licences in a district at the latest within five years measured from the date of his oldest licence in that district. This period may be extended by the Petroleum Administration for a maximum of two years

(2) Within two years after a licensee has made a discovery on one of his licences, he shall commence exploratory drilling on another licence area in the same district, and within five years of such discovery, he shall commence exploratory drilling on the rest of his licences in that district. However, in the case of licences acquired after the date of such discovery, the Petroleum Administration shall decide as to waiving the performance of the operations or to extending the legal time thereof in accordance with the provisions of article 33

(3) A licensee who has commenced exploratory drilling under any of the provisions of the foregoing subarticles shall continue such drilling with due diligence, with not more than six months between the completion of one well and the starting of another "

Lessees are subject to the following working obligations

"Article 66 A lessee shall

(1) within one year of the effective date of his right, mark the boundaries of the lease area with an appropriate number of boundary markers and in the manner prescribed by the Regulations

(2) in the event of an alteration of the lease area, within four months of the effective date of such alteration, mark with an appropriate number of boundary markers the changed boundaries of the lease area as provided in subarticle (1)

(3) maintain the boundary markers of his lease area.

"Article 67 If his lease area is not already adequately developed, a lessee shall commence a development well thereon within six months of the effective date of the lease, and thereafter he shall with due diligence, and to a greater extent than already done, define and

develop each petroleum field therein, produce petroleum therefrom, seek markets for the petroleum so produced, and market it

"Article 68

(1) If a lessee has, by the end of the first three years of his lease, not produced petroleum therefrom in commercial quantities, the Petroleum Administration shall, by taking also economic conditions of production into account, grant a suitable delay of not less than 90 days. Should, within this delay, the lessee still not have produced petroleum in commercial quantities, the lease shall lapse

(2) If a lessee has produced petroleum in commercial quantities from his lease area and if production has thereafter ceased, the Petroleum Administration may, after the expiration of the first three years of the lease, serve upon him a notice requiring production in commercial quantities to be resumed within a stated period of not less than 90 days. If, in spite of the notice, the lessee does not resume production in commercial quantities, the lease shall expire at the end of the stated period, provided, however, that no notice shall be given before the expiration of six months from the cessation of production, or before the expiration of two years from the cessation of production if exploratory or development drilling is being done on the lease area with due diligence."

Venezuela The law provides no working obligations other than that implied in the need to submit maps within specified periods. An exploration-exploitation concession holder must present his maps for exploitation within three years, subject to an extension for six months at a higher tax rate (articles 20 and 73)

Exploitation concession holders have one year in which to present their plans, subject to extension of six months at a higher tax rate (articles 23 and 73)

Detailed annual reports are required (article 61). In addition, concessionaires are obliged to furnish the Federal Executive with all data required and to have a complete knowledge of the development petroleum industry in the country. It is provided that "such data and information shall be held in strict confidence should the concessionaire so request, however such reservation shall not be binding on the part of the Government for more than three years." (article 60).

Unitization of Operations

Provision for unitization of operations, and consequentially of working obligations, are made in some laws (Turkey, Israel, Pakistan). The laws of Turkey and Israel (section 38) contain substantially the same provisions on this subject

Turkey The relevant articles of the law read as follows

"Article 70 Lessees whose lease areas are situated in whole or in part in the same petroleum field, and unitization of whose operations is likely to prevent waste, to

increase production and efficiency, or to lower production costs, may unitize their operations with the approval of the Petroleum Administration if the lessees accept reasonable conditions that may be set forth by the Petroleum Administration. Such applications made by lessees shall be acted on promptly

“Article 71 Subject to the conditions set forth by the Petroleum Administration, the lessees who unitize their operations may resort to all necessary measures for the efficient operation of the unitized petroleum field, and may pay a single royalty for the aggregate production. Lessees thus united shall pay rentals for the unitized petroleum field on the basis of proportions which they shall jointly determine and establish, in addition to the rentals normally payable for these areas remaining outside of unitization

“Article 72 Unless otherwise stipulated by the Petroleum Administration, drilling and production in the unitized area shall constitute compliance with each lessee’s duty to drill on and produce from his lease area

“Article 73 Except as to conditions set forth by the Petroleum Administration and matters mentioned in the foregoing articles, unitization shall not involve changing the areas held by the lessees or their rights and obligations with respect thereto ”

Pakistan The Governor-General may by notice require lessees to co-operate in unit development at any time if he considers that it is in the interest of Pakistan in order to secure the maximum recovery of petroleum and to avoid unnecessary competitive drilling. The lessee is then required to prepare, in co-operation with other lessees in the oilfield, a development scheme for submission to the Governor-General Failing such a submission within the time prescribed in the notice, the Governor-General himself prepares the scheme (Pakistan Petroleum—Production—Rules, second schedule, part III, clause 56)

Obligations relating to Domestic Needs for Petroleum Products and to Employment and Training of Nationals

DOMESTIC REQUIREMENTS

India The Petroleum Concession Rules specify that the central Government has, in the event of a national emergency, the right of pre-emption at fair market prices of petroleum or petroleum products extracted from the area leased, and of crude oil when the lessee is permitted to dispose of this without refining. Should the central Government stipulate in the mining lease that the lessee should refine crude oil in India, the lessee may not be required at any time to refine more than the amount needed to supply India’s indigenous requirements, see rules 52 and 54 (XIX).

Israel Section 33 of the petroleum law provides as follows

“(a) The Minister may, after consultation with the Board, require lessees to supply first, at the market price, out of the petroleum produced by them in Israel and

the petroleum products produced therefrom, such quantity of petroleum and petroleum products as, in his opinion, is required for Israel consumption, and to refine it in Israel as far as they have refining facilities, and to sell it in Israel, for this purpose, the Minister may require lessees to produce petroleum from their existing wells at a rate sufficient for the said purposes, provided that no lessee shall be required

(1) to produce from any well at more than its maximum efficient rate of production, or

(2) to supply towards the required quantity a percentage of his production exceeding the percentage required from any other lessee, unless the Minister sees fit to deviate from this rule when this is in his opinion required for reasons of state security or in order to prevent waste or inequity towards a particular lessee

“(b) ‘Israel consumption’ includes the bunkering of ships in Israel ports and the fueling of aircraft in Israel ”

Pakistan Under the Petroleum Production Rules, the Government has the right “to require the licensee or lessee to meet the internal requirements of Pakistan to the satisfaction of the Government of Pakistan before exporting either crude oil or any of its products” In the event of a national emergency or war being declared, the Government is empowered to pre-empt crude oil lying on the land, provided that the fair market value of such pre-empted oil be paid to the licensee or lessee

Peru Article 117 of the law provides as follows

“Concessionaires are obliged to supply preferentially and pro-rata, according to their production, the crude oil and by-products required for the internal consumption of the country in the amount and at the prices determined by the Government, whether derived from their own petroleum fields or purchased in the refineries of the country They are also especially obliged to supply the needs of national defence in accordance with the dispositions determined by the Executive Power and may only export the surplus

“The concessionaires are also obliged, when the Executive Power notifies them with 120 days anticipation, to deliver, in crude petroleum, a volume equal to the value represented by the 20 per cent non-reimbursable export tax paid on account of the 50 per cent tax on profits, instead of delivering this 20 per cent in cash.”

Philippines The Petroleum Law provides that the exploitation concessionaire is obliged to “develop and bring into production the exploitation area granted to him and any discovery areas that he may find, and to continue such development and production until at least the domestic consumption requirements of petroleum in the Philippines, determined in consultation with the Secretary of Agriculture and Natural Resources, are met by the total net production from all sources of indigenous production in the Philippines, if the petroleum deposit discovered shall permit such development in accordance with good petroleum engineering practice” (article 60)

An exploitation concessionaire may be required to refine part or all of the crude oil produced in a refinery in the Philippines in order to meet domestic requirements (article 71)

In a national emergency, concessions are subject to the Government's right to requisition or restrict disposal of products produced under concessions (article 99)

Turkey Article 13 of the law provides as follows

"(1) By a decision of the Council of Ministers, holders of petroleum rights may be required, out of the petroleum produced, or processed by them in Turkey and in proportion to the amount of petroleum so produced or processed to make available for the needs of the country, at market price

- (a) petroleum other than refined products,
- (b) refined products, insofar as they have refinery facilities in Turkey

"(2) The Minister may require holders of petroleum rights to produce petroleum from their existing wells at a rate sufficient for the foregoing purposes. But no holder shall be required

- (a) to produce from any well at more than its maximum efficient rate of production, or
- (b) to increase his production beyond the proportion required from other petroleum producers

By a decision of the Council of Ministers, deviation from this rule may be made to the extent necessary to prevent waste or to meet the exigencies of national security or equity

"(3) By needs of the country is meant the petroleum corresponding to the requirements of Turkey's armed forces and civilian population. This quantity includes the fuelling of ships in ports and of aircraft in airports in Turkey and the petroleum which the refineries in Turkey must refine to meet the requirements mentioned in this subarticle."

EMPLOYMENT AND TRAINING OF NATIONALS

India The Petroleum Concession Rules provide that, in granting a licence or lease, the central Government, may require that Indian citizens be employed at all levels of the organization to the extent agreed between the central Government and the licensee or lessee and that arrangements be made for this training in India or abroad (rule 60)

Libya The following are the requirements in respect of the training and employment of Libyan subjects (clause 18)

"(1) Provided that the requisite number having adequate skill and ability is available, the minimum number of Libyan subjects employed by the company in Libya ten years from the date of commencement of operations shall have reached at least 75 per cent of the total number of persons employed by the company in Libya

"(2) The company shall, as from the date of commencement of regular exports from Libya of petroleum in commercial quantities produced in the concession area, make an annual payment to the Libyan Government of

not less than £2,500 and not more than £5,000, which payment shall be applied towards giving Libyan subjects such technical training as may be agreed upon by the Director and the Company, in order to fit them for employment in the petroleum industry or in related undertakings, provided however that the Company may each year reduce such payments by the amount which during that year it expended for the training and education of Libyan subjects for such purposes in Libya or abroad

Pakistan Under the Petroleum Production Rules, a licensee may be required, in the Governor-General's discretion, to employ nationals of Pakistan in his organization at all levels. The number of Pakistan personnel to be employed is determined in each case in consultation with the Director of Petroleum. A proportion of Pakistan personnel is set for operations under oil mining leases. For the first five years, one-eighth of the total number of employees, for the next five years, one-quarter and thereafter at least one-half.

Lessees and licensees must arrange for the training of Pakistan nationals either in Pakistan or abroad, as required by the Government after consultation with the Director of Petroleum (rule 39)

Peru The law requires that concessionaires shall "give preference to national personnel as employees in all departments and activities of the concessions, under the same conditions and with identical remuneration as that of foreign personnel of the same category. The same preference must be given to national labourers. The proportion of Peruvian employees and labourers to be employed by the concessionaire is established by the dispositions of Law No 7505", see article 119 (1)

Philippines The Petroleum Law requires concessionaires to give preference to Philippine citizens, where qualified, in all types of employment and to maintain training programmes (article 26)

Turkey The Petroleum Law provides that the law (No 2007) restricting the employment of aliens may, with the permission of the Petroleum Administration, be waived for the personnel required for petroleum operations (article 119). It further provides as follows

"Article 120

(1) Lessees and certificate holders shall undertake at their own expense to provide education and training in educational or professional institutions and in operations in foreign countries or, to the extent approved by the Petroleum Administration, in Turkey, in order that Turkish citizens, not less than 15 per cent of the alien personnel employed by the holders under Article 119 (*sic*), may gain proficiency in all phases of petroleum operations

(2) The persons to be sent and the places to which they are to be sent shall be determined by the holder of the petroleum right together with the President

(3) Persons being thus educated and trained shall not be liable either to the State or to the petroleum right holder who assumes their expenses as regards obligatory service or employment"

RIGHTS ENCOMPASSED IN PETROLEUM RIGHTS

Acquisition of Surface Lands for purposes of Petroleum Operations

The laws surveyed make provision for procedures whereby the holder of a petroleum right for exploration or exploitation may obtain the necessary use of surface land, even if that land is subject to the occupancy, use, or ownership of private persons. In some countries, the matter is covered, partially at least, by laws dealing generally with expropriation and compensation for the acquisition by the government in the national interest of private lands. The provisions on expropriation for petroleum purposes vary with respect mainly to the extent to which the national petroleum authority itself handles the acquisition of the necessary rights on application by the right holder.

India The Petroleum Concession Rules contain a general provision to the effect that licences and leases "shall contain, consistent with these rules, such covenants regarding the liberties, powers, and privileges to be exercised or enjoyed by the licensee or lessee as may be necessary" (rule 58)

Israel The law contains a provision similar to section 86 of the Turkish Law. It provides that a holder of a petroleum right may enter on private land only by virtue of the Lands (Acquisition for Public Purposes) Ordinance or by virtue of a surface lease acquired under sections 40 or 41 of the petroleum law itself. Section 40 provides that the holder of a petroleum right is entitled to require the Government to acquire lands on his behalf in conformity with the lands ordinance, provided that the lands are reasonably required for his petroleum purposes. The right acquired is vested in the State notwithstanding that it has been acquired at the expense of the petroleum right holder. Section 41 provides that a petroleum right holder may require of the Minister that the necessary rights in state-owned land be leased to him. In the case of unused state land, the rent is purely nominal. Otherwise, the rent is fixed in accordance with the lands ordinance (section 42)

Libya The law confers the right on the concession holder "to enter and occupy free of charge for the purposes of his operation any land other than private land, provided it is not then in the lawful occupation of some person", see article 9 (10)

With respect to privately owned or occupied land, the following provision applies

"If the concession holder fails to agree with a private land owner or lawful occupier of other than private land as to the terms on which he may enter and occupy the land in question, the concession holder shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorize such temporary occupation upon deposit by the concession holder with the Commission of a sum by way of reasonable compensation to such land owner

and/or lawful occupier for loss of, use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for a longer period than one year, the Commission shall authorize occupation by the concession holder of the land in question upon deposit by the concession holder with the Commission of such sum by way of reasonable compensation as the Commission shall determine, and the Commission shall direct appropriate proceedings to be taken to put the concession holder into possession of the land under the law from time to time in force, as if the concession holder's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interests of claimants to the land or the amount of compensation payable by the concession holder, the Commission shall refer the dispute for determination by an appropriate court of Law, and the Commission shall pay to the respective claimants such sum by way of compensation as may have been determined by the Court. The Commission shall pay to or obtain from the concession holder (as the case may be) the amount by which the sum deposited by the concession holder exceeds or falls short of the total compensation payable to the claimants"

Pakistan Under the standard forms both for an oil prospecting licence and mining lease (schedule 2, part II of Pakistan Petroleum (Production) Rules), the licensee or lessee has the right to enter upon the lands described, whether government-owned or private, and "to search, bore for, win and work all petroleum, lying or being within, under or throughout the same land"

The licensee is liable for all damages to the property and rights of others caused in the exercise of his powers under the licence. He must indemnify the Government and hold the Government harmless for all third-party claims connected with the licence or actions done pursuant to the licence (schedule 2, part II, clause 9)

Before occupying land for surface operations, the holder of a petroleum mining lease must pay or offer reasonable compensation to the occupiers, and he is then entitled to occupy the land, but the lessee remains bound to pay the amount of compensation which, in a dispute, is assessed by arbitration proceedings (see below). Surface rent for privately owned lands is paid directly by the petroleum right holder to the private owner of the surface land (Pakistan Petroleum Production Rules, second schedule, part III, schedule 14, clause 19)

Peru The law provides that

"Every concessionaire shall have the right to establish rights of way (or easements) on land of public or private property during the period for which his concession is in force and to request the expropriation of private property to the extent necessary for the complete development of these activities and full exercise of his rights" (article 108)

National and municipal lands may be subject to the use free of charge of the concession holder unless already being used. The proceedings in cases of privately owned land are laid down in the Expropriation Law (Law No 9125) unless agreement is reached between the owner and the concessionaire. If the right sought is temporary, the Minister may grant it and set the indemnification payable by the concessionaire to the owner (article 110 to 112).

Philippines A concessionaire requiring the temporary occupancy of private lands must either reach agreement with the private owner, or failing such agreement, apply to the Court of First Instance in the province in question. The court shall, on the posting of the necessary bond, grant the concessionaire the authority to use the land as necessary for his operation, pending final determination including the value or rental of the land and compensation for damages.

For the necessary occupation other than temporary occupation, the right of eminent domain (compulsory acquisition) may be exercised by the Government through the concessionaire in accordance with the applicable law on acquisition of land for public use or benefit (articles 20 and 21).

Turkey The holder of a petroleum right is entitled to acquire a surface lease of the land needed in his operation, in the case of privately owned land, by agreement or expropriation or, in the case of land not privately owned, by specification in his licence, lease or certificate, provided, however, that in case no provision to the contrary exists in other laws, a petroleum right holder may also acquire the title to privately owned land by agreement with the owner. A decision to expropriate private land is made by the Petroleum Administration on application of the petroleum right holder. The expropriated land is owned by the Treasury. A surface lease thereon running as long as the petroleum right with which it is connected is given to the holder of the petroleum right, who must pay the cost of expropriation. The rights included in such a lease include the right to search for water by drilling and to use other existing water without adversely affecting the rights of others (sections 86 to 88).

Venezuela The law provides as follows

"For the full realization of the rights and obligations provided in this law, concessionaires shall enjoy the rights of establishing servitudes, of temporary occupation and of expropriation of the lands which they may need, in accordance with the provisions of the present section" (article 52).

Easements on public lands are established free of charge (article 55), and on private lands by agreement with the

owners. Failing agreement with the owner, the concessionaire has recourse to the court of local jurisdiction who may authorize the immediate commencement of the operations subject to a deposit by the concessionaire of the probable amount of damage which is determined by experts chosen by the parties or by the court if one party refuses (article 55).

Inclusion of Refining and Transport Rights in Exploitation Rights

In addition to the right to produce, sell and export petroleum, rights to carry on refining, manufacture and transportation are usually expressly given exploitation right holder, which rights would ordinarily in themselves require a certificate or concession for persons not holding an exploitation right.

China (Taiwan) The petroleum regulations require a petroleum lease holder to obtain special permission from the Ministry of Economic Affairs before conducting any business apart from exploration activities and actual petroleum production (article IX).

India Under the Petroleum Concession Rules, a mining lease accords the right to refine and carry away the oil extracted. A clause requiring that crude petroleum be refined by the lessee in India up to the domestic needs of the country may be inserted into a mining lease. A lessee is free to construct pipelines, except that no such pipeline may pass through non-Indian territory except with the prior approval of the central Government (Rules 52 and 53).

Israel The law provides as follows

"Article 25. A lease confers upon the lessee the exclusive right to explore for and produce petroleum in the area of the lease so long as the lease is in force

"Article 34. A lessee may, subject to the regulations, import petroleum and petroleum products into Israel, and may refine petroleum, whether produced in Israel or imported from abroad, and may process, transport, export and trade in such petroleum and petroleum products. For these purposes, he may erect installations and install other facilities required therefor

"Article 35 (a) A lessee may construct pipelines for the conveyance of petroleum and petroleum products and install other facilities required therefor.

(b) No lessee shall construct a petroleum pipeline, other than gathering pipelines leading to tankage within or within the vicinity of the leased area, except along a route approved by the Commissioner

(c) The construction of a petroleum pipeline shall be in accordance with plans showing in detail the approved route, the lands in which the pipeline is to be laid, the pumping stations, and other installations, the plan shall require the prior approval of the Commissioner which shall not be unreasonably withheld.

"Article 36 The Commissioner may, after consultation with the Board, require the owner of a pipeline constructed in accordance with section 35 to convey the petroleum of a specified person to the extent that the pipeline is not required by its owner for the conveyance of his own petroleum and on such reasonable conditions as the Commissioner may prescribe"

Libya The holder of a concession (one concession for exploration and exploitation) has the exclusive right "to carry out geological investigations, including aerial surveys, and to search for, bore for, and extract petroleum" The concessionaire also has the right "to take away such petroleum whether by pipeline or otherwise from the concession area, and to use, process, store, export and dispose of the same" (article 9, schedule 2, clause 1)

Article 12 of the Libyan law provides that pipeline facilities shall be made available on the following conditions

"Any concession holder having surplus pipeline capacity shall make such surplus capacity available for the transport of petroleum of other persons on terms and conditions to be agreed which shall conform with those normally prevailing in the petroleum industry" (article 12)

Pakistan Under the Petroleum (Production) Rules, the holder of a mining lease is empowered to refine or treat petroleum and to store, pipe, and carry away and dispose of the petroleum and petroleum products (schedule A—part II, clauses 4, 5)

Peru The law states that the exploitation concession confers the right exclusively to exploit the substances to which the law refers (article 42)

With respect to refining and transportation, the law provides that "the exploitation concessionaire may manufacture, store, transport and sell within the country or abroad the substances referred to in articles 1-4 (oil and similar hydrocarbons) within the limitations established by this Law" (article 43) Plans of works and installations must be submitted to the Ministry of Development (article 75) Exploitation concessionaires are obliged, if the capacity of their plants and means of transportation permit, to manufacture, refine, store and transport petroleum and by-products that the State or third parties may deliver to them, charging the established rates and following the established regulations (article 79)

Philippines The Petroleum Law provides that exploitation includes "drilling and operating wells, providing and operating pumping and storage facilities, pipelines and other such work and facilities as are useful for the purpose of making petroleum available for sale, manufacture or refining within or for shipment from such area" (article 51) An exploitation concessionaire is entitled to a refining concession or a pipeline concession when the manufacturing

or transportation is directly related, although not necessarily restricted to his concession (article 11)

Turkey The law makes the following provision on the rights conferred by a lease

"Subject to the provisions of this Law, a lease confers on the lessee

(1) The exclusive right to explore for, develop, and produce petroleum from the lease area so long as the lease is in force,

(2) The right to conduct any petroleum operation that may be conducted under a certificate,

(3) As to every operation under subarticle (2), the lessee shall at the same time have the rights and be subject to the duties of the holder of a certificate" (article 60)

With reference to subparagraph (2) of the above provision, petroleum operations which may be conducted under a certificate include transportation, refining and manufacture (articles 80 to 85)

Venezuela The resolution of approval for exploitation in the case of an exploration-exploitation concession or the grant of a direct exploitation concession

'Confers upon the concessionaire, his heirs and assigns, provided they comply with the legal provisions, the exclusive right, which shall last forty years counting from the date on which the aforementioned resolution of approval shall have become final, or from the date on which the title becomes effective, to extract within the confines of the corresponding exploitation parcel the substances conceded (granted) and to utilize them once they have been extracted In consequence, within the confines of the concession, they may make trial pits and carry out drilling and within or outside the confines of the concession they may construct buildings, dwellings, camps, hospitals, warehouses, storage facilities for materials and goods or for the substances produced, telephone lines, subject to the pertinent laws in force, means of communication and transportation, wharves and loading facilities, and in general conduct all operations necessary for the exploitation of said substances, save restrictions in regard thereto as established by law" (article 26)

Concessionaires having exploitation rights have the right to manufacture and refine the substances extracted, projects of factories or refining plants must be submitted to the Minister of Mines and Hydrocarbons Holders of exploitation concessions may themselves exercise the right to manufacture or refine the substances extracted or they may cede this right to another party upon prior authorization by the Federal Executive (article 28)

Concessionaires also have the right "to construct and make use of such means as they deem desirable for the transportation of the substances extracted" Notification is required to be given to the Minister of Mines and Hydrocarbons of the works proposed. The right to transport may be transferred to a concern engaged in transportation upon authorization by the Federal Executive (articles 32 to 33)

PROVISIONS FOR PROTECTION OF RIGHTS DURING PERIOD OF CONCESSIONS OR LEASES

Force Majeure Provisions

Turkey The following provision is made for saving rights in the event of *force majeure*

"Article 122. Acts of God, war, insurrections, and other *force majeure* occurrences shall suspend the rights and obligations of the holder of a petroleum right to the extent that they affect his petroleum operations, and the time to which he is subject as to such rights and obligations shall be extended for a period equal to the period of *force majeure*"

Substantially similar provisions are made in the laws or regulations of Libya, India, Pakistan and the Philippines.¹

Provisions against Unilateral Action by the Government

Guatemala The Law provides as follows with respect to the effect of changes in law or regulations on existing petroleum rights

"Article 19 The exercise of acquired petroleum rights shall be governed by the provisions of this Code and its regulations or by its revisions or any other laws that may have been in effect at the time at which they were acquired"

Libya The following clause is inserted in all concessions

"The Government of Libya, the Commission and the appropriate provincial authorities will take all necessary steps to ensure that the Company enjoys all the rights conferred by this concession. The contractual rights expressly created by this concession shall not be altered except by mutual consent of the parties"

Philippines The law, in article 102, provides against changes in working obligations, taxes and royalties as follows

"Work obligations, taxes, royalties not to be changed —Work obligations, special taxes and royalties which are fixed by the provisions of this Act or by the concession for any of the kinds of concessions to which this Act relates, are considered as inherent on such concessions after they are granted, and shall not be increased or decreased during the life of the concession to which they apply, nor shall any other special taxes or levies be applied to such concessions, nor shall concessionaires under this Act be subject to any provincial, municipal, or other local taxes or levies, nor shall any sales tax be charged on any petroleum produced from the concession or portion thereof, manufactured by the concessionaire and used in the working of his concession. All such concessionaires, however, shall be subject to such taxes as are of general application, in addition to taxes and other levies specifically provided in this Act"

¹For a *force majeure* clause involving minimum payments by companies to government, see articles 7 and 8 of the Iraq Petroleum Agreement, 1952, set forth in the appendix to this part

Provisions for Recourse in Disputes: Arbitration or other Special Procedures

Some legislation provides special arbitration procedures for settlement of disputes arising in connexion with petroleum rights. The arbitration procedure may exclude ordinary court jurisdiction (Libya, India, Pakistan)² of the appeal against the award to local courts may be provided for (Philippines). Another type of provision specifies that all disputes are subject to the jurisdiction of domestic courts (Venezuela)

India The Petroleum Concession Rules provide for arbitration of disputes between the central Government and the licensee regarding any matter connected with the licence or lease, royalties or rents, amount of compensation in the event of the government's acquisition of property, or of breaches committed. The central Government and the licensee each appoint an arbitrator. In case of disagreement between the arbitrators, they appoint an umpire. Decisions by the arbitrators or the umpire are final.

There is a similar arbitration procedure for disputes between the licensee or lessee and the central Government relating to the price to be paid when the Government exercises the right of pre-emption (rules 64 to 65)

Libya Disputes between the Petroleum Commission and concession holder arising from any concession granted under the law are settled by arbitration. Such proceedings are to determine the measures to be taken by the parties, including payment of damages and compensation. Upon institution of the proceedings by either party, each party appoints an arbitrator. Failing settlement by the arbitrators, within sixty days, the arbitrators appoint an umpire. If the arbitrators fail to appoint an umpire, either party may request the President or Vice-President of the International Court of Justice to do so. Or, if either party has failed to appoint an arbitrator, the President or Vice-President of the International Court of Justice may be requested to appoint a sole arbitrator to hear and settle the dispute alone. The umpire or arbitrator is to be guided by the rules of procedure established by articles 32 to 39 of the rules of the International Court of Justice of 6 May 1946. No appeal lies against the award by the umpire or sole arbitrator (article 9, schedule 2, clause 28)

Pakistan Under the Petroleum (Production) Rules, disputes arising in connexion with the following matters, on which the Ministry decisions are not final, are submitted to arbitration

²See also arbitration provided for in article 13 of the Iraq Petroleum Agreement, 1952

(1) right of a licensee to an oil prospecting licence or lease,

(2) cancellation for violations or breach of provisions,

(3) price payable by the Government for the pre-emption of crude oil,

(4) price of plant purchased by the Government on termination of the lease,

(5) compensation payable for the acquisition by the Government of the premises of lessees or all rights of the lessee,

(6) renewal of the lease,

(7) approval of programmes of work

The Government appoints one arbitrator, the licensee or lessee the other. In the event of disagreement between the arbitrators, they appoint a judge of the Federal Court of Pakistan as umpire. The decision of the arbitrators or of the umpire is final (rule 40)

GOVERNMENT REVENUE FROM PETROLEUM OPERATIONS

Forms of Payment

In the legislation surveyed, the provisions relating to payments to governments cover some or all of the following forms of payments—fees, rents, royalties, taxes and import or export duties. Some countries set a limit on the total payments due the government regardless of the form of such payments. In most cases, provision is made for some of the payments to be made either in cash or in kind

Fees

Provision is made by various countries for payments to the government in connection with some administrative action taken or some service rendered by it

India The Petroleum Concession Rules lay down the following fees—for the grant of a certificate of approval for petroleum, a fee of Rs 500, see rule 7 (2), for a renewal of such a certificate, a fee of Rs 250 (rule 8), a fee of Rs 1,000 for every application for an exploring licence (rule 13), an annual exploring fee of one rupee per square mile of land covered by an exploring licence, see rule 21 (1), a fee of Rs 2,000 for every application for a prospecting licence (rule 27), an annual prospecting fee to be fixed by the authorities of not less than eight annas and not more than one rupee per acre of the land covered by a prospecting licence, see rule 35 (1), an annual prospecting fee upon renewal of the prospecting licence to be fixed by the authorities, subject to a minimum of one rupee per acre but not exceeding the following rates per acre—one rupee four annas for the first year of renewal, one rupee eight annas for the second year of renewal, one rupee twelve annas for the third year of renewal, and Rs 2 for the fourth and subsequent years of renewal, see rule 35 (1), an application fee of Rs 5,000 for an application for a mining

Philippines The Petroleum Law provides for the settlement of controversies arising under its provisions other than those arising from conflicts of applications, by agreement between the Secretary of Agriculture and Natural Resources and the concessionaire. Such agreement may be reached with or without the intervention of arbitrators selected by the parties to the controversy. Failing agreement, the Secretary renders his decision from which appeal may be made to the court of competent jurisdiction (article 107)

Venezuela The law, in article 4, provides that the following clause must be inserted in all titles

“Any doubts and controversies of whatever nature which may ensue because of this concession and which cannot be amicably settled shall be decided upon by the competent courts of Venezuela and in accordance with its laws, and for no reason nor for any cause shall they give rise to foreign claims”

lease which is refundable if the lease is not granted (rule 41), and a fee of Rs 500 payable upon transfer of a lease or any right or interest therein

Israel The Petroleum Law requires a licensee to pay an annual licence fee of five pounds per one thousand dunams (section 19), and provides for a fee for registration in the petroleum register of any transfer of a petroleum right or an interest therein, or of any charge on such a right or interest (section 63), which registration fee is fixed at five pounds by the Petroleum Regulations (section 69). The Regulations also prescribe a filing fee of 100 pounds for an application for a licence which fee is not returnable (section 9)

Italy The Law on the Exploration for and Production of Liquid and Gaseous Hydrocarbons states that the holder of an exploration permit must pay an annual fee of 200 lire for each hectare of the permit area, which fee is increased to 400 lire for the first two-year extension and to 600 lire for the second two-year extension (article 10). The holder of a concession is required to pay for each year of its duration a fee of 1,500 lire for each hectare of the concession area (article 21)

Libya The Petroleum Law provides that a preliminary reconnaissance permit shall be granted on payment of a fee of 500 Libyan pounds, see article 6 (6) and paragraph 13 of the first schedule, and that such a permit may be renewed on payment of the specified fee, see article 6 (7). It also prescribes a fee of 500 Libyan pounds payable upon the grant of a concession, see article 13 (a)

Pakistan The Petroleum (Production) Rules provide for the following fees—Rs 5 an hour for inspection of the register containing the applications for exploration or prospecting licences or oil mining lease (rule 4), application

fees of Rs 250 for an oil exploration licence, Rs 500 for an oil prospecting licence and Rs 1,000 for an oil mining lease, one-half of which fees are repayable to the applicant if the application is refused, see rule 4 (3), a fee of Rs 250 payable with the submission of an application for the assignment of a licence or lease (rule 8) and an annual fee of Rs 100 for every 100 square miles (or part thereof) covered by an oil exploration licence

Philippines The Petroleum Act fixes an application fee of 100 pesos for a non-exclusive exploration permit (article 34), 1,000 pesos for an exploration concession (article 41), and 2,000 pesos for an exploitation concession (article 55), which fees are returnable to the applicant in the event of denial of the application, with a deduction for expenses incurred by the Government in connexion with the consideration of the application in the amount determined by the regulations. A fee of ten pesos is also prescribed for the registration of a declaration of discovery and location (article 65)

Turkey Law No 6401 levies the following fees for registration of application to obtain a licence, lease, surface lease, and certificate, a fee of 50 lire, for registration of licences, leases, surface leases, and certificates, a fee of 75 lire, for registration of transfers of licences, leases, and certificates and of recognition of temporary rights (of use in other persons) existing by virtue of law on definite parts of the rights conferred by licences, leases and certificates upon their holders, a fee of 150 lire, for registration of other transactions, a fee of 50 lire, for permits, a fee of 500 lire, for licences, a fee of 20 lire a year per 1,000 hectares, for leases, a fee of 50 lire a year per 1,000 hectares, for certificates, a fee of 1,000 lire, and for approval of tariffs, a fee of 100 lire

Surface Rents

Provision is made in various countries for the payment, in addition to fees, of rent the amount of which relates to the area covered by the petroleum right¹. In some countries, the rate increases as the area covered by the right increases (India). In others, the increase is related to an extension of the duration of the petroleum right (Peru) or to the location of the area (Libya). Some countries provide that the amount payable in the form of rent should be reduced by amounts paid as royalty, or for development purposes (Guatemala) while others provide that the holder of the petroleum right shall be responsible for paying only rent or some other specified form of payment, whichever may be higher, but not both (India)

Guatemala The Petroleum Code subjects the holder of exploration rights to an annual rental on the area covered by his right at the following rates for each hectare or

fraction thereof from the first to the third year, 0.30 Quetzal, from the fourth to the sixth year, 0.45 Quetzal, and from the seventh year onward, 0.60 Quetzal. The amount of royalty, if any, which corresponds to a given area and period is deductible from the foregoing rentals. After this deduction, expenditure during the period involved for development work or for operations for the purpose of establishing the petroleum possibilities of the area may be deducted, but such deduction may not exceed 75 per cent of the rentals of the area involved (article 120)

The Petroleum Code further subjects the holder of an exploitation right to an annual rental on the area covered by his right at the following rates for each hectare or fraction thereof from the first to the fifth year, 1.50 Quetzals, from the sixth to the tenth year, 3.00 Quetzals, from the eleventh to the fifteen year, 6.00 Quetzals, and from the sixteenth year onward 4.50 Quetzals. As in the case of an exploration right, the amount of royalty, if any, which corresponds to a given area and period is deductible from the foregoing rentals. After the deduction for royalties, expenditure for development work or operations for the purpose of establishing the petroleum possibilities of a given area are deductible from rentals when the holder has elected to convert his exploration right into one of exploitation. However, this deduction may be applied only from the fifth year of the initial period of the exploration right from which the exploitation right was derived and is limited to 50 per cent of the value of the surface rentals of the area. Further, this deduction is no longer available when the holder discovers petroleum exploitable in commercial quantities (article 121)

India The Petroleum Concession Rules require a lessee to pay for every year of the lease except the first year an annual rent at the following rates per acre: Rs 2 for the first 10 square miles, Rs 3 for the next 40 square miles, Rs 5 for the next 50 square miles, and Rs 10 for area exceeding the first 100 square miles. It is provided, however, that the lessee shall be liable to pay only the rent or royalty, whichever may be higher in amount, but not both—see rule 54 (ii)

Libya The petroleum law fixes the following rents each 100 square kilometres of each concession granted for concessions located within the first and second zones, 10 Libyan pounds for each of the first eight years, 20 Libyan pounds for each of the next seven years or until petroleum is found in commercial quantities, whichever is the earlier, and 2,500 Libyan pounds for each year thereafter, for concessions located within the third and fourth zones, 5 Libyan pounds for each of the first eight years, 10 Libyan pounds for each of the next seven years or until petroleum is found in commercial quantities, whichever is the earlier, and 2,500 Libyan pounds for each year thereafter, see article 13, paragraph (b). Sums payable by way of surface

¹ See also discussion below, of taxes based on area, which are imposed by the Philippines and Venezuela

rents are reduced by the amount of any royalty payable in respect of the same period, see article 13, paragraph (c) and clause 9, paragraph (2) of schedule

Pakistan The Petroleum (Production) Rules impose upon a licensee for each square mile or part thereof covered by an oil prospecting licence an annual rent at the following rates in respect of each year of the initial term of the licence, Rs 500, and in respect of each renewal of the term of the licence, Rs 1,000 (rule 27). The rules also require a lessee to pay an annual rent at the rate of Rs 2,000 per square mile or part thereof covered by an oil mining lease (rule 36), and a surface rent for all land which he may use or occupy superficially for the purposes of operations under the lease at the rate assessable under the Revenue and Rent Law in the district in which the land is situated or, if no such rent is assessable under the laws of the district, the rate fixed by the Government, subject to a maximum of Rs 2,000 per square mile (rule 38). Rent actually paid may be credited against royalties (see below section on royalties)

Peru The Petroleum Law fixes an annual rent payable by an exploration concessionaire which varies depending upon the zone concerned. The rates per hectare or fraction thereof are as follows: in the coastal zone, 2 00 Soles during the original period of the concession, 4 00 Soles during the first extension period, and 6 00 Soles during the second extension period, in the sierra zone, 1 00 Sol during the original period, 2 00 Soles during the first extension period, and 3 00 Soles during the second extension period, in the eastern zone, 0 50 Sol during the original period, 1 00 Sol during the first extension period, and 1 50 Soles during the second extension period (article 84)

The Petroleum Law also fixes an annual rent payable by the exploitation concessionaire. The rates per hectare or fraction thereof for the coastal zone are as follows: 10 00 Soles during the first five years, 30 00 Soles during the following five years, 80 00 Soles during the following five years, 100 00 Soles during the following five years, 80 00 Soles during the following five years, 40 00 Soles during the following five years, and 30 00 Soles thereafter until the end of the concession period. In the sierra zone, the rate is equal to 50 per cent of the rates established for the coastal zone, while the rent is equal to 25 per cent of the coastal zone rates for concessions in the eastern zone (article 85). Provision is, however, made for reduction of the rents for exploitation concessions at the rate of 10 00 Soles for every two tons produced per hectare per year with respect to concessions on the coast. In the sierra and eastern zones, the rate is 5 00 Soles and 2 50 Soles respectively for every two tons produced per hectare per year (article 86). However, an amount of 10 00 Soles per year per hectare in the coastal region, 5 00 Soles in the sierra zone and 2 50 Soles

in the eastern zone must always be paid as a minimum regardless of the volume of production and the duration of the concession (article 87)

Turkey The petroleum law requires a licensee to pay an annual rental per hectare in the following amounts: for the first and second years, 0 5 lire, for the third and fourth years, 1 0 lire, for the fifth and sixth years, 1 5 lire, for the seventh and eighth years, 2 0 lire, for the ninth and tenth year, 2 5 lire, and for each year after the tenth, 3 0 lire. The petroleum law provides, however, that expenditure by the licensee in any year in exploration on the licence area or in geological investigation outside of the area bearing on the petroleum prospects thereof may be subtracted from the rental for that year. The amount subtracted may not exceed 80 per cent of the rental. It is further provided that royalty calculated at the wellhead price and paid by a licensee who has made a discovery in his licence area may be credited against the rental payable by him for the period concerned (article 56)

In addition to the rental payable by a licensee, provision is made in the petroleum law for an annual rental payable by lessees. The rent per hectare of the lease area is 3 lire for the first year, 4 lire for the second year, 5 lire for the third year, 6 lire for the fourth year and 8 lire for the fifth year onward. Royalty calculated at the wellhead price paid by a lessee may, as in the case of a licensee, be credited against the rental payable by him for the period concerned. The rental payable by a licensee who, by reason of a discovery in his licence area, becomes subject to the obligations of a lessee may not be greater than the rental payable by him as a licensee (article 69)

Royalties

In contrast to rents, which are based on areas covered by the petroleum right, royalty is generally fixed at a rate of the production or extraction and is in the nature of compensation to the State for depletion of the natural resource. The rate is in several cases fixed at 12 5 per cent of the wellhead value of the petroleum or natural gas, but one country (India) has a rate of 10 per cent while another (Italy) has a rate which increases with production²

In many countries, there is a relationship between royalties and other forms of payments. One country (India) provides that a lessee shall be liable to pay only rent or royalty, whichever may be higher in amount, but not both. In another country (Pakistan), the amount of yearly rent actually paid in respect of a given year is deducted from the royalties payable in that year. Still another country (the Philippines) permits exploitation taxes to be credited against royalty payments. One other country

² The Venezuelan "exploitation tax", which is fixed at the rate of 16 75 per cent of crude oil extracted, is discussed below

(Libya) provides that sums payable by way of surface rents may be reduced by any royalty payable in respect of the same period

Guatemala The Petroleum Code requires the holders of exploitation or exploration rights to pay a royalty in cash or in kind of 12.5 per cent of the oil produced and saved in the area covered by the right (article 122) The cash royalty is calculated at the price of the petroleum at the place of its production as determined in accordance with freely competitive world prices (article 123).

India The petroleum concession rules fix a royalty which is payable by a lessee, see rule 54 (1), and by a licensee for any quantity of petroleum in excess of 4,000 gallons that the latter may carry away incidental to prospecting, see rule 35 (ii) (b) The royalty is payable at the rate of 10 per cent of the wellhead value of petroleum won or saved, convertible at the option of the authorities to an equivalent charge to be fixed annually, subject to a minimum of eight annas per 40 Imperial gallons. It is also payable at the same rate on the wellhead value of natural gas, if sold by the licensee or lessee or if utilized by him for any purpose other than the production of natural petroleum or natural gas On gas converted into gasoline, the wellhead value is calculated on the volume of gasoline manufactured It is deemed equivalent to the selling value of the gasoline less the cost of manufacture, and the royalty is subject to a minimum of eight annas per 40 Imperial gallons of gasoline manufactured The 10 per cent royalty rate is convertible at the option of the authorities to an equivalent charge per 40 Imperial gallons of gasoline (but shall not be less than eight annas) or per 1,000 cubic feet of gas, as the case may be, to be fixed annually The rate of royalty on oil shale is to be fixed by negotiation between the lessee and the authorities (see the schedule to the Petroleum Concession Rules)

"Wellhead" value is defined in these rules as "the published price of crude oil of similar type and quality in a substantial free market in any part of the world where such market may exist, with suitable adjustments to bring the price back to the wellhead of that crude" As noted above in connexion with rents, it is provided that the lessee shall be liable to pay only rent or royalty, whichever may be higher in amount, but not both, see rule 54 (ii)

Israel The Petroleum Law makes a lessee liable for a royalty of 12½ per cent of the quantity of petroleum produced from the leased area and saved, excluding the quantity of petroleum used by the lessee in operating the leased area, see section 32 (a) The lessee may be required to pay the market value at the wellhead of the royalties due from him, see section 32 (b)

Italy The Law on Exploration for and Production of Liquid and Gaseous Hydrocarbons requires the holder of a production concession to pay a royalty calculated on the

basis of the average daily production of each well for each calendar year at the following rates 0 to 4 tons per day, 25 per cent of the entire production, over 4 and up to 8 tons per day, 25 per cent of the first 4 tons and 5 per cent of the excess, over 8 and up to 16, at the foregoing rate on the first 8 tons and 14 per cent of the excess, over 16 and up to 32, at the foregoing rate on the first 16 tons and 16 per cent of the excess, over 32 and up to 64, at the foregoing rate on the first 32 tons and 18 per cent of the excess, over 64 and up to 128, at the foregoing rate on the first 64 tons and 20 per cent of the excess, over 128 and up to 256, at the foregoing rate on the first 128 tons and 21 per cent of the excess, over 256 tons, at the foregoing rate on the first 256 tons and 22 per cent of the excess. For natural gas, the same rates apply, assuming one ton of oil to be the equivalent of 1,200 cubic metres of gas (article 22)

Libya The Petroleum Law provides for a royalty of 12.5 per cent and the sums payable by way of surface rents are reduced by the amount of any royalty payable in respect of the same period, see article 13, paragraph (c), and clause 9, paragraph (2) of schedule.

Pakistan A royalty of 12.5 per cent is payable by a lessee or licensee in accordance with the Petroleum (Production) Rules. This royalty is payable on the wellhead value of all crude oil won and saved from the lands covered by the right, and is convertible at the option of the Government to an equivalent charge per 40 gallons to be fixed annually and subject to a minimum of 8 annas per 40 gallons The royalty is also payable on the wellhead value of natural gas, if sold by the holder of the right or utilized by him for any purpose other than the production of petroleum On gas converted into gasoline, the wellhead value is calculated on the volume of gasoline manufactured It is deemed equivalent to the selling value of the gasoline less the cost of manufacture, and the royalty is subject to a minimum of 8 annas per 40 gallons of gasoline manufactured The royalty rate is convertible at the option of the Government to an equivalent charge per 40 gallons of gasoline (but shall not be less than eight annas) or per 1,000 cubic feet of gas, as the case may be, to be fixed annually From the amount of royalties payable in respect of any one year of the term of the petroleum right there falls to be deducted the amount of yearly rent actually paid in respect of that year (rules 28 and 37)

Philippine The Petroleum Act states that exploitation concessionaires shall pay to the Government a royalty not less than 12.5 per cent of the petroleum produced and saved, less that consumed in the working of the concession, and excluding natural gas returned to the formation (article 65) However, exploitation taxes of any year on any or all exploitation concessions of a concessionaire may be credited against the total royalty payments on all the

petroleum produced by the concessionaire from any or all the exploitation concessions held by him within the same petroleum region. This deduction is applicable only to amounts due for exploitation tax in excess of fifty centavos per hectare per year (article 66)

Turkey Royalty, payable in cash or in kind, is fixed by the Petroleum Law at 125 per cent of the petroleum produced and stored by a lessee or licensee, and if taken in cash the amount of the payment is calculated at the wellhead price. However, royalty is not payable if the petroleum is used in exploration, development or production in connexion with the licence or lease, or for injection into the same or another reservoir stratum in the interest of more rapid, efficient or greater ultimate production, see article 78, subarticles (1) and (2)

Taxes^d

GENERAL CONDITIONS

Holders of petroleum rights are usually subject to tax laws of general applicability, and are thus required to pay taxes for which they might be liable thereunder and which have no special reference to the fact that they are engaged in petroleum extraction activities. Express provisions to this effect are contained in the Petroleum Law of Libya, which states that "the concession holder shall pay such income tax and other taxes and imposts as are payable under the Laws of Libya" (article 14), in the Petroleum Law of Turkey, which stipulates that "every petroleum right holder shall be subject to the provisions of all and every law on taxes, imposts and fees and of the tax procedure laws, of amendments thereto or of laws to be enforced in place thereof", see article 95 (1), and in the Petroleum Law of Venezuela, which declares that "concessionaires shall pay all general taxes, of whatever kind, and shall also pay the lawful rates, charges and fees for the services that may be rendered them" (article 46)

In addition, however, some countries have provisions which relate specially to the tax obligations of holders of petroleum rights. Such provisions either lay down taxes on specific incidents of petroleum extraction activities or special rules for the determination of the taxable income or profits of the holder of the petroleum right, or deal with the possibility of varying the amount of the taxes under certain conditions

TAXES ON INCIDENTS OF PETROLEUM EXTRACTION

As noted above, some countries levy taxes which bear a special relation to the extraction of petroleum, in addition to those bearing no such relation

^d All payments designated as taxes in national laws are dealt with as such in this part notwithstanding that some of such payments are similar in some respects to payments designated as fees, rents or royalties in other countries

Peru The Petroleum Law stipulates that the exploitation concessionaire in the coastal zone shall pay only once, at the time the concession is granted, a tax of 30 Soles for each hectare or fraction thereof comprised in the concession. In the sierra and eastern zones, this tax is reduced to 50 per cent and 25 per cent, respectively (article 89). A special tax is also levied on any transfer of exploration or exploitation concessions, apart from taxes of a general character. This special tax is fixed at 5 per cent of the price agreed upon, or on the value fixed by expert appraisers if the concession has been made gratuitously. Share subscriptions for the constitution of companies are exempted from this tax (article 102). Concessionaires are also required to pay an *ad valorem* expert tax (article 100)

Philippines The Petroleum Act imposes an annual exploration tax on the holder of an exploration concession and an annual exploitation tax on the holder of an exploitation concession. The exploration tax per hectare per year, or fraction thereof, is fixed as follows for the initial term of the exploration concession, not less than five centavos for the first year of the term of the concession, not less than seven and one-half centavos for the second and third years of the term, and not less than ten centavos for the fourth year of the term, for the first extension, ten centavos for the fifth to seventh year, and for the second extension, twelve and one-half centavos for the eighth to tenth year (article 49). The exploitation tax per hectare per year, or fraction thereof, payable by the holder of an exploitation concession is fixed as follows during the first five-year period, not less than fifty centavos, during the second five-year period, not less than one peso, during the third five-year period, not less than one peso and fifty centavos, during the fourth five-year period, not less than three pesos, during the fifth five-year period, not less than five pesos, and, thereafter, not less than five pesos during the period or periods of the renewal of the concession, unless modified by the Secretary of Agriculture and Natural Resources (article 64). Exploitation taxes may be credited against the total royalty payments due from the holder of the exploitation concession (see above section on royalties)

Venezuela The Petroleum Law imposes an exploration tax, an initial exploitation tax, a surface tax, and an exploitation tax. The exploration tax is payable by the holder of the right during the three-year exploration period and is fixed at two bolivars a year for each hectare or fraction thereof that the lot contains (article 38). The initial exploitation tax consists of eight bolivars for each hectare or fraction thereof that the parcels involved comprise, and is payable by holders of exploitation concessions and by holders of exploration-exploitation concessions who have made the election or demarcation necessary to exploitation of such parcels (article 39). These concessionaires are also required to pay a surface tax of five bolivars a year,

for each hectare or fraction thereof that the parcel or lot contains, from the date of approval of the general map showing the exploitation parcels which may have been selected by the holder of an exploration-exploitation concession or of the topographic plan of the parcel which must be presented by an applicant for an exploitation concession, until the expiration of the first ten years following the date on which the resolution approving the plans becomes final, or of the ten years following the date on which the title granted becomes effective. Thereafter, the surface tax rises in amount, being set at ten bolivars a year for the next five years, fifteen bolivars a year during the next five years, twenty bolivars a year during the next five years, twenty-five bolivars per annum during the next five years, and thirty bolivars a year during the remaining term of the concession. The surface taxes which any concessionaire may have to pay in any quarter on the total area comprised by his concessions are subject to an exemption in an amount equal to the total of the exploitation tax which may have been paid by him in the previous quarter. This exemption is only granted with respect to amounts in excess of one bolivar and twenty-five centimos per hectare a quarter (article 40)

The concessionaires referred to above are further required to pay an exploitation tax at the rate of 16.75 per cent of the crude oil extracted,⁴ as measured in the producing field at the installations where the fiscal control takes place, at the same rate, on natural asphalt extracted, measured in the producing field, and also at the same rate, on the value of natural gas alienated or used as fuel. Where the gas is treated in natural gasoline plants or destined for other industrial treatments, special agreements are to be made between the Minister of Mines and Hydrocarbons and the concessionaire for a fixed period, not to exceed fifteen years, to determine the share corresponding to the nation. The tax is not applied on gas returned to formation or used in any operation for the purpose of stimulating the production of crude oil, or on gas which cannot be utilized (article 41)

INCOME TAXES

Items deductible in determining taxable income

(1) Operating expenses—In order to determine taxable income, the tax laws of general applicability in various countries usually permit tax payers to deduct from their gross receipts operating expenses necessary for the production of the income. For example, in the computation of income on which tax liability is determined, the Internal Revenue Code of the Philippines allows a deduction from gross income for “all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business”, see section 30 (a, 1)

⁴ Compare with payments designated as royalties in other countries, described above

A similar provision is contained in the Income Tax Law of Venezuela, which states, in connexion with the tax on mining and hydrocarbon benefits and similar activities, that “there shall be deducted from the gross earnings the normal and necessary expenses incurred in the country with the object of producing the revenue” (article 16)

Some countries also expressly lay down specific deductions which may be taken by tax payers engaged specifically in petroleum operations. In addition to the items which might be deductible by the holder of a petroleum right under other applicable laws, the following specific expenses in connexion with his petroleum operations may, under the Petroleum Law of Turkey be deducted from his gross income in the computation of income and profits subject to tax: the cost of goods consumed in the operations or services rendered in connexion therewith, losses from damage to or destruction or loss of property used, produced, manufactured, or sold, and not compensated for by insurance or otherwise, including losses arising from bad debts or claims against the holder of the petroleum right for damages, rental and royalties, interest on indebtedness, remunerations and related benefits for services by others, whether paid directly to such persons or to others for the benefit of such persons through insurance, pension or other similar plans, and payments to other for, or in connexion with, the use of the property, see article 100, subarticles 1, 4, 5, 7, 8, 10 and 11. Similar specific deductions are allowed by the Petroleum Code of Guatemala (article 131)

(2) Deductions related to recovery of capital—A deduction is generally permitted in the legislation of various countries for depreciation of property employed in income-producing activities

Philippines The Internal Revenue Code permits such a deduction in a provision of general applicability which speaks in terms of “a reasonable allowance for deterioration of property arising out of its use or employment in the business or trade, or out of its not being used”. When the depreciation allowance equals the capital invested by the tax payer, no further allowance is permitted, see section 30 (f).

Venezuela The Income Tax Law states, in connexion with the tax on mining and hydrocarbon benefits and similar activities, that “a reasonable amount to cover the depreciation of permanent assets” is deductible from gross earnings in determining net revenue (article 19)

Turkey In the Petroleum Law, deductible expenses which are specifically allowed the holder of a petroleum right include “a reasonable amortization allowance for exhaustion, depreciation, or obsolescence of property”, see article 100, subarticle 2, and “the unrecovered residual value of property surrendered or abandoned during the year”, see subarticle 9

Guatemala A similar enumeration of expenses specifically deductible by the holder of a petroleum right under the Petroleum Code includes "the amortization factor for depreciation, obsolescence, or exhaustion of capital assets", see article 131 (b), and "the unrecovered value of the capital assets that are renounced or abandoned during the year", see *ibidem*, paragraph (1)

The fact that petroleum, like other minerals, is a wasting asset the extraction of which reduces the original amount thereof in its natural position or native state has given rise in the legislation of various countries to a tax-deductible allowance for such depletion. Together with the annual deduction for depreciation of physical assets, the depletion deduction permits the tax free return of at least the investment made by the taxpayer.

Philippines The depletion allowance fixed by the Internal Revenue Code in the case of oil and gas wells consists of "a reasonable allowance for actual reduction in flow and production to be ascertained not by the flush flow, but by the settled production or regular flow. Provided that, when the allowances shall equal the capital invested no further allowance shall be made", see section 30 (g). In other countries, the amount of the depletion allowance is determined either by reference to the cost of discovery of the oilfield, the quantity of recoverable oil and the annual production, termed "cost depletion", or by the application of a fixed rate to the value of production, termed "percentage depletion".

Some countries allow both cost and percentage depletion, and give the taxpayer whichever of the two happens to be greater in amount for the year, while other countries permit only cost depletion. Cost depletion generally ceases to be deductible when the taxpayer has recovered his capital investment in intangible assets, while no maximum over-all limit is usually set on the total allowance which may be taken over the years by way of percentage depletion.

The percentage depletion allowance and the privilege whereby certain costs of exploration, discovery and development may be regarded as expenses (see below) provide the petroleum extraction industry with two important special tax incentives. As an alternative to capitalizing and recovering such costs through cost depletion deductions spread over a period of years, the laws of some countries permit the holder of the petroleum right to treat such costs as expenses (that is, to deduct them in full in a single year as an operating expense) and at the same time to obtain a percentage depletion deduction for that year. In this way, the holder of the petroleum right is able to secure a much larger deduction than he would obtain if he were to recover the above costs through cost depletion deduction.

Venezuela The Income Tax Law allows a deduction of "a reasonable amount to amortize the investments capitalized prior to the coming into force of the present provisions which may have to be capitalized in conformity with this Law". It also provides that the system for calculating such amortization "will be that of annual exhaustion" (article 19). It further enumerates as investments capable of being capitalized:

"First—The cost of the concessions integrated by the purchase price and related expenses, or by the amount of the initial exploitation tax and that of exploration and other expenses necessary for the acquisition of the right. Capitalization is not permitted of the wages and other indirect expenses which have not been incurred with the special aim of obtaining the concession.

"Second—The direct expenses of exploration, topographic surveys and so forth.

"Third—A reasonable quota of the indirect expenses incurred in the field operations applicable to the work of development in diverse phases of the industry, and

"Fourth—Any other expenditure which may constitute investment of a permanent character" (article 20).

Israel The Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations allow a deduction on account of the depletion of the petroleum reserve which, in the case of cost depletion,

"shall be an amount arrived at by the division of the adjusted cost of the petroleum interest at the beginning of the taxable year by the number of units in the estimated petroleum reserve related to such interest remaining at the beginning of the taxable year, and the multiplication of the quotient by the number of units of petroleum related to such interest produced and saved during the taxable year", see sub-regulation 3b (II).

"the adjusted cost of a petroleum interest at the beginning of any taxable year means the cost price of such interest, at the beginning of such year, less the depletion allowance allowed to the holder in respect of such interest up to the beginning of such year" (sub-regulation 3c).

Turkey The Petroleum Law of Turkey embodies the following detailed provisions on the computation of the cost depletion allowance:

"(1) The value subject to depletion shall be obtained by subtracting from the total value subject to depletion of each separate area held by the holder of the petroleum right (a) the cost or value of that part of the property allocated to purposes other than petroleum production, and (b) the residual value to the holder of the separate area at the time of termination of the petroleum operation.

"(2) The depletion unit shall be determined by dividing the value subject to depletion at the start of the taxation period by the number of recoverable petroleum units estimated by the holder to exist underground at that time in the separate area.

"(3) The depletion allowance shall be determined by multiplying the depletion obtained according to sub-article 2 by the number of petroleum units produced

during the taxation period from the separate area and stored, excluding that used by the holder, (a) in exploration, development, or production in connexion with the licence or lease, (b) for injection into the same or another reservoir stratum of the holder in the interest of more rapid, more efficient, or greater ultimate production

“(4) The holder of the petroleum right may, at the start of each taxation period, revise his estimate relating to the number of recoverable petroleum units existing at that time in the separate area, and shall file a new estimate, computed in accordance with the regulations, and within the time and in the manner herein prescribed” (article 103)

The holder of the petroleum right is required to compute his depletion allowance separately for each taxation period and for each separate area, see subarticle 102 (2)

Guatemala Detailed provisions on the computation of the cost depletion allowance are contained in the Petroleum Code of which the relevant provisions read

“In order to determine the ‘depletion factor on the basis of cost’, the following concepts are established

(a) ‘Value of depletion’ is the difference obtained by subtracting from the value of the capital assets assigned to each separate area assigned to the holder of a petroleum right, the following

(1) the cost or the value, as the case may be, of the part of the separate area that is not devoted to the production of petroleum, and

(2) the estimated value that the separate area and its installations may have for the holder at the moment of terminating the petroleum operations corresponding to the said area

(b) ‘Depletion unit’ is the quotient which results from dividing the value of depletion calculated at the beginning of a taxation period by the number of recoverable petroleum units that the holder estimates exist within the separate area at the time of making that calculation,

(c) ‘Petroleum unit’ is a measure equal to one hundred and fifty eight litres and nine hundred and eighty four millilitres (158 984) of liquid petroleum (a barrel of forty two gallons) or five hundred cubic metres of gaseous petroleum calculated at the temperature and pressure that are prescribed in the regulations

Accordingly, the depletion factor on the basis of cost for a separate area shall be the product that is obtained by multiplying the depletion unit by the number of petroleum units produced and saved in the corresponding separate area during the taxation period

For this calculation, there shall not be included the units of petroleum

(a) that the holder may have used in surface reconnaissance, exploration, or exploitation operations related to the same area, and

(b) those that he may have injected into the same field or in others belonging to any of his petroleum rights for the purpose of obtaining ultimately a more rapid, more efficient or greater production

For the purposes of the calculation of the depletion unit, the holder of a petroleum right may, at the beginning of each taxation period, revise the estimates that he may have made with relation to the number of recoverable petroleum units that may exist at that moment in the separate area. When the regulations so indicate, the holder must make the said revision. In case of revisions, he must present the new estimate, calculated in accordance with the regulations and in the form and at the time prescribed therein” (article 134)

“The holder of a petroleum right shall calculate his depletion factor independently for each separate area and for each taxation period. ‘Separate area’ is understood to mean a single petroleum field or the part thereof that is contained within an exploration or exploitation right. The total depletion factor that a holder may deduct in a taxation period is equal to the sum of the depletion factors calculated for each separate area and in the same period, in the form that is indicated in articles 134 and 135, according to the case” (article 133, paragraph 2)

As indicated above, some countries permit a deduction from gross income of a percentage depletion allowance, the amount of which is determined by the application to the value of the production of a fixed rate specified in the law

Israel The Income Tax (Deduction from Income of Holders of Petroleum Interests) Regulations fix the percentage depletion allowance at “27½ per cent of gross income in the taxable year, but not more than 50 per cent of the net income in that taxable year”, see sub-regulation 3b (1)

Turkey The percentage depletion allowance is fixed at 27.5 per cent by the Petroleum Law, the relevant provisions of which read

“(1) The depletion allowance on a percentage basis shall be computed as follows

(a) The number of petroleum units produced during the taxation period from each separate area and stored, excluding that used by the holder

(1) in exploration, development or production in connexion with the licence or lease,

(2) for injection into the same or another reservoir stratum of the holder in the interest of more rapid, more efficient, or greater ultimate production, shall be multiplied by the wellhead price of each unit, and the result shall constitute the gross income of that separate area for the purpose of depletion allowance

(b) Royalties for the separate area and rentals for the licence or lease in which that separate area is located, paid or payable to the State by the holder of the petroleum right for the taxation period, shall be deducted from his gross income computed under subarticle (1) (a)

(c) The depletion allowance will be 27.5 per cent of the remaining amount

“(2) The depletion allowance calculated on a percentage basis for each separate area may not exceed

50 per cent of the net income remaining from gross income from such area after all the deductions, unless such depletion allowance has been made as the holder of a petroleum right is entitled to make

“(3) In calculations of gross and net income for the purposes of depletion allowance, the determination of that part of paid or payable rentals for each licence or lease except as to unitized portions thereof, to be allocated to each separate area in such licence or lease, shall be made on the basis of the proportion which the number of petroleum units produced and stored from each separate area in a taxation period bears to the total number of petroleum units produced and stored during the same period from the licence or lease in which such separate areas are located ” (article 104)

Guatemala Similar provisions are contained in the Petroleum Code which states

“In order to calculate the ‘depletion factor on the basis of percentage’, the following operations shall be made

(a) the price of each petroleum unit at the place of its production shall be multiplied by the number of units of petroleum produced and saved in an area during the taxation period. The product that is obtained shall be considered as ‘gross income of the separate area for the purposes of the depletion factor’. For this calculation, there shall not be included the units of petroleum

(1) that the holder may have used in surface reconnaissance, exploration, or exploitation operations related to the same area, and

(2) those that he may have injected into the same field or into others belonging to any of his petroleum rights for the purpose of obtaining ultimately a more rapid, more efficient or greater production

(b) From the foregoing gross income shall be subtracted the amount of the royalties paid or payable corresponding to the separate area

(c) Of the result obtained from the operations indicated in subarticle (b) above, 27.5 per cent shall be the ‘depletion factor on the basis of percentage’ for each separate area, subject to the limitation stipulated in the following article ” (article 135)

“The ‘depletion factor on the basis of percentage’ for each separate area corresponding to a taxation period may not exceed 50 per cent of the net profits before depletion

“In order to determine the ‘net profits before depletion’, all of the deductible amounts authorized by article 131, with the exception of the depletion factor, shall be subtracted from the amount of gross income derived from the petroleum operation of the area in question ” (article 136)

“In calculations of the net profits before depletion, the surface rentals paid or payable for the total area corresponding to a petroleum right must be assigned to each separate area that is included in the right, proportionately to the number of petroleum units produced and saved in each separate area, in relation to the total number of petroleum units produced and saved in the petroleum right during the taxation period. For this

calculation, the part of the surface and the number of petroleum units produced and saved that corresponds to the unitized areas must be excluded ” (article 137)

Peru The percentage depletion allowance varies according to the zone involved. The Petroleum Law provides

“The concessionaire in the coastal zone may deduct free of all tax on account of the ‘depletion factor’, 15 per cent of the total gross value of his production, calculated in conformance with article 95 but fixing as a limit, for such deduction, 50 per cent of the net profits computed in the respective operating year for the activities inherent to production after deducting this ‘depletion factor’ and the minimum payment of 20 per cent referred to in article 95. The sum exceeding this limit shall be added to the taxable profit in conformance with article 90

“The deduction on account of the ‘depletion factor’ for national concessionaires shall be 25 per cent of the total gross value of their production and the limit for the same shall be fixed in the manner provided for in article 94 ” (article 92)

“The concessionaires in the sierra and eastern zones may deduct free of all tax on account of the ‘depletion factor’, 27½ per cent of the gross value of their production, estimated in conformity with article 95 and deducting the cost of transportation from the place of production up to the embarkation port, but fixing, as the limit for such deduction, 50 per cent of the net profits computed in the respective operating year without deduction for the ‘depletion factor’ ” (article 94)

“There shall be paid in advance on exports of crude petroleum and its by-products derived from refining, on products obtained from the utilization of natural gas of its refining and all products whether solid, liquid or gases, which by their extraction or processing are related to the petroleum industry, when they originate from deposits located in the coastal zone, on account of the tax on profits corresponding to production activities, 20 per cent calculated in the value of crude petroleum at the port of embarkation, and at the quotation of the petroleum in the place of sale, taking as a minimum price the highest quotation for petroleum of similar quality in the United States of North America at the time shipment is made ” (article 95)

Pakistan The Income Tax Act provides for an allowance of 15 per cent, without designating such an allowance as a percentage depletion allowance. This allowance is in addition to the deductions for the expenditure mentioned in a subsequent paragraph relating to petroleum income tax act in Pakistan. The relevant provision reads

‘In determining the profits or gains for any year ending after the date on which commercial production commenced an additional allowance shall be made equal to 15 per cent of the gross receipts representing the well head value of the production from the business or part of the business to which the provisions of this schedule apply, provided that such allowance shall not exceed one half of the profits or gains as computed without the deduction of such allowance ” (rule 3, second schedule)

Israel In permitting a deduction on account of the depletion of a petroleum reserve, the Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations state that "the depletion allowance shall be the greater of percentage depletion or cost depletion" (sub-regulation 3b)

Turkey The Petroleum Law provides that

"The holder of a petroleum right may claim for each taxation period a depletion allowance deduction computed on a cost basis or a percentage basis. However, the depletion allowance as to which the deduction is claimed may not be less than the deduction computed on a cost basis", see article 102, subarticle (1)

Guatemala The Petroleum Code similarly provides that "the deduction for the depletion factor may be calculated on the basis of cost or on the basis of percentage, but the amount of the deduction that may be made shall not be less than the amount of that which results on the basis of cost" (article 133)

Israel In addition to the provisions referred to above concerning cost and percentage depletion, the Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations state that

"(a) Where capital expenditure has been incurred by a holder of a petroleum interest for the purpose of acquiring any land under section 40 of the Petroleum Law, 5712-1952, there shall be deducted, for the purpose of ascertaining his taxable income, an amount arrived at by the division of the amount of such expenditure by the number of years for which the land so acquired may be held by such holder, such amount shall be deducted in the taxable year in which such expenditure was incurred and in any subsequent taxable year, until the whole expenditure shall have been fully deducted

"(b) Where the right of the owner of a petroleum interest to hold such land has expired prior to the deduction of the whole expenditure so incurred, there shall be deducted, for the purpose of ascertaining the taxable income of such holder in the taxable year in which the right to hold such land has so expired, the amount not yet deducted under this regulation" (regulation 5)

Peru The Petroleum Law provides

"The expenditure and investment made during the period of exploration in the concessions granted under the same title shall be deductible from the gross profits obtained by means of equal annual instalments which the Ministry of Development shall fix in each case and for a period equal to the duration of the concession of exploitation." (article 91)

Pakistan The Income Tax Act embodies provisions which lay down allowances for expenditure on searching for, or on discovery and testing of, a petroleum deposit or on winning access thereto. Where the person incurring such expenditure gives up the search, exploration or enquiry before the working of the deposit involved, any such expenditure allocable to a surrendered area and to the drilling

of a dry hole is deemed a loss which is allowed in either of two ways as a deduction from income, profits or gains from business or under any other head of income (excluding dividend income), or as a deduction from income, profits or gains from the business of working the deposit. After the commencement of commercial production, all expenditure prior thereto not deemed lost and not represented by physical assets is deductible, and the assessee is permitted to select the amount to be allowed in any year, subject to a limit of 10 per cent of the aggregate amount deductible. Expenditure incurred subsequent to production in connexion with exploration is allowed as a deduction. Any unused deductions allowable after the commencement of commercial production may be applied against other income (excluding dividend income). The relevant provisions read as follows

"(1) Where a person incurs any expenditure on searching for, or on discovering and testing a petroleum deposit or winning access thereto, but gives up the search, exploration or enquiry upon which the expenditure is incurred before having carried on any business which consists of or includes the working of the deposit in question, such expenditure allocable to a surrendered area and to the drilling of a dry hole shall be deemed to be lost at the time of the surrender of the area or the completion of the dry hole, as the case may be. A portion of such loss as provided for in any agreement between any such person and the Government shall be allowed in either of the following ways

(a) Such portion of the said loss in any year shall be set off against income, profits or gains from business or under any other head of income, other than income from dividend, of that year. If the loss cannot be wholly set off in this manner, the portion not so set off shall be carried forward to the following year and set off against such income, profits or gains, for that year in the same manner, and if it cannot be wholly so set off, the amount not so set off shall be carried forward to the following year and so on, but no loss shall be so carried forward for more than six years

(b) Such portion of the said loss in any year shall be set off against income, profits or gains of the same business of the previous year in which commercial production commences. If the loss cannot be wholly set off against the profit of the same business for that year, the loss not so set off shall be carried forward to the following year and set off against the profits or gains, if any, of the assessee from the same business for that year, and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on, but no loss shall be so carried forward for more than ten years, provided that no such loss in respect of an area surrendered before the 24th of September, 1954, or in respect of a dry hole which was completed before that date, shall be allowed as a deduction

"(11) After the commencement of commercial production, all expenditure prior thereto, not deemed to be lost under clause (1) and not represented by physical

assets in use at the time commercial production commenced, shall be allowed as a deduction. The portion of such deduction to be allowed in any year shall be such amount (not being greater than 10 per cent of the aggregate amount deductible) as may be selected by the assessee.

“(iii) Expenditure incurred after the commencement of commercial production in connexion with production and exploration shall be allowed as a deduction.

“(iv) If, in any year, the deductions admissible under sub-section (2) of section 10 of this Act, and the foregoing clauses (ii) and (iii) of this rule, exceed the gross receipts from the sale of petroleum produced in Pakistan such excess shall be set off against other income, not being a dividend, and carried forward in the manner and subject to the limitations laid down in section 24 of this Act” (paragraph 2, second schedule)

Some countries give the holder of a petroleum interest the option to treat certain expenditure either as an operating expense or as capital expenditure.

Israel The Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations stipulate that

“(a) Exploration and development expenses incurred by a holder of a petroleum interest shall, at the option of such holder, be treated either as an expense deductible under section 11 (a) to (h) inclusive of the Ordinance or as capital expenditure, provided that the option shall be exercised by written notice to the Commissioner, in such form as the Commissioner may prescribe, no later than the due date for the filing of the return for the first year in which the owner of the interest has incurred exploration and development expenses, or within 6 months from the commencement of these regulations, whichever date is later.

“(b) Where a holder of a petroleum interest has exercised the option conferred by sub-regulation (a), such option shall affect the treatment of all exploration and development expenses incurred by him in respect of the related interest in the taxable year and in any subsequent year.

“(c) Where a discovery has been made in a petroleum property after exercise of an option under regulation (a), the holder of a petroleum interest in the petroleum property on which the discovery was made shall be entitled to re-elect the treatment of his exploration and development expenses by filing a notice in writing with the Commissioner not later than one year from the discovery.

“(d) The owner of a petroleum interest may at any time, with the consent of the Commissioner and under such conditions as the Commissioner may prescribe, amend his election under sub-regulation (a)” (regulation 4)

“‘Exploration and Development Expenses’ means any expenses incurred in the exploration for and development of a petroleum property, in whole or in part, including expenses for geological, geophysical, geochemical and similar tests and experiments, but excluding expenses incurred for the acquisition of an asset for which a rate of depreciation has been prescribed in

Income Tax (Depreciation) Regulations 1941 (4), hereinafter referred to as ‘the Depreciation Regulations’” (regulation 2)

Venezuela The Income Tax Law embodies the following provisions

“The taxpayers who, when this law comes into force, may have adopted in a constant manner and with subjection to recognized accounting principles systems of capitalization differing from those indicated in Ordinals second, third and fourth of the foregoing article, may continue the same with the express approval of the Administration and may not vary them without the approval of this authority” (article 21)

“Those amounts to which reference is made in Ordinals 1st and 2nd of Article 19 can be included in the cost of production, but in no case will there be admitted those corresponding to property not situated in the country” (article 22, see also article 20, quoted above, page 67)

Turkey The Petroleum Law provides

“(1) The holder of a petroleum right, may at his option, deduct as an expense any or all of the following classes of expenditure from his gross income for the taxation period in which the expenditure is incurred or paid, or may charge any class or all of it to a capital account as an asset

(a) exploration expenses,

(b) intangible drilling costs,

(c) the cost of drilling wells not productive of petroleum in commercial quantities

“(2) (a) The holder of a petroleum right shall exercise his right of electing as to each class of the foregoing expenditure whether to deduct the same from his gross income or to charge the same to a capital account as an asset, when filing his tax return for the first period in which expenditure included in this group is made

(b) The election so made by the holder of a petroleum right shall be binding upon him, but the Minister of Finance, on application, may permit him to make a new election

“(3) Exploration expenses charged to a capital account as an asset shall be recovered through depletion allowance deduction or as a loss due to abandonment

“(4) Intangible drilling costs and the cost of drilling non-productive wells not productive of petroleum in commercial quantities which are charged to a capital account as an asset shall be recovered as follows

(a) the cost of property and expenses incidental to the procurement thereof and the erection of installation thereon, through amortization or as losses due to abandonment,

(b) all other expenditures, through depletion allowance deduction or as losses due to abandonment” (article 105)

Guatemala The Petroleum Code similarly declares

“For the taxation period in which they are incurred, the holder of a petroleum right, at his election, may charge to the asset side of his balance sheet, or deduct

from his gross income as expenses, the amount of all or any of the following items

(a) exploration costs,

(b) intangible drilling costs, or

(c) costs of drilling wells that do not produce petroleum or that do not produce it in commercially exploitable quantities" (article 138)

"The holder of a petroleum right, upon making his declaration of profits in which for the first time are included costs of the type enumerated in the preceding article, must inform the State if he elects to deduct them from his gross income or charge them to the asset side of his balance sheet. The election that he may make in this regard shall be binding upon him, but the Ministry of Economic Affairs may, for justifiable reasons, permit him to modify it, providing that this does not imply evasion of taxes" (article 139)

"Exploration costs that are charged to the asset side of the balance sheet may be recovered by means of the depletion factor or as losses due to abandonment" (article 140)

"Intangible drilling costs and the costs of drilling wells that do not produce petroleum, or that do not produce it in commercially exploitable quantities which are charged to the asset side of the balance sheet, shall be recovered as follows

(a) the cost of the assets, including the expenses inherent in their acquisition or installation, by means of amortization or as losses due to abandonment, and

(b) all the other costs, by means of the depletion factor or as losses due to abandonment" (article 141)

"Upon the holder's election to recover the costs to which the two foregoing articles refer as losses due to abandonment, if the said costs should have been recovered in whole or in part by the depletion factor or through amortization, the amount that may be recovered as losses due to abandonment shall be solely the part not amortized, if any, upon the date on which the election to abandon is made. In no case shall the State accept or approve the accounting operations by which are subtracted from gross income two or more times deductible amounts that correspond to the same expense" (article 142)

Excess of deductions over gross income right to carry-over of excess

Legislation in various countries often permits a taxpayer to apply against the income of a future taxable year the excess of his allowable deductions over his gross income for a previous taxable year. This right is specifically granted to holders of petroleum interests by certain countries.

Israel The Income Tax (Deductions from Income of Holders of Petroleum Interests) Regulations permit such a carry-over to the seven succeeding years

"Where full effect cannot be given in any taxable year to any deductions allowed to a holder of a petroleum interest by or under these regulations owing to there being no profits or gains taxable for that year or

owing to the profits or gains taxable being less than the deductions, the deductions, or part of the deductions to which effect has not been given, as the case may be, shall be added to the amount of the deductions allowed for the following taxable year and deemed to be part of those deductions or, if there are no such deductions for that taxable year, be deemed to be the deductions for that taxable year, and so on for succeeding years, provided that a holder of a petroleum interest shall not be entitled to claim any such deduction after the expiration of seven years immediately following the year in which a discovery was made on the petroleum property to which such interest relates or in which such holder first becomes entitled to such deduction, whichever is the later date" (regulation 7)

Turkey The Petroleum Law allows a carry over to the succeeding ten years, but reduces the amount of the carry-over by the excess of the percentage depletion allowance over the applicable cost depletion allowance

"The remaining part of the losses of a holder, sustained according to the tax returns of the current and previous taxation periods, reduced by the excess of the depletion allowance on a percentage basis claimed by and allowed to the holder over his allowable depletion on a cost basis, may be carried forward into succeeding years, as prescribed in the Regulations, provided such carrying forward is not for more than 10 years as from the year during which such losses originated" (article 106)

Guatemala Similarly, the Petroleum Code embodies a carry-over period of ten years and requires a reduction of the amount thereof by the excess of the percentage depletion allowance over the applicable cost depletion allowance, and by the losses from the alienation of petroleum rights or related assets

"The net operating losses suffered by the holder of a petroleum right during a taxation period may be deferred to subsequent periods and subtracted as deductible amounts in the manner that the regulations prescribe. Said losses may not be deferred for more than ten successive taxation periods, nor be deducted in any form after ten years following the loss. 'Net operating losses' of a taxation period are understood to mean the result that is obtained by subtracting the following from the amount by which the total of the deductible sums authorized by article 131 for that period exceed the amount of gross income

(a) the sum that results from subtracting, from the value of the depletion factor on the basis of percentage, the value of the depletion factor on the basis of cost corresponding to the respective taxation period, and

(b) the amount of the losses that result from the alienation of petroleum rights, or of the assets that are related thereto, corresponding to the respective taxation period

"The subtractions to which the two foregoing sub-articles refer shall be made only when pertinent if, jointly or separately, the holder may have included as deductible, in relation to subarticle (a), the depletion factor on the basis of percentage, or, in relation to subarticle (b), capital losses

"The calculation to obtain net operating losses to which the two preceding paragraphs refer shall be based upon the declarations of profits made by the holder of petroleum rights for the taxation period in question and for the preceding ones" (article 143)

Pakistan Provisions permitting a carry-over of unused deductions may also be found in the Income Tax Act (quoted above)

Import and Export Duties

EXEMPTION FROM IMPORT DUTY OF GOODS FOR USE IN OPERATIONS

General rule

The petroleum laws of various countries permit the holder of a petroleum right to import, wholly or partly free of customs duty, the equipment and materials which he may require

Philippines The Petroleum Act provides that, "during the first five years following the granting of any concession, the concessionaire may import free of customs duty all equipment, machinery, material, instruments supplies and accessories" (article 103)

Libya The Petroleum Law states that "a permit or concession holder or any contractor employed by him may import free of duty, plant, machinery, tools, equipment and materials together with such other goods as may be specified from time to time in Regulations issued under the Customs law intended to be used in Libya for petroleum exploration, prospecting, mining, transporting, processing operations and activities connected therewith", see article 16 paragraph (1)

Israel The Petroleum Law includes detailed provisions on this point

"The holder of a petroleum right may import into Israel, himself or through an agent, free of customs and other import dues, all the machinery, equipment, installations, fuel, houses, transport, facilities and like things—other than consumer goods—required by him for a petroleum purpose (all these are hereinafter referred to as 'materials')" (article 46, as amended by Petroleum (Amendment) Law, 5717-1957)

Turkey The Petroleum Law specifies that "the holder of a petroleum right, himself, through an agent, or a contractor recognized by the Petroleum Administration, shall import into Turkey, free of customs or other import taxes and dues, for a period of 25 years from the effective date of the (Petroleum) Law, all materials considered by the Petroleum Administration as being required for the holder's petroleum operations", see article 112, subarticle (1) The exemption is still valid on the transfer of such materials from the holder of a petroleum right who has imported them to another holder of a petroleum right, see subarticle (2)

Guatemala The Petroleum Code states that "during the effectiveness of the petroleum rights, their holders may import free of customs and consular duties, consigned revenue and other import charges, either established or that may be established and which in the text of this Code shall be called 'import taxes', materials that are not produced satisfactorily in the country and that they may need for their petroleum operations" The Petroleum Code defines "materials" as consisting of "the products, machinery, equipment, instruments, spares, accessories, supplies of any kind and raw materials in their original state, in process of manufacture or finished" (article 106)

Peru The Petroleum Law permits a partial exemption from import duty with respect to concessions in the eastern and sierra zones

"The machinery, derricks, drilling equipment, piping, tanks, tools and other materials destined for work and operations on exploration or exploitation concessions in the eastern and sierra zones, shall pay only 50 per cent of the customs taxes and duties in force, general, special and additional, during the thirty years immediately following the date of granting the respective concession" (article 113)

"If at any time, the exempted materials are transported from the eastern or sierra zones to the coastal zone, the percentage of the custom duties exempted must be immediately reimbursed" (article 115)

"The concessionaires, by means of letters of guarantee granted in each case, may free of duty, introduce temporarily into the country special equipment required in the country, for the development of their activities The obligation to re-export will be effective in two years, but exemption may be extended for another two years When the original terms or extensions expire without re-exportation having been effected, the letter of guarantee shall be made effective for payment of the corresponding duties" (article 116)

Exceptions

In permitting the duty-free importation of equipment and materials which the holder of a petroleum right may require some countries make exceptions with respect to locally available items

Libya The Petroleum Law provides that the exemption from import duties shall not apply "to any goods which are available in Libya of suitable type and reasonably comparable quality, and at no higher price, provided that, in comparing prices to the price of the imported goods, shall be added customs duties and other expenses incurred up to the time the imported goods reach Libya", see article 16, paragraph (1)

Turkey Provision is made in the Petroleum Law whereby the Council of Ministers, "by means of issuing an itemized list of articles produced or manufactured in Turkey of a quality, existence and availability comparable to similar imported articles and selling at prices not more than 15 per cent in excess of the cost of the same, may

determine and establish which of the articles being imported free of customs duty shall, according to this list, be subject to customs duties or other import taxes and dues", see article 112, subarticle (1)

Guatemala The exemption from duty is restricted by the Petroleum Code to "materials that are not produced satisfactorily in the country" (article 106)

Disposition of duty-free goods

Philippines The Petroleum Act lays down that "if any goods on which exemption has been allowed be disposed of . . . (by sale or by re-export), the concessionaire is obliged to make a report to the Secretary of Agriculture and Natural Resources to that effect and to pay such import duty as is due" (article 103)

Libya The Petroleum Law stipulates that "any person intending to sell or transfer any goods which have been imported free of duty shall, before such sale or transfer, make a declaration to the Customs Department and shall, unless such goods are sold or transferred to another permit or concession holder or contractor entitled to the same exemptions, pay on demand such import duty as may be assessed by the Director General of Customs in accordance with the Customs Law", see article 16, paragraph (3) It also permits the export of such goods duty-free (paragraph 4)

Turkey The Petroleum Law states that "materials so imported free of import taxes and imposts, when transferred from the holder of a petroleum right to another person who is not a holder of a petroleum right, shall be subject to taxes and imposts in accordance with the tariff and terms in force at the time of the transfer", see article 112, subarticle 3 It further states that, "except in the event of the purchase of materials by the Petroleum Administration . . . , a holder of a petroleum right may export the materials that he has imported, other than consumer goods, free of export taxes and imposts"

Guatemala The Petroleum Code declares that "the holders of petroleum rights shall be responsible for the import taxes effective on the date on which the customs declarations are liquidated, when they use or dispose of the articles, imported with exemption from such taxes, for purposes different from those that correspond to the petroleum operations for which they may be authorized, except when the persons to whom such goods are transferred are the State or holders of petroleum rights authorized to use them in their operations In that case, they shall pay the import taxes diminished in the same proportion in which the goods imported freely may have deteriorated or depreciated" (article 107) The Petroleum Code also permits the duty-free export of materials imported duty-free, subject to the right of the Government to purchase such materials (article 112)

EXEMPTION FROM CUSTOMS DUTY ON EXPORTED PETROLEUM

Philippines The Petroleum Act provides that "no export tax shall be levied upon petroleum produced from concessions granted under this Act" (article 104)

Libya The Petroleum Law states that "petroleum or any of its derivatives produced in Libya may be exported free of customs duty and without an export licence subject to the policy of the Government regarding exports in general and to such restrictions as the State may impose by Law on production and exports during a state of war or emergency", see article 16, paragraph (4)

Turkey The Petroleum Law lays down that, "except for petroleum or petroleum products which may be required to be refined or sold in Turkey, a holder of a petroleum right may export petroleum and petroleum products free of all kinds of export taxes and imposts" (article 114)

Guatemala The Petroleum Code says that "the petroleum produced, and the products obtained, in refineries installed in the country may not be burdened with export duties" (article 111)

Increase or Decrease in Payments to Government

EQUAL DIVISION OF PROFITS

General considerations

Provision is made in the legislation of some countries for an increase or decrease in payments to the government by the holder of a petroleum right which, in effect, bring about an equal division of the profits from the production of the petroleum, the government receiving in total payments an amount equal to that remaining to the holder of the petroleum right after deducting the costs of production Arrangements of this sort are generally intended to strike a balance between the interests of the parties involved in the production of the petroleum, namely, the country to which the natural resource belongs and the natural wealth of which is being depleted in the process of the extraction, and the holder of the petroleum right, who contributes the capital and the technical skill and who assumes the risks necessary to the production of the petroleum

As will be seen below, there are two possible methods of achieving such an equal division of profits. Under one system, in addition to the normal taxes a special tax is computed and levied which, when added to payments made to the government in other forms, would bring the sum of all the payments to the government up to an amount equal to the balance of the profits remaining to the holder of the petroleum right At the same time, provision is made for the reduction of normal taxes and of other ordinary payments due to the government if such payments exceed the profits which would remain to the holder of the right The reduction would be in such amount as

may be necessary to reduce such payments to a sum equal to the balance left to the holder of the petroleum right. This system is followed in the legislation of Libya, Turkey, Guatemala and Venezuela.

The other method of achieving such an equal division of profits is the imposition of an income tax applicable only to holders of a petroleum right at the rate of 50 per cent of their profits. This is the method followed in Peru.

Determination of profits subject to division

The legislation of countries which have adopted arrangements for an equal division of profits in petroleum production usually specify the manner in which such profits are to be determined for the purpose of such arrangements.

Libya The Petroleum Law permits the concession holder to deduct from the income obtained by him from all his petroleum activities in that year all expenses and losses attributable to such activities, depreciation deductions and depletion allowances. Fees, rents, royalties, income taxes and other taxes and imposts payable by the concession holder are not deductible for this purpose. In this regard, the Petroleum Law of Libya states:

“‘Profits’ for the purposes of paragraphs (1) (a) and (b) (see section below on manner of achieving equal division of profits) means in respect of any year the income of the concession holder obtained from all his petroleum exploration, prospecting, mining and producing activities in Libya in that year after deducting

(a) all expenses and losses, except fees, rents, royalties, income taxes and other taxes and imposts payable, incurred by the concession holder in carrying out such activities and properly attributable thereto irrespective of where incurred. Exploration and prospecting expenses, intangible drilling costs, as defined in the Regulations, to the extent that such expenses and costs are not incidental to the procurement or installation of physical assets, the cost of drilling wells not productive of petroleum in commercial quantities and expenses of organizing and initiating petroleum operations in Libya, may be deducted in the year in which they are incurred or they may be capitalized and amortized as provided below. The election to deduct or to capitalize as aforesaid may be made annually by the concession holder. The unamortized balance of the cost of physical assets abandoned during the year may be deducted in the year of abandonment,

(b) an amount in respect of amortization during that year of capital expenditures on physical assets used in connexion with such operations, and of expenses incidental to their procurement and installation, computed in the case of all such expenditures incurred before the effective date, irrespective of the date incurred, at a rate not exceeding 20 per cent per annum, to be elected annually by the concession holder, until all such expenditures are fully amortized, and in the case of all such expenditures incurred on or after the effective date, at a rate not exceeding 10 per cent per annum, to be elected annually by the concession holder, until all such expenditures are fully amortized,

(c) each year, for depletion allowance irrespective of the amounts so deducted in any previous year, an amount equal to 25 per cent of the gross income of the year, as hereafter defined, but limited to 50 per cent of the profits of the year computed after deduction of the amounts specified in sub-paragraphs (a) and (b) above, but before deducting the amount specified in this sub-paragraph. Gross income for the year for the purposes of calculating this depletion allowance shall consist of income derived from the disposal of petroleum produced by the concession holder in Libya less the cost of handling and transporting it to the place of such disposal.

In lieu of the aforesaid deduction, the concession holder may in any year deduct an amount for amortization of all capital expenditure made in connexion with such operations, other than those made on physical assets, incurred before the effective date, irrespective of the date incurred, at the rate of 20 per cent per annum, and, in the case of such capital expenditures incurred on or after the effective date, at the rate of 5 per cent per annum until such expenditures have been fully amortized by virtue of all deductions made under this sub-paragraph (c)”, see article 14, sub-paragraph (2).

Turkey The Petroleum Law permits the holder of the petroleum right to “deduct from the gross income derived from his petroleum operations all deductions that he is entitled to apply except rentals, royalties, fees, customs and other import taxes and dues, normal tax and surtax and other direct taxes” (article 110, subarticle (2), for enumeration of permissible deductions, see section above on income taxes).

Guatemala The Petroleum Code similarly provides that, “in order to determine the ‘net profits subject to the additional tax’, there may be subtracted from the amount of the gross income derived from petroleum operations in a taxation period the value of all of the deductible amounts authorized by article 131 for that period, with the exception of surface rentals, royalties or direct taxes, including import taxes and any other tax charges” (article 146, subarticle b, for permissible deductions see above section on income taxes).

Venezuela For purposes of computing the additional tax, the Income Tax Law starts with the net income (for deductions allowable in determining net income, see above section on income taxes) used in calculating the normal tax (*impuesto cedula*), and includes untaxed income, the normal and necessary non-deductible expenses related, and applicable, to operations in Venezuela, dividends received from companies not subject to the additional tax, and royalties. The deduction of charges for reserves intended for normal future expenses is permitted. Income taxes paid by the taxpayer to other countries are not deductible. The relevant provisions read:

“For purposes of (the additional tax), net income shall be understood to mean that determined for purposes of the corresponding *cedula* tax, but including non-

assessable earnings and the normal and necessary non-deductible expenses provided they be related, and applicable, to operations in Venezuela. The deduction of charges to provide reserves destined for normal and necessary future expenses will be permitted, but these must be included in earnings when destined for other purposes.

"Dividends received from companies which are not assessed for the additional tax shall be included in the net income. There shall not be deducted from the net income any tax on income paid by the taxpayer in other countries (article 43)

"In the cases of net incomes of taxpayers who obtain earnings derived from the extractive mining or hydrocarbon industry, including royalties and other participations of the same origin, if, after the *cedulas* and complementary tax have been deducted, the remaining income exceeds the total of the taxes attributable to the activities of the industry in the taxable year, such excess shall be subject to an additional tax of fifty per cent (50%)" (article 42)

Peru The Petroleum Law permits the deduction from gross income of "all expenses, depreciation charges and other deductions in conformity with (the income tax law) plus the special item for account of depletion" (article 90). It also permits exploration expenditure and investment to be deducted in equal annual instalments over a period equal to the duration of the exploitation concession (article 91, text quoted above on page 70). The surface rents of exploration are not deductible (article 91)

Manner of achieving equal division of profits

Reference was made above to the fact that there are two possible methods whereby an equal division of the profits from the production of petroleum may be effected between the government and the holder of the petroleum right. One method consists of the imposition of a special tax which, when added to normal taxes and other payments made in other forms to the government, brings the sum of all such payments to an amount equal to the profits of the holder of the petroleum right. At the same time, provision is made for the reduction of the normal payments to the government when necessary to leave to the holder of the petroleum right profits equal in amount to the payments retained by the government.

Libya The Petroleum Law provides that

"(a) if, in respect of any complete year after the effective date as hereinafter defined, the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which a concession holder is liable in respect of operations and income therefrom under all the petroleum concessions held by him in Libya falls short of 50 per cent of his profits as hereinafter defined during that year, the concession holder shall pay to the Commission such sum by way of surtax as will make the total of his payments equal to 50 per cent of such profits,

"(b) if, in respect of any complete year after the effective date, the total amount of the fees, rents, royalties, income taxes and other taxes and imposts for which the concession holder is liable as aforesaid exceeds 50 per cent of the said profits of the concession holder during that year, he shall be entitled to deduct from his total payments to be made to the Commission a sum equal to such excess. If the sum which the concession holder is entitled to deduct exceeds his unpaid liability in any year, the excess shall be considered as an advance payment of any sums payable to the Commission in the following year or years", see article 14, sub-paragraph (1)

Turkey The Petroleum Law imposes a surtax, and limits the normal taxes, in the following terms

"(1) The holder of a petroleum right shall, for each taxation period, be subject to the following taxes on his income and profits

(a) a normal tax which is the sum of

(i) the tax levied on his net income and profits under the laws in force, and

(ii) the tax to be paid on behalf of shareholders on their income and profits through withholding or otherwise to be credited against their taxes

(b) After once having recovered the values contained in his capital asset base plus the remaining losses permitted to be carried forward as per article 106, a surtax on his income and profits amounting to the balance left, after deducting it from 50 per cent of his net income and profits, the normal tax and other direct taxes, rentals, royalties, fees, customs and other import taxes and dues paid or payable by him to the State for the taxation period

"(2)

"(3) The normal tax to which the holder of a petroleum right is subject according to subarticle (1) hereabove when added to the sum of other direct taxes, rentals, royalties, fees, customs and other import taxes and dues, paid or payable to the State in the same taxation period shall not be greater than 50 per cent of his net income and profits for the same taxation period" (article 109)

Guatemala The Petroleum Code similarly imposes an additional tax, and set a limitation on the total payments to the Government, thus achieving an equal division of profits. It also contains rules as to how the excess payments to the Government are to be applied

"The holder of a petroleum right shall be subject in each taxation period to the payment of the following taxes on his income:

(a) the normal tax, which is the sum of

(1) the amount of the tax on the earnings of profits enterprises (*sic*), in accordance with the tax laws of the Republic and their revisions, as modified by the provisions of this Code,

(2) the amount of the tax that burdens the income or capital benefits, or both together, to which the shareholders of the companies may be subject

(b) the 'additional tax', which is the amount that results from subtracting from 50 per cent of the net profits subject to the additional tax the amount of the normal tax and that of other direct taxes, including import taxes and any other tax charges, that of the surface rentals and that of the royalties paid or payable by the holder to the State" (article 146)

"When, in any taxation period, the normal tax that is indicated in subarticle (1) of article 146 exceeds 50 per cent of the net profits subject to normal tax, such excess shall be utilized

(a) to reduce the part of the normal tax established under item (2) of subarticle (a) of article 146, and

(b) if a balance remains, to reduce the tax on profit enterprises that is established under item (1) of subarticle (a) of the same article" (article 148)

"When, in any taxation period, to the amount of the normal tax or to that of the sum of this and the additional tax, if any, in the said period are added the other direct taxes, including import taxes and any other tax charges, the surface rentals and the royalties, then the total may not exceed 50 per cent of the net profits, subject to limitation on taxes corresponding to that taxation period.

"If any excess should exist, this shall be utilized

(a) in the first place, to reduce the part of the other direct taxes to which the preceding paragraph refers, or

(b) in the second place, to reduce the additional tax, if any, to which subarticle (b) of article 146 refers, or

(c) in the third place, to reduce the part of the normal tax established under item (2) of subarticle (1) of article 146, or

(d) if any balance should still remain, to reduce the tax on profit enterprises that is established under item (1) of subarticle (a) of the same article

"The foregoing reductions shall be made up to the point at which the sum of the surface rentals, the royalties, and the remaining direct taxes, the additional tax, if any, and the normal tax reach the above mentioned limit" (article 149)

Venezuela The Income Tax Law imposes an additional tax of 50 per cent of the amount by which the income remaining to the holder of the petroleum right exceeds the normal taxes payable by him (article 42, quoted above, page 76) There appears to be no provision either in the Income Tax Law or the Petroleum Law of Venezuela similar to those provisions cited above which provide for a reduction of normal taxes and other payments when the amount of such payments exceeds the profits remaining to the holder of the petroleum right

As noted above, the other method of achieving an equal division of petroleum production profits between the holder of the petroleum right and the government is through the imposition of an income tax, applicable only to holders of a petroleum right, at the rate of 50 per cent of their taxable profits

Peru In this regard, the Petroleum Law provides

"The concessionaires in the coastal zone shall pay, as total income tax, fifty per cent (50%) of the net profit earned" (article 90)

"In the sierra and eastern zones, the rate of taxation indicated in article 90 shall be the following

"10 per cent during the first 10 years of the term of exploitation,

"25 per cent during the following 10 years,

"35 per cent during the following 10 years, and

"50 per cent during the remaining period of the concession" (article 93)

Commencement of application of arrangements on division of profits

Countries which have adopted arrangements leading to an equal division of the profits in petroleum production usually provide for the postponement of the application of requirements for additional payments, or an exemption therefrom in whole or in part, either for a definite period of time, until the initial capital has been liquidated, until production reaches a certain level, or when the income is below a certain percentage of the investment

Libya The surtax applies only in respect of any complete year after "the date on which the concession holder first reaches a level of regular exports of petroleum averaging fifteen thousand (15,000) barrels a day measured over a period of thirty consecutive days under all his concession in Libya or the expiry of four years from the date when petroleum is first exported regularly by the concession holder, whichever is the earlier", see article 14, paragraph (2)

Turkey The surtax becomes applicable to the holder of the petroleum right "after once having recovered the values contained in his capital asset base plus the remaining losses permitted to be carried forward" article 109, subarticle (1) (b) The Petroleum Law further provides that

"The holder of a petroleum right shall be subject to the surtax as from the date when the values contained in his capital asset base plus the remaining losses permitted to be carried forward become less than the sum of the following

(a) his net income and profits for purposes of the normal tax for the current and all preceding taxation periods less

(1) the normal tax paid or payable in the course of the taxation period in which he becomes subject to surtax and

(2) the normal taxes paid for all previous taxation periods, and

(b) the excess of the depletion allowance on a percentage basis claimed by, and allowed to, the holder, to the date he is subject to the surtax over his allowable depletion on a cost basis", see article 109, subarticle (2)

Peru Under the Petroleum Law, the 50 per cent rate of tax becomes fully applicable in the sierra and eastern zones only after the thirtieth year of the period of the concession (article 93, quoted above)

Venezuela The Income Tax Law provides for exemptions from the additional tax when income does not exceed a certain percentage of capital

“First paragraph Those taxpayers will be exempt from this tax whose net income, after deduction of the *cedular* and complementary tax does not exceed ten per cent (10%) of the capital invested by the taxpayer in the production of the revenue

“Second paragraph When the net income is greater than ten per cent (10%) and does not exceed fifteen per cent (15%) of the capital invested, this tax will apply only to half of the income over and above the aggregate of the taxes arising during the taxable year out of the activities of the industry

“In the determination of the capital invested, the average of its amount will be taken at the beginning and at the end of the taxable year

“The assets and liabilities of the concern held abroad will be included, when these are related to its operations in Venezuela” (article 42)

OTHER PROVISIONS RELATING TO THE REDUCTION IN PAYMENTS TO GOVERNMENT

Peru The Petroleum Law provides for a review of rates of taxation for the sierra and eastern zones under certain conditions

“If the rates of taxation fixed by the present law for the sierra and eastern zones make a certain section or sections of such zones economically unexploitable, the Executive Power, after previous studies and corresponding verification, shall submit to Congress the projects of authoritative laws fixing the minimum rates and basic conditions for granting these” (article 105)

Venezuela Power to reduce the exploitation tax is vested in the national Government by the following provision of the petroleum law

“With a view to making it economically possible to continue exploiting certain concessions, the Federal Executive is authorized to reduce the exploitation tax in those cases where it has been satisfactorily proved that the increasing cost of production, including the amount paid for taxes, has reached a limit which does not permit of commercial exploitation. The Federal Executive is also authorized to increase again the exploitation tax previously so reduced, and up to its original level, when it considers that the reasons for making the reduction have changed” (article 41, ordinance 1, special paragraph)

Pakistan The Petroleum (Production) Rules prescribe that “every oil mining lease shall contain a clause providing for the periodical revision of royalties”, see rule 37 (5)

Payment in Cash or in Kind

RIGHT TO DETERMINE FORM OF PAYMENT

In some countries, the government has the right to require that a payment due to it from the holder of a petroleum right should be made in cash or in kind, or partly in cash and partly in kind

Philippines The Petroleum Act provides that the “royalty may be paid either wholly or partly in kind, or wholly or partly in cash, at the election of the Secretary of Agriculture and Natural Resources” (article 67)

Venezuela The Petroleum Law states that the exploitation tax “shall be paid totally or partially in cash or in kind, at the election of the National Government” (article 41, ordinance 1)

Turkey The Petroleum Law says that “royalty payable by a petroleum producer may be paid either in cash or in kind”, see article 78, subarticle (2), at the option of the Petroleum Administration, see subarticle (3) (a)

PAYMENT IN KIND

Place of delivery

Where the government has the right to require payment in kind, the place to which the holder of the petroleum right is required to make delivery is usually specified

Philippines The Petroleum Act obliges the concessionaire to make delivery “at the place of production or at any established receiving and storage station on the transportation system which is employed by the concessionaire for the transportation of his own petroleum or similar kind, as elected by the Secretary of Agriculture and Natural Resources” (article 67)

Venezuela The Petroleum Law provides that

“In case the Federal Executive (the national Government) should decide to receive in kind the tax mentioned in ordinal 1 of article 41, the following rules shall apply

“(a) The volume of petroleum due to the nation shall be delivered, wholly or in part, at the option of the Minister of Mines and Hydrocarbons at any established receiving installation along the route over which the petroleum from the concession is conducted, between the producing field and the export shipping terminal, including the extremity of the flexible hose used for loading tankers at the terminal. The pipeline transportation service which the concessionaire renders to the nation shall be paid for at cost, which cost shall not exceed one-half centimo (Bolivar 0 005) per cubic metre per kilometre, and if the concessionaire should render loading services, he can also charge their cost which shall not exceed twenty centimos (Bolivar 0 20) per cubic metre” (article 50, first special paragraph)

Turkey The Petroleum Law provides that

“Where facilities therefor are available, the Petroleum Administration may require the producer to deliver all

or part of the specified petroleum elsewhere than to the producer's tankage, but, such delivery is more costly than delivery to the producer's tankage, the Government shall pay the producer for the added cost" see article 78, subarticle (3) (c).

Storage of payment in kind

Provisions requiring the holder of a petroleum right to store oil payable to the government may be found in the legislation of the three nations set out below

Philippines

"The holder of such concession is under an obligation to store, for a period not in excess of thirty days, such royalty in kind, free of expense to the Government. Should the Government have no adequate facilities for the handling and/or storage of such petroleum after the said period, the concessionaire shall supply facilities for the handling and/or storage thereof for a reasonable charge, which period and charge shall be as mutually agreed upon between the Secretary of Agriculture and Natural Resources and the concessionaire in advance provided that in no event the concessionaire shall be required to store beyond such thirty days over one hundred thousand barrels of such petroleum at any one time, or of any petroleum other than that produced within the area held by the concessionaire" (article 70)

Venezuela

"(b) The volume of oil belonging to the nation, out of the production obtained during any calendar month, must be kept in storage by the concessionaire at his expense, in separate tanks or mixed with his own oil in common tanks, for two months at most. The concessionaire shall be responsible for the petroleum belonging to the nation during the storage period. The Federal Executive (the national Government) may demand the immediate delivery of part or all of the petroleum in storage which belongs to the nation

Turkey

"(c) If the Federal Executive (the national Government) does not dispose of the nation's petroleum once the storage period has terminated, the concessionaire's obligation to keep it in storage shall cease, it being then understood, *de facto*, that the nation shall sell it to the concessionaire at a price which shall be determined at the time in accordance with the rules established in the second special paragraph of this article" (article 50 first special paragraph).

"A producer shall not be required, as regards royalty taken in kind, to store (a) gas under any circumstance or (b) liquid petroleum for more than 30 days", see article 78, subarticle (4)

PAYMENT IN CASH COMPUTATION

Provisions relating to the computation of payments which the government elects to receive in cash may be found in the legislation of Turkey, which provides that

"the amount of these payments shall be calculated at the wellhead price", see article 78, subarticle (2), and in that of the Philippines and Venezuela, which respectively state

Philippines and Venezuela "When the Secretary of Agriculture and Natural Resources elects to have the royalty paid in cash, as provided for in article sixty-seven of this act, the market value of the petroleum at the place of its production shall be used for the calculation of the amount due, and it shall be determined by taking as a basis the average price of petroleum of the same quality, during the preceding quarter, in the governing market or markets as specified in the regulations, and deducting from such average price the cost of transportation from the place of production to such markets, and deducting also the cost of any processing or treatment which is necessary to make the petroleum suitable for such transportation

"For this purpose, the cost of transportation shall include all actual costs inherent therein, such as freight, according to the usual tariffs, port fees, storage costs, pumping costs, and the costs of operating and maintaining the facilities provided expressly for such transportation. Similarly, the cost of processing or treatment shall include all actual costs inherent therein, such as for chemicals, stabilization, compression, and the cost of operating and maintaining the facilities provided expressly for such processing or treatment

"The Secretary of Agriculture and Natural Resources is empowered to enter into an agreement with the concessionaire for the purpose of determining the market value of petroleum and the deductions to be allowed in computing the market value at the place of production, for the purpose set forth in this article" (article 68)

"(a) The concessionaire is obliged to pay the tax in Venezuelan money of legal tender, in accordance with the market value of the petroleum at the producing field, determining in accordance with the rules established hereinafter and which cannot in any case be less than that corresponding to the minimum value established under letter (c) of this same paragraph. The said value shall be calculated on the bases to be agreed upon between the Minister of Mines and Hydrocarbons and the concessionaire, taking into account the market quotations for Venezuelan petroleum, or taking as the equivalent of the latter another similar petroleum which has a wide market and is therefore accepted in the industry as a standard of value for petroleum of similar quality and characteristics, and also the factors which may serve as a basis for fixing that price at the Venezuelan port of exportation, in accordance with the practice of the industry. For the calculation of these values, there shall be adopted the rate at which the concessionaire has to sell his foreign exchange, according to the current foreign exchange regulations in force in Venezuela

"(b) From the price fixed at the Venezuelan port of exportation, in accordance with the provisions of the foregoing letter (a), only one deduction shall be made which shall be fixed by agreement and which in no case shall exceed one-half centimo (Bolivar 0.005) per cubic metre per kilometre of the distance between the producing field and the Venezuelan port of exportation, calculated over existing pipelines. When there are no

oil pipelines between the producing field and the port of exportation, the Federal Executive (the national Government) shall determine the rules for the calculation of that distance. The Venezuelan port of export shall

be considered to be the deep water port of easiest access for the respective producing field, and shall be determined by the Federal Executive, (the national Government)" (article 50, second special paragraph)

GOVERNMENT EXPLOITATION

Some petroleum laws refer to the exploration and exploitation by the government through a government agency or government-owned corporation or by contract of service with private companies (Turkey, Italy, Peru, China (Taiwan) and the Philippines). The association of private and government capital in petroleum enterprises is also provided for (Peru, Japan, China (Taiwan) and Italy)

Under one type of provision, government operations are generally subject to the same application procedures, rights and working obligations as apply to private concessionaires, although a state enterprise may be preferred to private petroleum right holders or applicants under certain circumstances and with respect to particular areas (Turkey and Peru). In addition, some laws designate for government exploration and exploitation certain districts closed to applications by private persons or companies. (Italy and the Philippines).

China (Taiwan) The Petroleum Regulations provide that the "operation of petroleum mines are divided into two kinds: state operation, or private operation under lease." State operation may be conducted either by an organization established by the Ministry of Economic Affairs or by a special sole state capital enterprise formed for the purpose (article IV). The regulations also provide for the granting of leases to companies whose capital is from the Chinese Government and from Chinese nationals and/or foreign nationals.

Mexico Under the Constitution and Petroleum Law, petroleum resources are developed only by the Government, either alone or in association with private capital.

Italy Government exploitation of petroleum resources is carried on by the National Hydrocarbons Agency (ENI), which was established as a juridical entity under Law No 136 of 1953. The policy of ENI is determined by a committee composed of the Ministers of Finance, the Treasury, and of Industry and Commerce. ENI has exclusive rights in the area designated in that law to explore and develop hydrocarbon fields, and to construct and to operate pipelines. It may manufacture, refine, and sell hydrocarbons.

ENI may carry out its functions and exercise its exclusive rights through enterprises which are under its control and whose capital is subscribed by the Government or by semi-governmental agencies. It is also authorized to buy stock in corporations and to reorganize corporations

in which it has a controlling interest. The approval of the Ministers of Finance, of Industry and Commerce and of the Treasury is necessary for stock issues which would result in the loss by ENI of its controlling interest in any corporation.

With respect to areas other than those designated in the law as exclusively subject to exploration and exploitation by ENI, the Agency may be granted exploration permits and exploitation concessions in reserved areas by the Minister of Industry and Trade, but it may not participate in public auctions of concessions in those areas (law No 6, 1957, articles 29 and 34). ENI is exempt from provisions determining the maximum extent of areas which may be held by any one person, agency or corporation under exploration permits or exploitation concessions (*ibidem*, articles 3, 15 and 35).

Japan The Japan Petroleum Exploration Company, Ltd was established by law No 152, 1955. The Government must at all times hold at least 50 per cent of the shares of this company.

The company has as its object the exploration of petroleum resources in a prompt and methodical manner, and it is authorized to engage in the following activities:

- (1) prospecting for petroleum
- (2) development of petroleum and natural gas
- (3) sale of petroleum and natural gas
- (4) other activities necessary for the achievement of its purpose

Authorization from the Minister of International Trade and Industry is required for the above activities, as well as for the issuance of new shares of stock or debentures. His approval is also required for the budget, programme, sale and acquisition of mining rights for petroleum, and the appointment or dismissal of Directors or Auditors of the Company.

Mexico The Constitution prohibits the granting of concessions for the exploration or exploitation of petroleum or similar hydrocarbons, and provides that "the nation shall effect the development of these products" (article 27).

Under this constitutional provision, the Mexican Petroleum Law provides for government exploitation in the following three forms:

- (1) directly through a government organ,
- (2) through public institutions created by law specifically for petroleum operations; and

(3) through contracts with companies or private persons

Operations undertaken directly by the Government are under the direction of the Director of Mines and Petroleum in the Ministry of National Economy. Such operations are undertaken only if necessitated by economic conditions in the industry, or national defence requirements or other compelling considerations.

Exploration and exploitation through public institutions may be carried on in areas, not exceeding 30,000 hectares, which are allocated by the Ministry of National Economy after the approval of the plan and programme presented by the institution. A public petroleum institution may, with the approval of the Ministry of National Economy to establish mixed companies, carry on the exploration and exploitation work, the majority shares being owned by the public body.

The Government may contract for exploration and exploitation operations with individual Mexican citizens or with companies entirely constituted by Mexicans, or with "mixed" companies established and controlled by the Federal Executive, more than half of whose capital stock is owned by the Government. In no case may such contracts be made with corporations whose stock is sold publicly. The contractor may be paid either a fixed amount or a stated percentage of the production. The maximum period for contracts is 30 years.

Peru The law provides as follows

"Article 3—The Government may carry out directly all operations for the exploration, exploitation, manufacture, refining, transportation by special means and storage of petroleum and similar hydrocarbons, the Government may also grant concessions for these purposes to persons or private companies, national or foreign in accordance with the conditions and requisites established in this law and its regulations.

"Article 62—The reserved areas shall be explored or exploited

- (a) Directly by the State,
- (b) By the State in association with national capital,
- (c) By national persons or private companies only, and
- (d) By those who obtain them under the conditions stipulated in chapter VI (bids)

"Article 63—When the State operates petroleum deposits by administration or other analogous system, bids shall be called for the services required.

Should the State enter into association with national capital, the Ministry of Development shall establish by supreme resolution, issued with the approval of the Council of Ministers, the basic conditions under which

it shall accept such association, the amount of the deposit guaranteeing compliance with the offers made and the location, extension and exact boundaries of the area to be exploited by the company formed.

"Article 147—The Executive Power shall organize—a state organization having juridical representation and being subject to commercial and industrial laws.

The Executive Power shall assign to it a capital of not less than 500 million Soles which shall be covered by the revenue from royalties received by the State, by the revenue from its own operations and by the one per cent on exports created by law 9157, until the assigned capital is made up.

The executive power shall authorize the Fiscal Petroleum Company to form mixed companies with national capital only, in the proportion of 60 per cent private capital and 40 per cent state capital, and to enter into such exploration or exploitation contracts as it may deem advisable."

Philippines The Petroleum Law provides for the government exploration, exploitation and utilization of petroleum resources, as well as for private concessions. Government exploitation is carried out on petroleum reservations, which are established by proclamation. No areas for which concessions have been granted or applied for may be included in such reservations. The law further provides that the Government may explore, develop and exploit such petroleum reservation either by itself or through its instruments or through competent persons under contract of service executed by the President, on behalf of the Government, and approved by the Congress (articles 5 and 13).

Turkey The law contains the following provisions relevant to government petroleum operations

"Section 2 Government petroleum operations

121 (1) The petroleum operations, with the exception of geological investigation, now conducted by the Mineral Institute of Research and Exploration shall, within 150 days after the effective date of this law, be transferred to a person existing by virtue of law created for the purpose by the Government.

(2) The person existing by virtue of law so created shall have the same rights, and be subject to the same obligations, under this law as any other person existing by virtue of law.

(3) If such person existing by virtue of law applies for licences on areas in which it has heretofore started, and with due diligence continues, exploratory drilling, and for leases on areas in which it has made discoveries, such applications shall be preferred to other applications for the same areas.

(4) Other persons existing by virtue of law of the same nature created subsequently shall be subject to the provisions of subarticle (2) without having preferential rights under subarticle (3)."

APPENDIX

Agreement between the Government of Iraq, 3 February 1952, and the Iraq Petroleum Company, Limited, Mosul Petroleum Company, Limited, and Basrah Petroleum Company, Limited

WHILREAS it is the desire of the Government and the Companies to enter into an Agreement for the equal sharing of the profit resulting from the operations of the Companies in Iraq

AND WHFREAS the Government proposes to amend the existing income tax law to provide for tax at the rate of Fifty per centum on income arising from dealings in oil or rights to take delivery of oil produced in Iraq and exported therefrom, with credit against such tax for royalty or equivalent payments received by the Government in respect of such oil

NOW IT IS HEREBY AGREED between the Government and the Companies in manner following

Article 1

(a) In this Agreement

"The Iraq Company's Convention" means the Convention dated the Fourteenth day of March One thousand nine hundred and twenty-five made between the Government of the one part and Turkish Petroleum Company Limited of the other part and all agreements and exchanges of letters in force and affecting the same immediately prior to the date on which this Agreement becomes operative in accordance with Article 16 hereof

"The Mosul Company's Convention" means the Convention dated the twentieth day of April One thousand nine hundred and thirty-two made between the Government of the one part and BOD Company Limited of the other part and all agreements and exchanges of letters in force and affecting the same immediately prior to the date on which this Agreement becomes operative as aforesaid

"The Basrah Company's Convention" means the Convention dated the Twenty-ninth day of July One thousand nine hundred and thirty-eight made between the Government of the one part and the Basrah Company of the other part and all agreements and exchanges of letters in force and affecting the same immediately prior to the date on which this Agreement becomes operative as aforesaid

"The existing Conventions" means the Iraq Company's Convention, the Mosul Company's Convention and the Basrah Company's Convention

"The Amended Conventions" means the existing Conventions as amended by this Agreement

"The Relevant Effective Date" means (i) in relation to the Iraq Company the First day of January One thousand nine hundred and fifty-one, (ii) in relation to the Mosul Company the First day of January immediately preceding the commencement of regular exports of oil referred to in Article 6 of the Mosul Company's Convention and (iii) in relation to the Basrah Company the First day of January immediately preceding the commencement of regular exports of oil referred to in Article 6 of the Basrah Company's Convention

"The Government's share" means the amount receivable by the Government under paragraph (a) of Article 2 of this Agreement

"The operations of the Companies in Iraq" means the operations which the Companies are respectively entitled to carry out within Iraq under Article 1 of each of the existing Conventions

"The profit resulting from the operations of the Companies in Iraq" means (i) in relation to the export by the Companies of crude oil from Iraq the difference between the Iraq border value per ton of such oil and the actual costs or fixed cost per ton as the case may be (ascertained in each case in manner provided for in Article 9 of this Agreement) multiplied by the number of tons of oil so exported and (ii) in relation to other operations of the Companies in Iraq the profit ascertained in a manner to be agreed between the Government and the Companies

"Posted Prices" means the prices (expressed in shillings per ton) f o b seaboard terminal for Iraq crude oil of the gravity and quality concerned arrived at by reference to free market prices for individual commercial sales of full cargoes and in accordance with the procedure to be agreed between the Government and the Companies or if there is no free market for commercial sales of fuel cargoes of Iraq crude oil then posted prices shall mean fair prices fixed by agreement between the Government and the Companies or in default of agreement by arbitration having regard to the posted prices of crude oil of similar quality and gravity in other free markets with necessary adjustments for freight and insurance

"Actual costs" means the aggregate costs determined by sound and consistent accounting methods fairly and properly attributable to the operations of the Companies in Iraq in respect of

(i) operating expenses and overheads and

(ii) depreciation of all physical assets in Iraq at the rate of ten per centum per annum and amortization of all other capital expenditure in Iraq at the rate of five per centum per annum until such assets and expenditure are fully written off

"Iraq border values" means the values (expressed in shillings per ton) of Iraq crude oil at the points of export from Iraq having taken into account the geographical position of such points of export applicable posted prices and average realisations from cargo and long-term contract sales

"Ton" means English ton of two thousand two hundred and forty pounds

(b) In this Agreement and in the Amended Conventions "net production" means in respect of any calendar year and in relation to each of the Companies the gross quantity of oil won and saved in that year by that Company after deducting all water and foreign substances and (in the case of the Iraq Company only) after deducting also all oil supplied for the Government refinery in that year under Article 14 (2) of the Iraq Company's Amended Convention.

Article 2

As from the Relevant Effective Date —

(a) the Government shall receive in the manner provided for in Articles 10 and 11 hereof an amount equal to fifty per centum of the profit resulting from the operations of the Companies in Iraq or the amount provided for in Article 4 or 6 (as the case may be) whichever is the greater

(b) in addition the Government shall receive from each of the Companies a tax commutation payment of Twenty thousand pounds sterling per annum payable on or before the Thirty-first day of March in the next succeeding calendar year

Article 3

(a) The Government shall be entitled by notice to elect to take in kind up to twelve and one-half per centum of the net production of each of the Companies for each calendar year as from the Relevant Effective Date and shall receive in the manner provided for in Article 11 hereof a sum equal to the value at posted prices of any such oil in respect of which no such notice is given

(b) Any oil which the Government elects to take in kind under this Article shall be delivered f o b sea board terminal

(c) The notice referred to in paragraph (a) of this Article shall be a notice in writing given by the Government to the Company concerned not less than six calendar months prior to the commencement of the calendar year to which such notice relates

(d) All matters required for the implementation of this Article and not hereinbefore specifically provided shall be determined in such manner as the Government and the Company concerned may agree

Article 4

The Companies undertake that the Government's share in each calendar year as from the Relevant Effective Date shall be not less than an amount equal to the value at posted prices of twenty-five per centum of the net production of the Iraq Company and the Mosul Company respectively in that year and of thirty-three and one-third per centum of the net production of the Basrah Company in that year of which, in each case, the value at posted prices of the twelve and one-half per centum which the Government is entitled to elect to take as oil in kind as provided in Article 3 hereof shall be deemed to form part

Article 5

The Iraq Company undertakes that it will produce and dispose of a minimum quantity of twenty and three quarters million tons of crude oil per annum as from the First day of January One thousand nine hundred and fifty-four the Mosul Company undertakes that it will produce and dispose of a minimum quantity of one and one-quarter million tons of crude oil per annum as from the First day of January One thousand nine hundred and fifty-four and the Basrah Company undertakes that it will produce and dispose of a minimum quantity of eight million tons of crude oil per annum as from the First day of January One thousand nine hundred and fifty-six

so long thereafter in each case as the relevant Amended Convention remains in force The quantities of oil above referred to shall include any oil which the Government has elected to take in kind as provided in Article 3 hereof but shall not include any oil supplied for Iraq's requirements under the Iraq Company's Amended Convention

Article 6

The Companies jointly and severally undertake that the Government's share shall be not less than Twenty million pounds sterling per annum during each of the years One thousand nine hundred and fifty-three and One thousand nine hundred and fifty-four and not less than Twenty-five million pounds sterling during One thousand nine hundred and fifty-five and each year thereafter

Article 7

If the Companies respectively are able to show to the reasonable satisfaction of the Government that they are or have been prevented by circumstances beyond their control from producing and/or disposing of the full quantities of oil mentioned in Article 5 hereof in any calendar year the relevant quantity or quantities of oil so mentioned shall in respect of that year be reduced by the amount which the Companies respectively have been so prevented from producing and/or disposing of and the undertaking in respect of that year under Article 6 hereof shall be reduced in proportion to the reduction so made PROVIDED ALWAYS that nothing herein contained shall permit the obligations of the Companies under Articles 5 and 6 hereof to be reduced for reasons of commercial expediency or convenience only

Article 8

(a) Notwithstanding the provisions of Article 7 hereof the Companies jointly and severally undertake unconditionally that if in respect of any calendar year the Government's share is less than Five million pounds sterling the Companies will make good the deficiency provided that the total of the amounts paid by the Companies under this unconditional guarantee shall not exceed Ten million pounds sterling outstanding at any one time

(b) To give effect to paragraph (a) above

(i) If in any quarter of any calendar year the quarterly advance made to the Government under Article 11 of this Agreement is less than One and one-quarter million pounds sterling the Companies shall make good the deficiency for that quarter

(ii) Unless the Government and the Companies otherwise agree any sums paid to the Government hereunder shall be repaid to the Companies out of the Government's share in respect of the next succeeding calendar year or years to the extent that the Government's share in respect of any such year exceeds Twenty million pounds sterling before One thousand nine hundred and fifty-five or Twenty-five million pounds sterling in that year or thereafter as the case may be but shall not be otherwise recoverable

(iii) As and when any sum is repaid as aforesaid the amount of the obligation of the Companies under this guarantee shall revive to the extent of such repayment

Article 9

(a) For the purpose of calculating the profit resulting from the operations of the Companies in Iraq no deduction shall be made for any tax on profits

(b) For the purpose of calculating the profit resulting from the operations of the Companies in Iraq in relation to the export by the Companies of crude oil from Iraq

(i) It is agreed that the Iraq border values of 36 0° A P I crude oil of Kirkuk quality established in accordance with the definition of Iraq border values in Article 1 hereof as at the First day of January One thousand nine hundred and fifty-two were Ninety-four shillings per ton at the Iraqi/Syrian border and Eighty-one shillings and nine pence per ton at Fao

(ii) Such Iraq border values shall be appropriately adjusted

(a) In respect of other gravities and qualities of crude oil by the same amount by which the relevant posted price for the actual gravity and quality concerned differs from the relevant posted price for 36 0° A P I crude oil of Kirkuk quality

(b) In respect of any increase or decrease in the relevant posted price occurring after the said First day of January One thousand nine hundred and fifty-two which shall be added to or subtracted from the value obtained in accordance with this Article

(iii) The Iraq border values of crude oil exported at other points of export from Iraq shall be determined by agreement between the Government and the Companies in accordance with the said definition of Iraq border values. Such Iraq border values shall be subsequently adjusted in the same manner as provided for in paragraphs (ii) (a) and (b) above

(iv) The provision referred to above for establishing and adjusting such Iraq border values shall continue in full force and effect unless and until either party hereto shall show to the reasonable satisfaction of the other that such provisions have become inconsistent with the said definition of Iraq border values and the Government and the Companies have agreed upon alternative provisions

(v) The Companies' actual costs shall be taken to be Twenty-three shillings per ton for the year One thousand nine hundred and fifty-one. Seventeen shillings and six pence per ton for the year One thousand nine hundred and fifty-two and Thirteen shillings per ton thereafter (in this paragraph called "the fixed cost") If the actual costs for any year (including the years One thousand nine hundred and fifty-one and One thousand nine hundred and fifty-two) as and when determined are found to differ from the fixed cost by more than ten per centum the actual costs shall be applied, and if any such application is required in One thousand nine hundred and fifty-three or in any year thereafter the figure so ascertained shall unless and until the actual costs are found to differ from it by more than ten per cent be treated as the fixed cost.

(vi) Notwithstanding the provisions of paragraph (b) (v) above it is agreed that in the event of regular

exports of oil under the Basrah Company's Convention being commenced during 1951 the fixed cost specified in that paragraph for 1952 shall be applied in relation to the oil so exported by the Basrah Company in 1951

Article 10

In respect of each calendar year as from the Relevant Effective Date the Companies shall pay to the Government an amount which when added to the aggregate of the sum below mentioned is equal to the Government's share

Such sums are as follows

(a) a sum equal to the value at posted prices of all oil which the Government is entitled to elect to take in kind in that year in accordance with Article 3 hereof

(b) a sum equal to the total payments of Iraqi income tax based on income of that year arising in any way from dealings in oil or rights to take delivery of oil which has been produced by the Companies in Iraq and exported therefrom.

Article 11

(a) The Companies for themselves and any companies for the time being liable to pay Iraqi tax for whom the Companies or any of them may from time to time act as agent shall make payment to the Government for each calendar year as from the First day of January One thousand nine hundred and fifty-one as follows

(i) advances against and on account of the total revenue shall be made quarterly in arrears within seven days after the end of each quarter. They shall be based in each case on a provisional tonnage statement for the period from the preceding First day of January to the end of such quarter and shall be cumulative so that in calculating the amount of each advance there shall be deducted the total amount of any previous advances for the year in question

(ii) as soon as practicable after the end of the year and in any event not later than the Thirty-first day of March next following the Companies shall submit to the Government a final tonnage statement for the whole of that year. The final tonnage statement shall become conclusive either as submitted or as subsequently varied by agreement not later than the Thirtieth day of April next following unless one party hereto has prior to that date by notice in writing to the other requested that any dispute be referred to arbitration for decision. If as a result of a conclusive final tonnage statement or of any such decision any balance is found to be due to the Government in respect of the total revenue for the year such balance shall forthwith be paid, and if the advances received by the Government in respect of that year are found to have exceeded the total revenue any excess shall be treated as an advance by the Companies (for themselves and as agents as aforesaid) on account of the total revenue for the next following year

(iii) any settlement under sub-paragraph (ii) hereof shall be without prejudice to a variation of the total revenue for the year in question by reason of the

operation of Article 9 (b) (v) hereof, but no such variation shall be made unless within nine months after the end of that year either the variation has been agreed between the Government and the Companies or one party hereto has by notice in writing to the other requested that the question be referred to arbitration for decision. If as a result of such agreement or decision a further balance is found to be due to the Government such balance shall forthwith be paid, and if a balance is found to be due from the Government such balance shall be treated as an advance by the Companies (for themselves and as agent *à* toresaid) on account of the total revenue for the calendar year next following the date of such agreement or decision as *à*foresaid.

(iv) all payments made under this Article shall be in sterling to a bank in London nominated by the Government or at the option of the Government by delivery in Baghdad of a London banker's draft in sterling payable to a bank in Baghdad nominated by the Government.

(b) If any balance due to the Government under sub-paragraph (a) (ii) or (a) (iii) of this Article shall be unpaid for a space of three calendar months after the same has become payable the Government shall have the right to prohibit all export of petroleum and other products until the balance in question be paid. And if payment be not made within three calendar months after the expiration of the *à*foresaid three months the Government shall have the right to terminate the Amended Conventions and to take without payment all the property of the Companies within Iraq including the oil collected in the storage tanks and elsewhere.

(c) In this Article

the total revenue' means in relation to any calendar year the aggregate of the payments to which the Government is entitled in respect of that year under this Agreement and under the Amended Conventions and by way of Iraqi tax.

'Iraqi tax' means in relations to any year the total amounts payable to the Government in respect of Iraqi income tax based on income of that year arising in any way from dealings in oil or rights to take delivery of oil which has been produced by the Companies in Iraq and exported therefrom.

'tonnage statement' means a statement by the Companies showing the net production of and quantity of oil exported by each of them during the period to which such statement relates, the relevant posted prices and Iraq border values and all such other information as the Government may reasonably require to enable the total revenue for such period to be assessed.

Article 12

In calculating posted prices for the purposes of this Agreement and of the Amended Conventions prices quoted in currencies other than sterling shall be converted to sterling on the basis of par values for the time being established under the Articles of Agreement of the International Monetary Fund or (if no par value is established for one or more of the relevant currencies or if the International Monetary Fund is discontinued) then on the basis of the appropriate rate or rates of exchange recognised by any other internationally accepted authority.

Article 13

(a) [deals with effect of agreement as amending existing conventions]

(b) [deals with effective date of amendment]

(c) If any doubt, difference or dispute shall arise between the Government and the Companies concerning the interpretation or execution hereof or anything herein contained or in connection herewith or the rights and liabilities of the Government or the Companies hereunder or if the Government and the Companies should fail to agree upon any of the matters required to be settled by agreement the same shall be decided by arbitration in the manner provided by the relevant Amended Convention. In this paragraph "the Companies" means the Companies or any one of them.

[NOTE: Article 40 of the Iraq Convention as amended provides for arbitration by two arbitrators, one of whom is chosen by each party, and one referee chosen by the arbitrators. In the event of arbitrators failing to agree upon a referee, then the Government and the Company appoint a referee. If the Government or Company fail to agree, the referee is appointed by the President of the International Court of Justice. The decision of the arbitrators, or if they disagree, the decision of the referee is final.]

Article 14

Any action to be taken hereunder by the Government shall be taken by such Minister or other person as the Council of Ministers may from time to time nominate for the purpose of such action.

Article 15

This Agreement has been drawn up in the Arabic and English languages, both texts being regarded as authoritative, but in the event of any discrepancy between the meanings of the English and Arabic texts hereof the English text shall prevail.

Article 16

This Agreement shall not become operative unless and until it has been confirmed by Special Law.

[The Agreement was ratified by Special Law dated 17 February 1952.]

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Part III

**COMPARATIVE SURVEY OF MINERAL LEGISLATION OUTSIDE
THE REGION**

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INTRODUCTION

Excerpts or summaries of legislative provisions on certain aspects of mineral development from the mining laws of the following countries have been compiled in this part

Australia	(a) Victorian Mines Act 1928-1949 (b) Australian (Commonwealth) Coal Industry Act 1946-1952
Belgian Congo	Decree of 24 IX 1937 as amended
Brazil	Mining Code of 1940 as amended

Canada	(1) The Manitoba Mines Act (b) The Manitoba Mining Royalty and Tax Act
Egypt	Mining Law (No 66) of 1953
Mexico	(a) Mining Law of 1930 as amended (b) Law of Taxes and Promotion of Mining, 1956
Peru	Mining Code (1950)
Turkey	Mining Law (Law No 6309) 1954

BASIS OF STATE CONTROL: STATE OWNERSHIP OF MINERALS; CLASSIFICATION OF MINERALS AND AREAS

Of the countries dealt with here, the Belgian Congo, Egypt, Mexico and Peru have espoused the 'regalian doctrine' by which rights to minerals are not included in land ownership and all minerals are state owned. Brazilian law differs only in that no one is declared to be the owner of minerals, but the right to obtain valuable minerals wherever located is created only by state authorization.

Canada In the province of Manitoba, ownership of minerals may be vested in the owner of the surface land by virtue of old grants by the Crown. But the present law establishes the presumption that minerals are reserved to the State when grants of state lands are made and that the right to obtain such minerals is acquired only under the Mines act.

Australia Legislation in the state of Victoria provides for the application of the Mines Act to minerals even under land which had in the past been granted without reservation of minerals.

Belgian Congo The Mining Law (decree of 24 IX 1937, section I, article 1) states that the subsoil is entirely owned by the colony, and that exploitation of the following substances is governed by the mining law

- (a) substances which can be used because of their mineral content and rare earths,
- (b) substances containing sulphur or phosphorus,
- (c) fossil, combustible or bituminous substances,
- (d) rock-salt, metallic salts and salt springs,
- (e) amianthus and mica,
- (f) diamonds and other precious stones

Exploitation of uranium, thorium and all substances containing radio-active materials is not covered by the general mining law. Under the decree of 2 July 1955, a special contract approved by decree is a prerequisite

The following substances are not considered as minerals: turl, slate, sandstone, building stone, marble, granite, limestone, gypsum, pozzuolana, brass, basalts, lignite, diorite-sand, chalk, sand, silex, clay, kaolin, fuller's earth, pottery earth and fossil coral (article 3)

The following regions in the Belgian Congo are reserved for the exclusive exploration and exploitation of the State: the province of Leopoldville, the district of the Middle Congo, and the territory of Lukasi. Areas open to general prospecting are announced by decree.

Brazil The Mining Code defines mineral deposits as "any and every mass of mineral or fossil substance existing in the interior or on the surface of the earth, which is of value to industry" (article 1, paragraph 1). The following is the classification of deposits:

- Class I—Primary deposits of precious-metals ore,
- Class II—Alluvial and eluvial deposits of precious metals ore,
- Class III—Primary deposits of base-metals ore,
- Class IV—Alluvial and eluvial deposits of base-metals ore,
- Class V—Primary and secondary deposits of rare-metals ore,
- Class VI—Primary deposits of non-metallic ores and minerals,
- Class VII—Alluvial and eluvial deposits of non-metallic ores and minerals,
- Class VIII—Deposits of solid-fossil fuels,
- Class IX—Deposits of bituminous and pyrobituminous rocks,
- Class X—Deposits of petroleum and natural gases,
- Class XI—Thermal and gaseous mineral waters

Sole Par. Doubts concerning the classification of deposits shall be decided by the National Department of Mineral Production"

The ownership of the surface does not include ownership of mineral and fossil substances useful for industry (article 4)

"The right to prospect mineral substances in lands of private or public domain is created by authorization from the Government of the Union, and the proprietor or possessor of the land is obliged to respect the same" (article 5)

"Industrial utilization of the mineral deposits whether or not manifested, depends upon Federal authorization, which shall be granted upon petition by means of successive decrees of authorization for prospecting and for operation" (article 12)

Quarrying of substances of little economic value, panning of alluvial gold and working for diamonds do not require government authorization

"Quarries and deposits of mineral substances that do not contain ore of great economic value can be utilized independently of an authorization if they can be used immediately in natura or without any improvement other than the quarrying and shaping for use, and provided they are not destined to constructions affected with a public interest and have no application in the manufacturing industry (article 12, paragraph 1)

"The works of the nature of panning alluvial gold and washing for diamonds in lands and streams of the public domain are free

"Paragraph 1—In the lands and waters of private domain, such works shall depend upon an understanding with the proprietor. In this case, the contribution due from the miner to the proprietor as indemnity for servitudes and damages shall not exceed 10 per cent of the value of the effective production, with an appeal lying to the proper department of the Ministry of Finance or, in default thereof, to the local authorities

"Paragraph 2—If the panner or washer is compelled to inhabit lands of private domain in the vicinity of public lands and waters, he shall pay to the landowner an indemnity not higher than 5 per cent of the value of the effective production"

Egypt Under the Mining Law (No 66 of 1953), minerals are state property and all mining operations require licences, permits or leases

"Article 1 For the purpose of application of this Law, the word 'Minerals' shall apply to minerals and their ores including raw combustibles, chemical elements, precious stones and the like, the rocks and layers, mineral deposits on or under the surface of the soil, as well as the natural gases and mineral waters coming out of the bowels of the earth

"Article 2 All raw minerals existing in mines and quarries of the Egyptian Kingdom, including the territorial waters, are considered as state property

"Article 5 It is forbidden to carry out exploration, reconnaissance, prospecting or exploitation work for minerals in the Egyptian Kingdom including the state territorial waters, whoever the proprietor may be, except by virtue of a licence given in accordance with the conditions and in the manner stipulated in this Law"

Canada In Manitoba, the following provision governs the application of the Mines Act

"Unless the contrary appears to be the intent of the instrument wherein a disposition of the surface rights in respect of any Crown lands is granted or reserved, the grant or reservation shall be construed to convey or reserve the land therein described with the exception of the ores, mines, and minerals on or under the land, and such right of access for the purpose of winning the ores and minerals as is incidental to a grant of ores and minerals, and the ores and minerals and the right of access shall be leased or otherwise disposed of only under this Act."

Mexico Under article 27 of the Constitution, ownership of minerals is vested in the nation. The Mining Law (1930 as amended) governs the exploitation and treatment of all natural mineral substances except for petroleum and its by-products and for atomic material and related deposits (uranium, thorium and other elements from which energy may be obtained from nuclear reaction), which are the subject of special legislation. Article 4 provides that "the right to exploit and treat any of the substances covered by this Law is acquired originally from the nation, by means of concessions granted by the Executive Power through the Ministry of National Economy."

National mining reservation affecting specified minerals, kinds of deposits or areas are subject to special regulation outside of the generally applicable provisions of the law. Such reserves are provided for as follows in the Mining Law

"Article 126. The Federal Executive, through the Ministry of National Economy, may constitute national reserves on free ground for the following purposes

I. To promote and encourage the exploitation of mineral resources in isolated, unexplored or abandoned districts, special concessions being granted for this purpose in accordance with the conditions set forth in the Regulations of this Law

II To seek that miners on a small scale and co-operative associations engage in mining activities in districts which offer exploitation prospects on a commercial scale compatible with their financial possibilities

III To carry out the exploitation of mineral substances when, on account of special circumstances, this should be necessary

IV To regulate the production and distribution of mineral substances, keeping them inactive when such operations might upset the market

"Article 127 The national mining reserves may comprise

I Substances

II Zones

III Placers

"Article 128 The minerals contained in placers shall in all cases form part of the national reserves

"Article 129 Special concessions to exploit reserves shall only be granted when the applicants prove that they can count on the necessary technical help to carry out the works required to utilize the concessions and that they have the necessary financial backing for their undertaking

The Ministry of National Economy is empowered to refuse the granting of said concessions if it deems that the general interests of the country would not be benefited thereby "

Peru Article 1 of the Mining Code (1950) provides that

"Mineral substances of any kind found in the soil or subsoil of national territory are assets belonging to the State except for rights legally acquired "

The Mining Code does not apply to "petroleum and analogous hydrocarbons or to radio-active substances "

Turkey Under the Mining Law (Law No 6309, 1954) minerals are owned by the State. Exploration and exploitation may be carried on only by virtue of permits or operating rights granted by the State

Article 4 declares that "Minerals are under the ownership and domination of the State and are not considered to be part of the land where they are found "

Petroleum is the subject of a separate law

Australia In the state of Victoria, Crown grants of land in the earliest years of its history did not necessarily reserve all mineral rights to the Crown. It was soon laid down, however, that all gold and silver was Crown property, whether or not it had previously been alienated by the Crown. After 1 March 1892, all other minerals remained permanently vested in the Crown upon alienation, but, preceding mineral ownership already acquired remained intact. The Mines (Minerals) Act of 1944 made provision to place all mineral deposits including those alienated before 1892 on the same basis for the purpose of search and exploitation. Section 3 of the enactment provides that any person may petition the Minister of Mines to have any land which was alienated before 1 March 1892, and not exceeding 640 acres, subjected to the same conditions for mineral search and exploitation as land alienated since that date. The state Minister of Mines is also empowered to order surveys on such land to ascertain whether there is a reasonable probability that it contains minerals in economic quantities. If that is bound to be the case, the Minister

may serve notice on the owner that unless arrangements are made within six months to mine the land, it will be brought under the general search and exploitation provisions of the Mines Act

The Mines Act, 1928, which was a general consolidation of the preceding law and not a general re-enactment, remains the basic legislation for the search and exploitation of most mineral deposits within the state. Its format largely remains close to the legislation promulgated during the middle years of the nineteenth century when Victoria was one of the largest gold producers in the world, and the extensive "gold rushes" of the period called for more detailed legislation to deal with many specialized problems of a political and economic nature which arose in relation to the search and exploitation of mineral resources

The 1928 Mines Act retained a long standing distinction between gold and other minerals. Gold was defined as including, in addition to the pure element, any earth containing gold or "having gold mixed in the substance thereof or set apart". For other minerals, the act's definition was of general scope and defined minerals as "all metals other than gold and all minerals and mineral ores", and, without restricting the generality of the foregoing, included "gems, precious stones, mineral, oil, natural gas, and mineral water and the ores and earths of all minerals". The 1944 Mines (Minerals) Act excluded silver and petroleum from the principal act definition. In 1949, the Mines (Amendment) Act completely re-appraised the definition and substituted in the principal act a definition which listed minerals (still other than gold) as "antimony, copper, iron, lead, manganese, mercury, molybdenum, silver, tin, tungsten and the ores and earths of these metals, gems and precious stones, barytes, bauxite, calcite, diatomaceous earth, fluorspar, glass-sand, gypsum, limestone, magnesite, mica and silica, wavellite and other phosphatic minerals, wolfram, coal, clay, ochres and feldspars for use in the manufacture of porcelain, fine pottery or pigments, basalt and granite, material for cement making, and mineral water, and any other substance which is declared a 'mineral' within the meaning of the Act", which may be proclaimed by the Governor-in-Council.

The extraction of coal resources in the state of Victoria is generally governed by the Coal Mines Regulations Acts, 1928-1945, dealing in detail with the development and day-to-day operations of coalmines

GRANT OF RIGHTS TO EXPLORE AND EXPLOIT MINERALS

Eligibility of Foreign Companies

Of the laws here noted, Brazil and Mexico declare foreign companies, or companies most of whose capital is owned by aliens, ineligible to hold mining concessions, Turkey requires incorporation under domestic law, and the

Belgian Congo, Egypt and Peru allow foreign companies subject to registration requirements

Belgian Congo Applicants for permits must be registered in the Congo. Companies must either be established under the laws thereof or maintain a registered

operating office within the colony (article 11) Joint stock companies must be constituted under the laws of the Congo and must have the approval of the Minister of Belgian Colonies (article 75)

The Government has the right, with respect to both foreign and domestic companies, to subscribe up to a maximum of 20 per cent of the initial capital and to the same proportion of any increased capital (article 461)

Brazil Article 6 of the Mining Code provides that

“The right to prospect or operate can be granted only to Brazilians, natural or juridical persons, the latter being constituted by Brazilian partners or shareholders

Paragraph 1—The operation of mining corporations is subject to Federal authorization upon petition directed to the Minister of Agriculture and showing proof of its organization and of the Brazilian nationality of the partners or shareholders. The instrument of authorization to operate shall consist of an authentic copy of the respective decree, which must be transcribed in the proper book of the Division of Development of Mineral Production (DFPM) and must be registered, in the original or by a certified copy, in the registry of Commerce and in the Board of Trade of the State where the mineral deposit may be located”

Decree-Law No 6230 of 1944 provides as follows

“Article 1—The President of the Republic may permit that companies destined for the exploitation of mining have their capital composed one-half in bearer shares, provided the other half consists of nominative shares, the owners of which can only be Brazilians

“Article 2—The Directorate of the companies so constituted will be composed of five directors or any higher odd number, of whom one-half, including the president, will be elected by owners of nominative shares and the other half by owners of bearer shares, and the directors thus chosen will elect the last director”

Egypt Foreign companies are eligible to engage in mining operations. The provisions of the law (No 156 of 1953, as amended by Law No 475 of 1954) on Investment of Foreign Capital in Economic Development Projects, under article 2, are expressly applicable to foreign capital after approval by a Special Committee for Foreign Capital Investment. Profits from foreign capital may be transferred abroad in the same currency as it entered the country, capital certified in the registration certificate may be repatriated after five years at an annual rate not exceeding one fifth of its registered value, foreign experts and foremen may transfer abroad up to one half of their wages (articles 3 and 4)

Mexico Aliens, but not foreign companies, may receive mining concessions, article 27 of the Constitution providing as follows

“Only Mexicans by birth or naturalization and Mexican Corporations have the right to obtain concessions for working mines or for the utilization of waters or mineral fuel in the Republic of Mexico. The

nation may grant the same right to aliens, provided they agree before the Ministry of Foreign Relations to consider themselves as Mexicans in respect to such property and bind themselves not to invoke the protection of their governments in matters relating thereto

Article 6 of the Mining Law provides that “under no circumstances may foreign companies, Governments or rulers obtain such concessions”

Peru The Mining Code permits mining operations by foreign companies subject to the same authorization as is required for domestic mining companies

“Article 211 A company is a mining company when it has any of the objects established in section two of chapter one of this Code (Exploration or exploitation of mineral substances)

“Article 212 Every mining company must be authorized by the Director of Mining or by the Regional Chief Officer of Mining. With the application for authorization there shall be attached the technical-economic reports which justify the object and purposes of the company and the amount of its capital. The companies shall start operations after they have been inscribed in the Register of Mining Concessions and Rights

“Article 213 Mining societies and companies constituted abroad shall apply for recognition by the Director of Mining, with the requisites and in the form prescribed in the two preceding articles, to be able to commence operations in national territory”

Aliens may not acquire concessions, directly or indirectly, within 50 kilometres of the national boundaries, except under special contracts proposed for reasons of national necessity and approved by the Congress (articles 21 and 79)

Turkey Article 13 of the Mining Law provides that “exploration permits may be given to Turkish citizens or to legal persons formed under Turkish laws”

Rights granted under Permits, Licences, Leases and Concessions

Most of the laws whose provisions are compiled in this subsection distinguish between exploration and exploitation for the purpose of permits, licences, leases or concessions, and, except for the Peruvian provision for free prospecting, permits and licences are required for both types of activities (It should be noted that variations exist among the laws with respect to the use of such terms as prospecting and exploring, exploitation and operation, permits and licences, leases and concessions) Exploration and exploitation rights are combined in one licence or “mining right” in the Canadian province of Manitoba and in the Australian state of Victoria

Some laws are so drafted as to preclude several explorers for any one mineral or class of minerals from searching in the same area at once. Thus in Brazil, Egypt, Mexico and Turkey exploration requires a permit or

licence which accords its holder exclusive rights to search for certain minerals within a limited area for a limited time. In contrast, a general exploration licence in the Belgian Congo gives the non-exclusive right to search for minerals in all areas open to prospecting, and only after some apparent discovery is made is an exclusive permit granted.

Exploitation operations by exploration right holders are typically precluded by provisions defining the kinds of work permitted so as to exclude effective exploitation (Brazil and Egypt) or specifically prohibiting the exploration licensee either from selling mineral products without authorization (Belgian Congo) or from extracting more than a certain amount of ore sufficient for sampling (Turkey). On the other hand, the Mexican Law specifically provides that exploration licensees may treat and dispose of products acquired from exploration operations.

Exploitation concessions or leases have a much longer term than exploration rights, in Mexico and Peru they have an "indefinite term". Such rights are usually granted only after the area has been explored and a discovery has been made. But legislation varies with respect to whether the explorer who made the discovery has the right to its exploitation. In the Belgian Congo, although no mining lease may be granted for an area and mineral covered in another person's exclusive exploration right the Government nonetheless has full discretion to deny a mining lease to any applicant, including the discoverer. In Brazil and Turkey, the discoverer may, in the government's discretion, be denied exploitation rights subject to his right to indemnification or compensation. In Egypt and Peru the holder of a valid exploration licence has a right to obtain a lease or concession covering his discovery. Prospecting licences in Manitoba (Canada) and miners rights in Victoria (Australia) give the right to establish claims for mining purposes in locations not already subject to other claims or licences or leases.

Certain laws make provision for competitive bidding or public auctions for exploitation concessions when, for any reason, such a concession is to be given to one other than the explorer. This is the case in Egypt and Turkey.

Legislation varies also with respect to the minerals included under an exploitation concession or lease. Under Turkish law, rights over only one mineral are given in a single operating concession, although the concessionaire has an overriding right to acquire a further concession covering a discovery of new minerals made by anyone within his concession area. Under another type of provision, found in the laws of the Belgian Congo and Brazil, a concessionaire acquires rights to minerals which had been discovered at the time the exploitation right was granted and which were specified in the concession or lease. Rights to all

minerals of a specified class—either metallic, non-metallic or carboniferous—are given in one concession under the Mexican and Peruvian laws. Under the law of Manitoba, a mining lessee is entitled to exploit all minerals within the area of his lease.

The exploitation right usually accords the right to construct the necessary installations and to treat and dispose of the minerals extracted. The Belgian Congo law provides that the right to dispose of the minerals extracted is subject to the preferential right of the Government to acquire the products of exploitation.

BELGIAN CONGO

The Mining Law in the Belgian Congo provides for general non-exclusive exploration permits, special exploration permits and exploitation concessions.

General exploration permit

The general exploration permit accords its holder the non-exclusive right to prospect throughout the Colony in areas declared to be open. All minerals for which concessions may be granted are covered by the general exploration permit. The permit is valid for two years and is renewable (articles 10 and 14).

Special exploration permit

An applicant for a special exploration permit must be in possession of an unexpired general exploration permit and must show a discovery or sign of the probable existence of minerals.

The special permit covers only those minerals discovered during the validity of the general exploration permit. The permit holder may dispose of the products of his prospecting works only after obtaining authorization. It is valid for a period of two years renewable for three additional periods.

The maximum area for one exclusive prospecting licence is two square kilometres. No maximum is placed on the number of licences which may be held by one person or company (articles 21 to 23).

Exploitation concession

Only the holder of a special exploration licence who has made a discovery may apply for an exploitation licence. The executive power however has the right to refuse or suspend the right of exploitation for economic or political reasons (article 63).

The concession specifies the ores to which it applies, and only with respect to these minerals may the concessionaire conduct exploitation and treatment operations. The right of disposal is qualified by the preferential right of the Colony or the Belgian Government to acquire the products (article 74).

An exploitation concession larger than 800 square kilometres may be granted by the legislative body. Concessions for smaller areas are granted by the Governor-General. The concession area may be no larger than the area covered by the special exploration licence.

The duration of a concession is of 30 years in the case of surface lodes (*gisements superficiels*) and of 50 years in case of a mine (*exploitation en profondeur*). Renewals of like periods may be granted.

BRAZIL

The Brazilian Mining Code provides for authorization to prospect and authorization to operate.

Authorization to prospect

Definition of prospecting "Article 13—Prospecting is understood to be the work necessary for the discovery of a mineral deposit and for ascertaining its economic value.

"Sole Parc" Prospecting includes works for geological reconnaissance, geophysical studies, excavations of small depth, opening of wells and galleries, soundings, chemical analyses, and experiments in treating the ore."

Mineral covered "Article 14—Petitions for authorization shall be directed to the Minister of Agriculture and must indicate the mineral substances or substances and allied substances to be prospected."

Duration "Article 16, II—The authorization shall be valid for two years, but may be renewed at the discretion of the Government, if duly proved circumstances of *force majeure* should occur."

Maximum area "Article 18—Each authorization for prospecting shall be restricted to the following maximum areas:

Classes I to VII	500 hectares
Classes VIII and IX	1,000 hectares
Class X	10,000 hectares
Class XI	50 hectares

"Sole Parc" The same person shall not be granted more than five authorizations to prospect mineral deposits of the same class" (see section above under Brazil on classification of minerals).

Authorization to operate

Right of holder of prospecting authorization to obtain operating authorization. The holder of a prospecting authorization is required to present a detailed report enabling the Government to form a sound judgement concerning the mineral reserves of the deposit, the quality of the ore and the possibility of operation. Approval of the report constitutes an official declaration that the mineral deposit has been suitably prospected. The prospector then has one year in which to apply for authorization to operate.

After the lapse of one year, the operating authorization may be granted to any other party, but provision is made

for the Government to decide on a fair indemnity the prospector or his successor by whoever may obtain the authorization. A fair indemnity is similarly established if the prospector applying for the authorization to operate does not accept the conditions imposed by the Government involving modifications of his plan (articles 16 IV, 19, 21 and 30).

An operating authorization may be refused at the Government's discretion to a prospecting right holder if the operation is declared prejudicial to the public interest. It may also be refused if the operation would "affect interests superior to the utility to be derived from its industrial operation", in this case the prospector is entitled to compensation for his prospecting expenses provided that his prospecting report has been approved (article 36).

No right to compensation, indemnity or operating authorization is acquired by the holder of a prospecting authorization unless his prospecting right is approved (article 22).

"Article 29—The petition for authorization addressed to the Minister of Agriculture shall indicate the nature and class of the substance or substances to be worked, the area necessary for the work, the easements required for the mine, as well as the special or incidental conditions suitable for the certificate of authorization, and must contain a plan for the proper utilization of the mineral deposit, with a map of the same, and proof of the applicant's financial capacity.

"Paragraph 1—The petition shall be attached to the file of the respective authorization to prospect.

"Paragraph 2—The plan for the proper utilization of the mineral deposit shall comprise, when applicable:

- I—An explanatory memorandum
- II—Projects or preliminary projects relating to
 - (a)—mining in the open or underground,
 - (b)—illumination, ventilation, transportation, signal arrangements, and underground protection,
 - (c)—surface transportation and treatment of the ore,
 - (d)—power installations, water supply, air compression, and air conditioning,
 - (e)—sanitation of the mine and of the surface works,
 - (f)—in respect of the deposits of class XI, the installations for tapping and protecting the springs, the carrying, distribution, and utilization of the water.

"Paragraph 3—If the applicant is not the prospector, he must further attach to his petition the document to which item III of article 14 refers (proof of Brazilian nationality)."

Prerequisites An authorization to operate may be applied for only if the mineral deposit has been suitably prospected, whether by the applicant or another person.

Maximum area The area for the operating authorization is subject to the limitation of the area stipulated for prospecting (article 28).

Duration "The authorization will last as long as the operation is maintained in full activity" (article 28, paragraph 1)

Minerals covered The holder of an operating authorization may not extract any substances other than those indicated in the authorization decree or substances associated therewith in the same deposit. The operator must also permit prospecting for useful minerals other than those covered by his authorization within his operating areas whenever such prospecting is authorized by the Government (article 34, XI and XIV)

EGYPT

Section one of the Egyptian Mining Law (No 66 of 1953) provides for exclusive exploration licences, prospecting licences, and mining leases with respect to minerals other than raw combustibles (raw combustibles are defined as coal, including anthracite as well as lignite and peat, liquid crude oil, asphalt, petroliferous rock and natural gas)

Exploration licence

Definition of Exploration Article 1 provides that

"Exploration for minerals other than raw combustibles means the examination of the surface or the bowels of the earth by any means particularly geological and geophysical, leading to the identification of minerals by their physical, magnetic, electric or other characteristics, or by making test pits or bores to ascertain the existence or the possibility of existence of any mineral ores"

Issuance by decree, duration Licences for such exploration are provided for as follows

"Article 8 The exploration licence shall be issued by virtue of a decree from the Minister of Commerce and Industry for a nonrenewable period of three months against payment of a fee of 5 Egyptian pounds

"The Licensee shall, during the validity of his licence, have an exclusive right to carry out exploration and apply for a prospecting licence under the provisions of this Law"

Maximum area "Article 9 The number of exploration licences granted to any one person for any one mineral in any one zone shall not exceed four. The area covered by each licence shall be rectangular, four kilometres long and two kilometres wide

"The Minister of Commerce and Industry may, for technical reasons, grant more than four licences or modify the shape and area covered by the licence, provided the area in respect of which these licences are granted does not exceed 100 square kilometres in the shape approved by the Department of Mines and Quarries"

Prospecting licence

Definition of prospecting Prospecting for minerals other than raw combustibles is defined as meaning

"The extended examination of the surface and bowels of the earth by all geological, geophysical or mining methods enabling the determination of the extent to which the ore spreads, of its quality, of the most appropriate means of its extraction and refining and of the degree of its suitability in local and foreign markets"

Prospecting licences are granted by law, not by decree, on application of the exploration licence holder, or after competitive bidding

Issuance by law, duration "Article 10 For the granting of a prospecting licence, the applicant should satisfy the necessary financial and technical requirements for the purpose

"The licence shall be granted by a law and for a renewable period of one year, provided its total duration does not exceed four years, under the conditions and in the manner laid down in this Law. Renewal shall be by a decree from the Minister of Commerce and Industry at the request of the applicant, so long as prospecting operations are carried out in a serious manner

"However, the Minister of Commerce and Industry shall not be bound to renew the licence if he considers that the licensee has become entitled to apply for a mining lease in accordance with the conditions of the prospecting licence and the Department have duly notified him by registered letter with acknowledgement of receipt of the necessity to apply for a mining lease

"A fee of 25 Egyptian pounds shall be collected yearly for every prospecting licence upon its issue or renewal"

Maximum area "Article 11 The number of prospecting licences granted to any one person for any one mineral in any one zone shall not exceed four. The area covered by each licence shall be rectangular, two kilometres long and one wide

"The Minister of Commerce and Industry may, for technical reasons, increase the number of licences above four or modify the shape and/or size of the licence area"

Public auction "Article 12 There shall be put up for public auction for mineral prospecting

(a) Areas in respect of which the right of the prospecting licensee is forfeited after he has carried out therein works that increased their value

(b) Areas in respect of which the licensee's right to exploitation has been forfeited and for the exploitation of which no bid was made in the auction held for the purpose in accordance with article 17 (competitive bidding for mining leases)

(c) Areas in respect of which it has not been possible to determine priority in accordance with article 7, and, in this case, the auction shall be restricted to the applicants concerned

Mining lease

Mining leases are obtainable generally only by holders of prospecting licences for the same area and mineral. The two exceptions to this provision are (1) that leases may be issued directly, after competitive bidding for areas known to contain exploitable minerals and (2) that a

discoverer is entitled to a mining lease even if his prospecting licence does not cover the newly discovered mineral

Right of prospector to mining lease "Article 13 The holder of a prospecting licence shall, during the validity of his licence, be entitled to obtain a mining lease for all or part of the area covered by the licence subject to the conditions and in the manner laid down in this law

"If an applicant obtains a mining lease for part of this area, the prospecting licence shall remain valid in respect of the remaining area if he has made a reservation to this effect when applying for the mining lease, provided the duration of the licence shall not exceed four years, whether for the initial or renewal period

"He may, with a permission from the Director of the Department of Mines and Quarries, dispose of the raw material produced from prospecting operations, provided he has actually applied for a mining lease and settled the royalty as fixed by the law for that raw material

Perequisites "Article 15 The issue of a mining lease for any mineral in a given area shall be conditional upon the previous holding of a prospecting licence for the said mineral in this area and upon proof by the licensee of the existence of the raw material which can be worked The mining lease shall in this case be issued by a decree from the Minister of Commerce and Industry, and shall be in conformity with the conditions attached to the prospecting licence

"Article 16 As an exception to the provisions of the preceding article, a mining lease may be issued without being preceded by a prospecting licence, if the Department finds that the mineral exists in quantities justifying its exploitation, in which case, the lease shall be issued by a law after the area containing the mineral is put up to public auction

Public auction "Article 17 The Department of Mines and Quarries shall enter in a special register all the areas known to them as containing mineral ores in exploitable quantities This register shall be available for perusal at all times, and applications for prospecting in the areas included in the register shall not be considered However, the Department shall put to public auction what they deem fit out of these areas as well as areas for which applications for exploitation are made, in this latter case, auction shall take place within six months from the date of the application for exploitation

"The Department shall publish in the *Journal Officiel* in January of each year a notice of the areas included in the register

"Areas not recorded in the register, and in respect of which information is received about the existence of a mineral therein in exploitable quantities, shall not be put to auction for exploitation, and in this case the informer shall have the right to obtain a mining lease As a condition for the validity of the information, the informer must hold an exploration permit, prospecting licence or mining lease, and find an apparent mineral on his way to the area covered by his licence or lease, or discover another hidden mineral in the course of his work in the said area In both cases, the informer must

apply for a mining lease at the time of giving the information The lease shall be issued by a law."

Duration The duration and renewal of mining leases are provided for as follows

"Article 18 The mining lease shall be issued for the period indicated by the applicant, provided that this shall not exceed thirty years

"If, at the expiration of the mining lease, it is proved to the Minister that the lessee has properly fulfilled all the obligations thereof and if he shall have given to the Ministry at least six months' notice in writing expressing his desire to renew the mining lease, then this lease shall be renewed once only for the period indicated by the applicant, but not exceeding 15 years, in accordance with the provisions of the laws and regulations in force at the time of renewal

"The lease may thereafter, by agreement between the Ministry and the lessee, be renewed in accordance with the conditions to be agreed upon In such a case, the renewal shall be by a law"

Right to contiguous area The holder of a mining lease may acquire rights to contiguous land by virtue of a "protection permit" covering an area no more than twice that of the exploitation area under lease. The "protection permit" is issued by law and entitles the holder to carry on prospecting work and to obtain a mining lease over all or any part of the area (article 19)

CANADA (MANITOBA)

The mining law of Manitoba provides for non-exclusive prospecting licences, exclusive boring permits (for prospecting oil shale, coal or salt), claims and mining leases

Prospecting licences The prospecting licensee may search for minerals in all open lands throughout the province, permission of the owner is required with respect to private lands The licence is valid from the date of issue to the 31st day of March, and is renewable

Boring permit A boring permit, which may be obtained only by a prospecting licensee, accords the exclusive right to bore for oil shale, coal or salt The maximum area for such a permit is 1,920 acres; the length of the area may not exceed three times its width

Claims The holder of a prospecting licence may, upon discovery of a mineral deposit, record a claim which results in his exclusive right over the minerals within the area This right may be held for a period of five years, after which the claim holder may apply for a mining lease, provided that he has complied with the required working obligations

Mining claims consist of approximately forty acres, and no more than nine claims may be staked by any one licensee within one mining division in one year

Mining leases A lease of a claim entitles the lessee to all the minerals found in place The lease is for a period of twenty-one years and may be renewed

MEXICO

The Mexican Mining Law provides for three kinds of concessions: prospecting concessions, exploitation concessions and concessions for treatment plants. Concessions within national reserves are separately provided for by regulations.

Prospecting concessions

Area Prospecting concessions cover nine "pertenencias" (one pertenencia equals one hectare or 10,000 square metres), and no individual company or association may hold more than one prospecting concession.

Duration The concession is valid for a period of two years. The holder of a prospecting concession may not after expiration obtain another concession covering the same area (articles 20, IV and 23).

Rights of disposal and treatment Prospecting concessions authorize and cover operations for the discovery of mineral deposits which might be exploited (article 5, I). Prospecting concessionaires may dispose of the mineral products they obtain from their workings and may install plants for the exclusive treatment of ore extracted (article 20, II).

Exploitation concessions

Right of prospecting concessionaire to acquire exploitation concession Article 20, V provides as follows:

"Concessionaires shall enjoy the exclusive right of filing petitions for exploitation concessions to substitute the prospecting concessions, covering the whole or part of the area, provided the applications are filed during the life of the prospecting concessions. If the concession applied for should be in course of substantiation when the prospecting concession expires, the life of the latter shall be considered extended, with the rights and obligations derived therefrom, up to the date when the new concession title is issued or until the respective final decision is handed down."

Duration Exploitation concessions are granted for an unlimited period of time.

Area The maximum area for an exploitation concession is 100 "pertenencias" (that is 100 hectares) except in the case of mineral coal. There is no provision limiting the number of concessions which may be held by one person or company.

Minerals covered Each concession may refer only to one of the three established categories of minerals: metallic, non-metallic, coal and graphite. But if, during the course of exploitation, the concessionaire discovers a mineral not included in his category, then he may petition the Ministry of National Economy to include it in his concession title (articles 25, I and 26).

Rights of disposal and treatment The exploitation concessionaire may dispose of the extracted minerals. He may erect and operate treatment plants without obtaining a separate concession for treatment plants, provided that the capacity of the plant is less than twenty-five tons (articles 25, III and 34). He may establish, within or outside the perimeter of his concession, transportation lines and storage stations, aqueducts, pumping plants and power transmission lines for his exclusive use and also metallurgical and concentration plants and other installations necessary for the purposes of his concession (article 27).

Concessions for treatment plants

Concessions for treatment plants may be for private or for public use. Only holders of exploitation concessions may obtain a concession for treatment plant for private use. Such a concession requires the holder to devote 20 per cent of the plant's capacity to the treatment of ores received from the public. A concessionaire for treatment plants for public use is obliged to utilize 100 per cent of the plant's capacity for treatment of ores received from the public (article 35).

Special provisions for concessions in national mining reserve

Concessions within zones or for particular minerals constituted by decree as national reserves, or concessions for minerals contained in places which are in all cases reserved, are subject to Regulations Governing National Mining Reserves. Such special concessions are of two kinds: concessions for exploitation by zones, and concessions for exploitation by claims.

Concessions for exploitation by zones are those granted for gold or tin placers whose efficacious utilization requires only the use of the indispensable work tools of each individual and his experience and physical efforts. Only individual Mexican citizens may be granted such concessions (Regulations Governing National Mining Reserves, articles 4 and 5). Articles 6 and 7 of the regulations provide that:

"Article 6 Concessions for exploitation by zone shall be granted for zones which are well identified on the ground, no specific perimeter of superficial area being fixed for each particular beneficiary. However, the Ministry of National Economy will limit the number of concessionaires or each zone, with the idea of avoiding ruinous competition between them.

"Article 7 Concessions for exploitation by zones shall be granted for an unlimited period of time, and will authorize the beneficiaries to have free access to the zones which are assigned to them and also to dispose of the minerals which they obtain by their personal work, subject to the following obligations:

(a) A personal appearance once a year, during the time for which they are engaged in their activities, before the mining agent of the particular jurisdiction, to give notice that they are continuing to work.

(b) Respect toward the rights of other like concessionaires. Also they must not invade the lands or claims granted under concession in a different legal form to other persons or concerns.

(c) Obedience to the disciplinary measures specified by the Ministry of National Economy, with the idea of preventing conflicts between concessionaires in the same zone."

Concessions for exploitation by claims are granted for mineral deposits and also for gold and tin placers whose adequate utilization requires the investment of capital and the organized effort of several persons. Such concessions may be granted to Mexican companies or Mexican citizens or individual aliens (Regulations Governing National Mining Reserves, articles 8-10)

PERU

Free prospecting

The Peruvian law provides for free prospecting

"Every person, natural or juridical, national or foreign, legally so recognized may prospect freely in lands which are not cultivated or fenced in, whoever may be their owner" (article 2)

Exclusive exploration and exploitation are the subjects of concessions. Concessions are also required for treatment plants and tunnels.

Exploration concessions

Duration An exploration concession is granted for a minimum period of five years (article 3)

Shape, area, and minerals covered See exploitation concession

Exploitation concessions

Right of exploration concessionaire to exploitation concession "Article 140 In the case of a concession of exploration, the concessionaire may apply for its demarcation and conversion to an exploitation concession at any time within the period for which he may have applied for its extension up to five years, which is the maximum duration of this type of concession under Article 3 of this Code."

Procedure prior to grant of concession After the filing of the application in proper form showing, among other things, the location, area, topography and previous history of concessions on the proposed concession and its admission, a protective writ is issued and notice is given to the owners of the soil and to adjacent concessionaires. From this date until the act of demarcation, opposition may be formulated and presented before the Regional Officer. Decisions on oppositions are made by the Regional Officer and may be appealed against to the Director of Mining.

Two months after the protective writ, the applicant may request demarcation of the concession. After demarcation, the Director of Mining must approve the proceedings and the decision approving title is inscribed in the Register of Mining Concession and Rights (chapter III, section 1)

Minerals covered. Concessions are granted with respect to classes of minerals carboniferous, non-metallic and metallic.

"Article 29 The concessionary of carboniferous substances may explore, exploit and freely dispose of the coal and all non-metallic substances which may be found within the vertical planes of the area granted.

"Article 30 The concessionary of non-metallic substances may explore, exploit and freely dispose of only the non-metallic substances with the exception of coal, which may be found within the perimeter of the area granted.

"Article 31 In the case of the two preceding articles, metallic substances require a separate concession. In the same way a separate concession is required for coal in the case of article 30. The new concessions may be applied for by the same concessionaire or by a third party. In the case of denouncement by a third party the concessionaire shall have the preferential right which he must exercise within the period of ninety days from the date of the protective writ.

"Article 32. In the case of two or more, superimposed concessions, if the carboniferous and/or the non-metallic one lapses, the concessionaire of the metalliferous one acquires in full the right established in article 28, on the concession or concessions which have lapsed. And in the event of the expiry of the metallic and of the non-metallic concessions, the concessionaire of the carboniferous one shall have the right to make the non-metallic substances exclusively his own."

Shape and area "Article 24 Every kind of concession shall be granted in extensions of from one to one thousand hectares and in rectangles the sides of which shall be between one and the other in a proportion which does not exceed one to ten. In concessions for gold washing, wolfram and other analogous substances, it may be allowed that the longer side of the rectangle exceed the shorter by more than ten to one.

"Article 25 The petitioner can reduce the extension of his denouncement up to the moment of measurement and renounce part of the concession after title has been given. For an increase, he must make a new denouncement."

Duration Exploitation concessions do not have a fixed period of validity. Article 3 provides that "the Executive Power shall concede the right to explore for as long as five years or to exploit indefinitely mineral and fossil substances susceptible of being used in industry, in the form and with the rights and obligations established in this Code."

Concession for treatment plants

"Article 156 Applications for concessions for treatment plants shall be presented to the Regional Chief Office of Mining in the same form as in the case of mining concessions, accompanying, furthermore, the application with a descriptive statement, with the plans and other requisites that the regulations establish. The Regional Chief Officer will carry through the proceedings of the application in accordance with the ordinary procedure established in the preceding Section.

"At the time at which the concession is granted, the time limit shall be fixed within which the plant must be installed, which cannot be less than that asked for by the applicant nor more than five years from the date of the demarcation of the ground. An application for an extension of the period may be made to the Director of Mining direct, and it may only be granted for a reasonable term, after compliance with the procedures which the regulations lay down.

Concessions for construction of general tunnel

The application for such a concession must include a descriptive statement and a plan of work. Article 157 prescribes the following procedure:

"Article 157. He shall add to his application a descriptive statement and a plan of the work which it is proposed to carry out, with all the other requisites that the regulations indicate. The Regional Chief Officer shall proceed with the application in the ordinary manner and, whether there is opposition or not, he shall convene, within thirty days of the publication of the notices, a meeting of the concessionaires in the zone affected and of the applicant, to be held on the date and at the hour which he may fix. In the meeting, over which the Regional Chief Officer shall preside and in which the Engineer, if such there be, shall participate and the Secretary of the Chief Office, the decisions shall be taken concerning the making of the tunnel and the conditions and time limits for its opening, having regard to the requirements which the respective regulation establishes. For a decision upon the execution of the work, there shall be necessary the presence at the meeting and the vote of two-thirds of the concessionaires of the zone affected, calculating one vote per each hectare granted. Other resolutions shall be decided by a simple majority. In the case of joint ownership of a concession, or of a company already constituted for its exploitation, the vote shall be exercised by the legal representative. If, at the first citation, the required quorum is not present, there shall be a second citation, and, if there is still no quorum, the application shall be considered as rejected. Once the work is approved by the respective meeting, the Regional Chief Officer shall send the record of the proceedings to the Bureau of Mines, with his report thereon, to which shall be added that of the Engineer of the Regional Chief Office, if there be one, in which he, or both of them in the second case, shall establish the conditions which should be imposed on the owner and the time within which the work should be begun and terminated."

TURKEY

Turkish law provides for exploration permits and for operating licences and operating concessions.

Exploration permit

Minerals covered "Article 12. An exploration permit is issued for one kind of mineral. In each case where exploration shows other minerals mixed with the kind specified in the permit, or which must be exploited at the same time because of geological occurrences, these minerals may be registered under the exploration permit

provided that the holder of the exploration permit furnish the necessary technical information and justification to the Mining Department."

Production restriction "Article 34. It is forbidden to convert exploration into an effective exploitation. In the case of an infraction of this prohibition, a written notice indicating the regulations to be followed and the conditions to be observed in exploration is communicated to the prospector. If the prospector, in spite of the notice, neglects exploration and continues the exploitation, his permit shall be cancelled."

"Article 35. It is not permitted to produce and to transport as a sales sample more than 2,000 tons of ore from each area under exploration permit."

"Article 36. The amount of ore which, during the period of exploration, is produced in excess of the limit permitted under Article 25, reverts to the Treasury."

Duration "Article 11. An exploration permit is valid for a period of two years. That period may not be extended."

Shape and maximum area "Article 18. The area which is the object of an application for an exploration permit must be delimited by joining straight lines connecting unchangeable and definitely fixed limit points, or by curved lines as determined by the sea shore, or borders of lakes, rivers or creeks, or by railways and highways.

This area shall not be over 2,000 hectares and the sketch map shall be prepared according to the applicable regulations."

Operating right

The two types of operating right are the operating permit and the operating concession. The operating permit is granted by the Ministry of Industry and Commerce for a period of from 10 to 15 years, and is not renewable, except in the case of minerals "which, having small economic value, are recognized by the Council of Ministers on the proposition of the Minister of Economy and Commerce as essential for small industries" (articles 45 and 62).

An operating concession granted by decision of the Council of Ministers may not be granted to a single citizen, but only to "a limited liability company formed under Turkish law." The period of a concession may not be less than 40 years nor more than 99 years (articles 63 and 64).

"Article 51. The Ministry of Economy and Commerce shall decide whether the mine will be the object of an operating permit or an operating concession. That decision shall depend on the ore reserves and ore quality, the economic and technical conditions, the place of the mineral in the country's economy in terms of different needs and importance, and the length of time in which the reserves may be depleted."

Conversion from an operating permit to an operating concession is provided for in article 68.

"The Ministry of Economy and Commerce may decide either on its own initiative or upon application by the operating permittee showing an important develop-

ment, after having made an investigation and examination of the area, and within the provisions of article 51, whether a mine operated under a permit should become the object of a concession or not'

Right of discoverer "Article 43 The holder of an exploration permit may apply, by means of a written request addressed to the Minister of Economy and Commerce for the operating rights of a mine he has discovered lawfully, not later than the last day of the validity of the exploration permit"

"Article 52 The Ministry of Economy and Commerce shall prepare for mines as discovered, for which the type of exploitation has been decided, the operating contract showing the technical, economic and financial conditions and the amount of guarantee to be paid by the holder of the operating right

"The operating contract on a discovered mine shall be given to the discoverer. If the discoverer raises any objections within one month, the case shall be studied by the Council of State. Such contracts, based upon similar mines shall become final if no objection is raised within the given period of time or if the Council of State approves the contract or modifies it"

"Article 53 The operating contract prepared under article 52 for mines, considered to be discovered following an exploration permit, is given to the discoverer

If the contract is for an operating permit, the discoverer shall notify the Ministry of Economy and Commerce within three months to the effect that he desires to obtain the operating permit and that he will comply with the terms of the contract and also will pay the amount of guarantee specified in the contract within the abovementioned three months period

If the contract is for an operating concession, and if the discoverer is a legal person as described in article 64, and has the required qualifications, the legal person must notify the Ministry of Economy and Commerce, within six months from the date of the notification, that it wishes to exploit the mine according to the conditions set forth in the contract and to remit the guarantee indicated in the contract

If the discoverer is not a legal person described in article 64, and he does not have the qualifications necessary to obtain an operating concession, he must transfer his rights within one year of the notification, to a qualified legal person which desires to exploit the mine in accordance with the conditions set forth in the contract

The request for an operating concession by a discoverer who does not meet the requirements of the second, third, or fourth paragraph is rejected without prejudice to his right to discovery"

"Article 136 The compensation to be paid to the discoverer of a mine in the case where the operating right is given to a person other than the discoverer, and for which the law specifies that the right of the discoverer shall be reserved, consists of

(a) That portion of the expenses incurred during the exploration period which cannot be covered by the sale of ore,

(b) an allocation of one half of one percent of the value serving as the basis for establishing the state's royalty"

Public auction If the exploitation right for a mine has expired or if the operating concession request by the discoverer is rejected, an advertisement indicating the mine and the conditions of the contract, as drawn up under article 52, is placed in the Official Gazette. Should there be several applicants, the one offering the greatest percentage of royalty per ton, as a supplement to the state's royalty, is given preference, provided that the percentage proposed to be given the State may not exceed the maximum state royalty under the law. If no application is made, the terms of the contract are modified. The discoverer is given the option to accept and qualify under the new contract. Failing the grant of the concession or permit to the discoverer, the terms of the new contract are advertised for bids (articles 54, 55 and 67)

Minerals covered Only one mineral may be covered in an operating permit or concession, but the right holder has priority even over the discoverer to obtain operating rights over other minerals within the area

Article 72 If minerals, other than the one which is the subject of the operating permit or concession, occur in the same mining area in a mixed state with the subject mineral, and because of the geological constitution must absolutely be produced along with it, it is noted in the operating permit or concession that these minerals fall equally within the scope of the operating right, provided that the holder of the right furnish the necessary technical information to the administration (mining department) and justify the fact

"Article 73 It is necessary to obtain an operating permit or a concession for a mineral of another kind which will be discovered in an area of an existing operating permit or concession, and which would not be found in a mixed state to require the production with the same operation. However, the holder of an existing operating permit or concession granted previously for this area has a right of priority in requesting the acquisition of an operating right for the new mine discovered by someone else. The right of discovery of the latter is safeguarded at all times."

AUSTRALIA (VICTORIA)

The right to search for, and exploit, minerals and gold can only be carried out on the issuance of authority from the government of Victoria. This authority may be granted under a miner's right, mining lease or mining licence, special licences including tailing licences are also provided for

Mining right and claims

The Governor-in-Council is empowered under the Victorian Mines Act to issue two classes of miner's right. The first, designated as a miner's right, is issued to individuals. A consolidated miner's right is issued to the manager or trustee of companies or partnerships. The Governor-in-Council may validate either class of miner's right up to a period of fifteen years.

The holder of a miner's right is entitled, and has a general non-exclusive right, to search over crown and private lands. He also has the right to take possession for mining purposes of as much land as may be permitted him under the currently existing by-laws under the Mines Act, subject to the payment of compensation to private owners or users of the surface. The holder of a miner's right may, as a correlative right, construct water sluicing equipment and construct dams or divert water on crown lands to utilize hydraulic extractive processes. The land possessed under a miner's right is referred to as a "claim".

In addition to giving its holder right to possession of a claim, the miner's right allows all shares or interests created in a claim to be chattel interests and all gold or minerals in the claim are the absolute possession of the person or persons in occupation of the claim. Claims are required to be marked out in the manner prescribed by the by-laws and must be registered within seven days after possession has been taken.

The by-laws provide differing rules for a variety of claim classifications. Distinctions are drawn between varying types of gold mining claims, for example. The holder of a miner's right who seeks to prospect on or for a quartz reef may take possession of a claim 400 feet along the line or supposed line or reef up to a width of 600 feet. The claim allowed for exploitation of a quartz reef is 100 feet along the reef line, with a maximum width of 600 feet. Different rules apply for prospecting and exploiting alluvial gold mining claims.

A holder of a miner's right, or a number of holders acting in conjunction, may for the purpose of mining for any mineral, take possession of an ordinary mineral claim which is not to exceed three acres for each holder of a miner's right. The consolidated claim is limited to thirty acres. For the purposes of prospecting for minerals, the holder may take possession of a mineral prospecting claim of not more than five acres, with the proviso that the claim is at least one mile from the nearest occupied mineral claim. Provisional occupancy is permitted for only twelve months, or until a payable lode or deposit is discovered within that period. Upon discovery, provisional occupancy ceases, and the holder must then take possession of an ordinary mineral claim.

Possession of claim terminates with the expiration of the miner's right under which it was established. The registered holder of a claim, or a person who has a registered interest in a claim, may transfer the holding or interest to any person who is the holder of a miner's right.

Mining leases

The Governor-in-Council is authorized under the Mines Act to issue mining leases for both gold mining and general mineral exploitation, provided the land leased is

not held by the holder of a miner's right or business licence. (The business licence is a survival from the period of the last century when businessmen could be granted licences to operate on designated goldfields). "Gold mining leases" or "mineral leases" cannot be issued for a period extending beyond fifteen years. They may, however, be renewed.

In the case of a gold mining lease, except where extraction is to be carried out by dredging or sluicing, the yearly rent is two shillings and six pence an acre demised. Where an applicant seeks to carry out gold mining by dredging or sluicing, the area of the lease cannot exceed five acres, and the rental is set at five shillings per acre a year. Where any holder of a miner's right seeks to prospect for gold in a place where sinking through basalt will be necessary and no other gold workings are closer than five miles, he may mark out an area of one square mile for prospecting. If gold is discovered in such an area, the Governor-in-Council may then grant a lease not exceeding 100 acres, to be selected by the prospector in one lot, for a period to be set by the Governor-in-Council at a nominal rent.

Mineral leases must not exceed 640 acres, and, where there is a residential area under which mining operations are sought to be carried on by leasehold, the lease is to be effectual only at such depth below the surface (not less than 100 feet) as, in the opinion of the Governor-in-Council, will not endanger the safety of the buildings erected in the residential district.

Where leases are issued for periods of less than fifteen years, the lessee is entitled to the automatic renewal of his lease up to the fifteen year statutory period, provided that he has complied with the conditions of his lease. Renewals thereafter are granted if application is made before the lease expires.

Licences for prospecting and exploitation

The Government is also authorized to issue licences for gold and mineral exploitation and searches.

In general, the licences for metals and minerals other than gold are issued only for searches. Licences can be issued only for searches on crown lands which have not been demised under the provisions of any act, or are not occupied by the holder of a miner's right or business licence. The Governor-in-Council may specially fix a fee rent or royalty to be paid in respect of such a licence, and the licence may be revoked at any time on the payment of compensation for any outlay incurred in any search which has been carried out.

The Governor-in-Council may, upon the recommendation of the Minister of Mines and with the consent of the lessee, grant licences to the holders of miners' rights to enter crown lands delineated as gold or mineral leases and

mine on such land to a depth not exceeding fifty feet. A licence in this form is not to be granted if it interferes with the proper working of the demised area. Crown lands for the purpose of the issue of these licences include any land licensed for use or leased after 1884 with a right included to acquire the land in fee simple, land leased under a perpetual lease or any land alienated in fee simple after 29 December 1884.

Special licences and tailing licences

Special licences may be issued for mining for gold or minerals in lands specially designated as Mallee Country.

An important licensing provision is that which permits the issue of tailing licences. Tailings are defined as any sand, slime, slum or other mine material produced by mining operations or by the crushing or treatment of mine material.

When a mining lease is surrendered, expires, is declared void or is forfeited, tailings become the property of the crown after a period of twelve months. A tailings licence may then be issued, conferring upon the licensee the power to remove tailings on specified lands, or to treat them on the land on which they are located. At the same time, however, the Government may grant a gold mining or mineral lease to another person to exploit the land, but not the tailings.

Right to occupy Surface Lands

All the laws surveyed make provision for the right to enter and use surface land where necessary for the exercise of exploration or exploitation rights, and provide for compensation to private owners or occupants of the land. Usually the amount payable to the private owner is limited to compensation for the loss of use, or for damages resulting from the occupancy for mining purposes (Peru, Australia), although Egyptian law provides for double compensation.

Peru The acquisition of rights respecting surface lands owned privately or by the State within or outside the perimeter of the concession area are provided for as follows:

“Article 33 In concessions granted on unimproved land, the concessionaire acquires free of charge if the land belongs to the State or to municipalities, the free use of the surface ground corresponding to the concession, for use in the economic purposes thereof. He may also acquire free of charge for the same purpose the necessary unimproved lands which may be outside the perimeter of the concession.

“Article 34 If the unimproved lands comprised within the perimeter of the concession are privately owned, the concessionaire shall also have the right to acquire them for the economic purposes of the concession, paying to the owner the respective compensation, but only in the event of their use causing damage to him.

“Article 35. The concessionaire may acquire, after paying compensation, the surface soil of his concession which may be cultivated or enclosed, if the respective area be indispensable for the reasonable utilization of the concession.

“Article 36 If the grounds lie outside the perimeter of the concession, the concessionaire has the right to expropriate, by payment of compensation, those which are indispensable to the reasonable utilization of the concession.

“Article 37 The concessionaire shall have the right to expropriate, by payment of compensation, such waters as are indispensable for the domestic use of the personnel employed in his mining industry and for the exploitation and working of the substances which are the subject of the concession, whether they be found within the perimeter of the concession or not.”

Rights of way necessary for transportation and communications facilities, for light and power, for pasturage of animals and for the use of timber from the neighbouring woods may be applied for. Such rights of way are free of charge if on unimproved lands, and, if on cultivated or fenced lands, may be acquired after payment of compensation (article 38).

Applications for expropriation or rights of way are made by the concessionaire to the Regional Chief Officer of Mining. If the owner of the surface and the concessionaire are not in agreement, the Regional Chief Officer decides on the necessity of expropriation. The final decision declares the necessity of expropriation and the fair valuation (articles 159 and 160).

Egypt Article 42 of the Egyptian Mining Law provides as follows.

“Article 42 The Ministry of Commerce and Industry has the right to decide if the land belonging to individuals, which is needed by the licensee, is permanently or temporarily required for prospecting or mining purposes. In the former case, the licensee shall be compelled to purchase the land, but in the latter case he shall only be bound to take it on lease, provided he pays double the price of similar land in case of purchase and double the rent of similar land in case of lease.”

Australia (Victoria) The general rule under the Victorian Mines Act is that any holder of the miner's right who seeks to take possession of a claim on private land, or any person who intends to obtain a gold mining lease or mineral lease on private land, may, at all reasonable times, provided he makes no unnecessary damage, enter such lands for the purpose of marking out an area he desires to utilize for mineral or gold mining.

There are, however, a number of important exceptions to any general right of entry under these provisions. No person, without the consent of the owner, is permitted to make out any land within 100 yards of any private land used as a garden, orchard or vineyard, or on which is situated any spring, artificial reservoir, dam, sheepwash, woolshed or any dwelling house.

The holder of a miner's right cannot take possession of land which, under the law could not be leased, except if the owner consents, or if special conditions are fulfilled

No lease can be granted under any private land used as a garden, orchard or vineyard, unless the applicant has written permission from the owner, or the lease is limited to a greater depth than 100 feet from the lowest part of the surface lands. A landholder cannot claim the benefit of this provision, however, for more than ten acres of land. In city, town or borough, residential areas leases are forbidden where the area of the private land is less than half an acre, and the applicant has no authority from the owner to mine or the lease is sought for land which is less than four hundred feet from the surface. Similar limiting factors apply where an applicant seeks a lease under private land on which is situated any hospital, asylum or public buildings.

Except in three mining districts, which were amongst the oldest and most important of the early goldfields within the state, no mining operations can be carried on in the vicinity of any church or place of worship without the written consent of the church authorities.

Where there is a substantially built woolshed, dwelling house, building or factory, or where there is a spring, dam or sheepwash, no lease can be granted within 100 yards of these, unless the written authority of the owner has been obtained, the lease is limited to a depth greater than 400 feet, or the owner has been duly compensated in accordance with the act's provisions.

Any holder of a miner's right, or applicant for a lease, is empowered to negotiate individually with a landholder for compensation for damages involved in utilizing private land for mining purposes. If no agreement can be reached by the parties themselves, on the complaint of either party,

a warden appointed under the act must determine the amount of the compensation to be paid. The compensation is required to cover deprivation of the possession of the surface lands or part thereof, damage to the surface from mining operations, the expense of severing the land from the rest retained by the owner and for all consequential damages, without reference to the principles which would otherwise determine damages in a common law action.

The holder of any claim or lease on private land is entitled to purchase the freehold of his claim or lease. If private negotiations fail, the purchase price is to be ascertained by a mining warden.

Compensation is also provided for in the case of crown lands lawfully occupied for farming purposes or on which buildings or reservoirs are located.

The holders of miner's rights or leases may mine upon or under any public highway after obtaining permission from the authority in charge of the road's care and management. The road administering authority must decide whether the mining occupancy can be affected without injury to adjoining property and will not substantially injure the road surface or obstruct the traffic. Where a corporate road administering authority refuses to decide on these questions, mandamus will lie. The holder of a miner's right, who marks out a portion of a street as a claim, and then applies to the road administering authority for a permit to mine this claim, is in lawful occupation of that land. The permit issued by the local administering authority merely takes the land out of the exemption provisions, and the right of mining occupancy is still dependent upon the rights granted under the mines act.

After the granting of a lease or the commencement of work on any claim under a miner's right, the lessee or holder may, after twenty-one days' notice, take steps to obtain more surface area for mining operations.

OBLIGATIONS OF LESSEES, LICENSEES AND CONCESSIONAIRES

Working Obligations

The provisions here set forth are concerned with compelling utilization of exclusive rights which have been granted. Usually, licensees and concessionaires must, within a specified time, either commence operations and continue them without interruption (Belgian Congo, Brazil, Turkey) or show certain minimum expenditure for work (Mexico and Peru) to complete a specified amount of work (Manitoba). Failure to comply with such working obligations results in the loss of the exclusive right (Belgian Congo, Brazil, Egypt, Mexico, Turkey) or in increased charges payable to the Government (Peru).

Belgian Congo If the following working obligations are not complied with, a concession is withdrawn. Exploitation work must begin within three months of the

date on which the concession was granted. Preliminary exploitation operations may not be interrupted for more than three years. Full exploitation operations must begin within ten years of the grant of the concession and, once begun, may not be interrupted for more than three years.

Brazil Time limits for prospecting operations are provided as follows:

"Article 24. An authorization to prospect shall lapse

I. If the concessionaire does not commence the work within the first six months after the date of the authorization.

II. If for a like period he should suspend the works started, except in case of *force majeure*, at the discretion of the Government."

The holder of an operating authorization must, on penalty of forfeiture, except in case of *force majeure*

(a) start the operation within one year from the date of the authorization decree, except in case of *force majeure*,

(b) conduct the operations in accordance with the approved plan,

(c) comply with technical rules and regulations,

(d) entrust the operating works and treatment of the ore to legally qualified professionals,

(e) take steps indicated by Federal supervising authorities within prescribed period with respect to direction of work, installations, safety

Annual reports to the D.N.P.M. are required on work performed (article 34) Mining concerns are also obliged to facilitate the inspection of all works by control agents of the D.N.P.M. and to furnish information as required on conditions and progress of work and on production (article 55).

The suspension of mining operations must be notified to the Government. (article 34) In the event of operations being abandoned, the D.N.P.M. may cause a notice to be published in the "Diario Oficial" declaring the mineral deposit available for operation. The newly authorized operator must indemnify his predecessor if the abandonment of operations was justified (article 70).

Egypt Article 43 of the Mining Law provides that the Government may requisition a mine "in the event of the lessee stopping work in the mine or plant or limiting production without necessity with resultant deficiency in the supply of the country, or if such action is intended to exercise an arbitrary control on the market".

Canada (Manitoba) Under the regulations of the mines act, a claim which has been located and recorded by a prospector may be held for five years. During the five-year period following the recording of his claim, the claim holder is required to have completed work requirements, which are set forth in regulations in terms of cubic footage removed by trenching, shaft sinking, sinking test pits, and so on, or lineal footage bored by diamond drill, a survey may be accepted as one year's work. A certificate of improvement certifying that the claim holder has complied with these working obligations must be issued before the lease may be applied for.

Mexico Under the mining law, a concessionaire must present proof of regular work, based on expenditure on salaries. The minimum amount varies with the area of the concession and class of mineral.

During the first five years of the concession, the concessionaire is obliged to prove payment of only one-half the minimum expenditures set by regulation. The

obligation to prove regular work ceases only in the event of an authorized shut down which may in no case last more than two years (articles 28, 29 and 116).

Peru The mining law provides that, unless exploitation concessionaires show mining activity by a given amount of expenditure after five years, they must pay double the regular ground rent

"Article 51 After the fifth year of the exploitation period, every concessionaire whose profit and loss account for the preceding year, as verified by the respective authorities, does not show that he had effected expenditure in wages and materials of Soles 50 00 a hectare of his concession or of each of the concessions which he owns and groups together in each mining district, shall pay an extra ground rent equal to that established in article 49, for each concession, the accumulated sum total of which shall be deducted from the first profits tax which he has to pay in the future"

This extra ground rent may be reduced or suspended "if the conditions of the market make it necessary, or if for fortuitous circumstances or for reasons of *force majeure*, the exploitation has negative results" (article 55).

Failure to pay ground rent for two years causes the concession to lapse (article 68) Work stoppages must be justified in the technical and economic reports submitted (article 63).

Concessions for treatment plants lapse if work stops for four consecutive years (article 70)

Concessions for general tunnels lapse if the work is not begun within the time limit agreed on, or if work has been stopped for one year, except in the case of accident or *force majeure*. The concession also lapses if, after work has been concluded, the tunnel owner does not comply with the conditions of his concession (articles 72 and 73).

With respect to technical personnel, article 59 requires that

"The technical personnel employed by the concessionaire must be integrated with national mining engineers in the proportion determined by the regulations. These engineers shall be responsible for seeing that the regulations governing safety in mines and industrial hygiene are complied with and they shall sign all reports, plans, statements and statistics which the concessionaire has to submit to the Executive Power"

Turkey Exploration activities must be carried on under the direction of a mining engineer, mine technician or geologist. Within one year and a month from the grant of the exploration permit, the permittee must submit a report describing the work done and expenditure effected. The permit is cancelled if no exploration activity took place within the allowed period of time (article 33).

The holder of an operating permit or concession must start exploitation within one year of the registration of the operating right. If work is not begun or if it is interrupted and there are no compelling circumstances, the

Ministry of Economy and Commerce advises the holder of the operating right that he must resume normal activity within six months on pain of annulment of the permit or concession (articles 74 and 75)

Operations must comply with the technical report and the contract pursuant to which the right was granted. Modifications of the technical report must be submitted to the Ministry of Economy and Commerce. In the event of non-compliance with the technical report, partial or total suspension of work may be ordered by the Minister of Economy and Commerce (articles 52, 74 and 80)

Activities in the mining area must be conducted according to technical regulations under the supervision of a mining engineer, and at least one qualified technician must be kept at the location. The names and domiciles of the responsible manager, the mining engineer and technician must be notified to the Ministry (articles 81 and 82)

Australia (Victoria) Any claim "apparently" unoccupied and on which there is no plant or machinery, and which has been unworked for a period prescribed by the by-laws, is deemed to be "abandoned ground". Without any adjudication of forfeiture or abandonment, such a claim may be taken up and registered as a claim by another holder of a miner's right. The by-laws provide that a claim can be declared forfeited if *bona fide* work on it is not commenced within fourteen days, work is commenced and then suspended for fourteen days, the claim is unregistered, it has not been worked or used in a *bona fide* manner during the period of occupancy, or if less than the minimum number of men required by the by-laws have been employed in working the claim.

If mining operations do not begin during the first twelve months of operation of a lease granted with respect to private land, and the cessation has not been approved by the Governor-in-Council, the Executive Council may, on the application of the owner of the land, authorize him to re-enter and take possession notwithstanding the fact that the lease has not expired.

GOVERNMENT CONTROL AND SUPERVISION OF OPERATIONS

The appropriate government authorities are, under most laws, given supervisory and enforcement power to ensure compliance with regulations, approved plans of work and so on. Concessionaires are obligated to make regular reports, fully to disclose plans of operations and to facilitate inspection. The relevant provisions of the laws of Mexico and Manitoba (Canada) set forth below are broadly representative. Plans of mine workings required to be submitted are, under Manitoba law, kept confidential.

Belgian Congo The law is of special interest, since, in addition to the usual provision for supervision of

Obligations to Refine Ores domestically, to Employ and Train Nationals

Canada (Manitoba) Section 9 of the Manitoba Mines Act requires treatment of ores in Canada

"(1) All permits or leases shall be subject to the provision that all ores or minerals mined from locations described in those permits or leases shall be treated and refined within Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment, in default whereof, the permit or lease issued for the lands shall be and become void, and the lands shall forthwith revert to, and become re-vested in the Crown, freed and discharged of any interest or claim of any other person, and shall be open to disposal in such manner as the minister may decide

"(2) The Lieutenant-Governor-In-Council may exempt any lands from the operation of this section for such period of time as to him may seem proper"

Turkey Article 145 of the Turkish Mining Law provides that "Persons working in all kinds of mine exploration or operation activities must be citizens of the Turkish Republic. However, the engineers, technicians, foremen and skilled workers may be foreigners. The employers of such foreigners must send diplomas and other documents showing their education and skill"

Peru Employment of Peruvian nationals and training facilities for mining engineers are provided for as follows:

"Article 58 Every concessionaire who employs in the works of exploitation technical and administrative personnel and work-people is obliged to supplement the numbers with nationals of the country in the proportion established by law"

"Article 60 Every concessionaire is obliged to admit to his work centre, to the extent that his lodging and other facilities permit, students of mining engineering, so that they may do practical work in their special field during vacation periods, and he must similarly give such students facilities for visiting his installations. The said students shall be obliged to respect and observe the hours and regulations in force for the personnel in the employment of the undertaking"

operations, it provides for a great measure of government control over the management of mining companies

The Government is also empowered to regulate production under mining concessions

Egypt Concessionaires may be ordered to increase production, and mines may be requisitioned in national emergencies

Australia Legislation vests extensive powers of control over production and distribution of coal in a Joint Coal Board created under the Coal Industry Act of 1946

Canada (Manitoba) Plants showing workings of mines are required annually

"Article 40 (1) On any examination or inspection of a mine, the owner or agent shall, if required, produce to the inspector, or to any other person authorized by the minister, an accurate plan and sections of the workings of the mine

"(2) The plan and sections shall show the workings of the mine up to within six months of the time of examination or inspection, and the owner shall, if required by the inspector or other authorized person, cause to be marked on the plan the progress of the workings of the mine up to the time of the examination or inspection, and shall also permit him to take a copy or tracing thereof

"(3) An accurate plan on a scale of not more than fifty feet to the inch of every working mine in which levels, crosscuts or other openings have been driven from any shaft, adit, or tunnel, and of every mine consisting of a tunnel or shaft fifty feet or more in length shall be made and a certified copy filed in the Mines Branch on or before the thirty-first day of March in each year, showing the workings of the mine up to and including the thirty-first day of December next preceding

"(4) Before a mine or any part of a mine is abandoned, closed down or otherwise rendered inaccessible, all underground plans and sections shall be brought up to date and a certified copy filed in the branch

"(5) Every such plan shall be treated as confidential information for the use of the officers of the branch and shall not be exhibited, nor shall any information contained therein be imparted to any person, except with the written permission of the owner or agent of the mine

"(6) All mine plans, survey notes and computations shall be kept at the mine office away from risk of damage by fire or any other cause

"(7) Every owner or agent of a mine, who fails to comply with this section, or makes any return which is to his knowledge false in any particular, is guilty of an offence"

Statistical reports must be submitted each year containing information on the number and wages of employees, and of the quantities of minerals dressed, sold, treated or used (article 41)

Inspection is provided for as follows

"Article 42 (1) Every inspector shall

(a) make such examination and inquiry as he may deem necessary to ascertain whether the provisions of this Act or the regulations are complied with, and give notice to the owner or agent in writing of any particulars in which he considers a mine or any portion thereof, or any matter, thing or practice, to be dangerous or defective, or contrary to this Act or the regulations, and require them to be remedied within the time named in such notice,

(b) enter, inspect, and examine any mine, and any portion thereof, at all reasonable times by day and night, but so as not to impede unnecessarily or obstruct the working of the mine;

(c) order the immediate cessation of work in, and the departure of all persons from, any mine or portion thereof that he considers unsafe, or allow persons to continue to work therein on such precautions being taken as he deems necessary,

(d) exercise such other powers as he may deem necessary for ensuring the health and safety of miners and all other persons employed in or about mines, smelters, metallurgical and mining works

"(2) Non-compliance with any written order of the inspector, issued in accordance with clause (a) of subsection (1), is an offence, and failure to give written notice of the completion of any work, in accordance with any written order of an inspector issued under clause (c) of subsection (1), is also an offence"

Mexico The following provision for official inspection is made in the mining law

"Article 86 With a view to ensuring strict compliance with the provisions of this Law, its Regulations and the Mining Police and Safety Regulations, the Ministry of National Economy shall order visits of inspection to all the surface and underground workings covered by any of the concessions authorized by this or prior laws, as often as it considers advisable and with the completeness required in each case. The Ministry shall also order its inspectors to make topographical surveys to obtain data for the mapping of a mining district

"Article 87 At the request of any legitimately interested party, and at his request, inspections may also be ordered to ascertain if a concession invades another or if encroachments are caused by the workings carried out by a third party. Any questions which may arise as a result of such inspections shall be subject to decision by the competent courts

"Article 88 The Ministry of National Economy shall order the suspension of such works as do not conform to the Regulations of this Law or to the Mining Police and Safety Regulations, and whenever, as a result of such works, the lives of workers are endangered or public welfare is at stake, the suspension order being based on the report of an inspector. A copy of this report shall in all cases be sent to the parties concerned, and the suspension order shall only be applicable to the danger zone or to that where the provisions of the Regulations have not been complied with, and it shall remain in force until the grounds for its issuance have ceased to exist"

Reports must be submitted annually by exploitation concessionaires. Such reports must state the class of work done, progress, and quantity of ore extracted and include plans of the workings. Concessionaires are also bound to reply to questionnaires from the Ministry of National Economy requesting statistical data (article 99)

Belgian Congo Under article 76 b of the General Mining Decree as amended, the Colony may appoint one or two delegates to each mining company. These delegates have the control and supervisory powers of directors.

They have no personal liability, nor have they the power to represent the company. They receive notices of all meetings of the directors, commissaries and shareholders

which they may attend in an advisory capacity. They receive copies of minutes of proceedings and of all communications received by the directors or commissaries. The expense of this mission of control is borne by the company.

The same article further provides that the Colony may at any time exercise in all companies holding concessions a right to vote equivalent to 50 per cent of the votes attached to all categories of shares.

It should be noted that this provision applies whether or not the Colony has exercised its further right to subscribe to 20 per cent of the capital stock issued by any mining corporation.

Article 74 of the decree provides that concessionaires are subject to all measures which the Colony may establish in the public interest to restrict, regularize or centralize the production or sale of minerals.

Egypt Article 43 of the mining law provides in part, as follows:

“Article 43. In cases of emergency arising from the outbreak of war or the expectation of war or internal causes, the Government may requisition the whole or part of the output of the mine—whether crude or refined and may request the lessee to increase production to the maximum possible limit, it may also requisition the mine itself, as well as all the relevant processing and refining plant, if necessary.”

Australia The Coal Industry Act of 1946 was the result of agreement between the Commonwealth Government and the principal coal producing state of New South Wales. The act set up a Joint Coal Board of the Commonwealth and the state of New South Wales, with wide powers over the coal industry in that state, to ensure the maintenance of adequate coal supplies throughout the Commonwealth and for overseas export.

The act empowers the board to undertake a wide range of activities relating to the distribution, production and control of the coal industry. The board's powers include the right to order the distribution of coal to the best advantage in the public interest, and to ensure that distribution is made at prices best calculated to serve such interest. It can co-ordinate sales, marketing and transportation of coal.

In dealing with the productive aspects of the coal industry, the board is empowered to make provision for the introduction of improved mining techniques and machinery, and to investigate the development of uses or markets for coal and its by-products. It is also given the right to establish welfare amenities for coal industry employees, and, in collaboration with other authorities, to provide for health, educational, recreational housing and other facilities in coal mining communities.

The board is also given extensive power for direct control over coalmines. It is empowered to assume control of the management and operation of any coalmine and can acquire any mine. In addition, it may establish and operate coalmines. It is empowered to terminate, suspend, vary or modify any contract relating to the production supply and distribution of coal, and may suspend or exclude any person from employment in the coal industry, subject to the appeal procedure set out in the act. Nothing in the act, however, is to be deemed to authorize any form of industrial conscription.

The board is also empowered to set up a Workers' Compensation Fund to meet payments for premiums and other moneys received under any workers' compensation scheme established by the board, and also a welfare fund to meet payments to cover its welfare plans for employees in the coal mining industry.

The act organized the setting up of a Coal Industry Tribunal to deal with industrial disputes in the coal industry. The Tribunal is invested with the same powers as those granted to the Commonwealth Conciliation and Arbitration Tribunals. Minor disputes are dealt with by Subordinate Arbitral Tribunals, local coal authorities, with a power of review in the tribunal, on the motion of the Joint Coal Board.

The 1951 Coal Industry Act extended the application of the principal Act to the shale mining industry and streamlined the arbitral machinery of the Coal Industry Tribunal. It further clarified the tribunal's jurisdiction, together with that of the local coal authorities. The Coal Industry Act of 1952 merely clarified the terms of the tribunal's jurisdiction in relation to federal constitutional power over industrial disputes.

GOVERNMENT REVENUE FROM MINING OPERATIONS

Brazil

FORMS

The Mining Code of Brazil (Decree-Law No. 1985, 29 January 1940, as amended by Decree-Law No. 5247, 12 February 1943) provides for a tax which is based on the area to be prospected, a tax which is based on the value of the production of the mine, and an income tax.

The concessionaire of the prospecting authorization is obliged to pay in respect of the area to be prospected the following tax per hectare:

- Classes I to VII, cruzeiros 10 00
- Classes VIII and IX, cruzeiros 5 00
- Class X, cruzeiros 0 50
- Class XI, cruzeiros 10 00

The minimum tax payable for the prospecting authorization is fixed at cruzeiros 300 (article 17)

The miner authorized by decree to work a mine, or guaranteed by paragraph 4 of article 143 of the Constitution, is subject to the taxes imposed by the union, state, or municipality only to a total of 8 per cent of the value of the production, including any other imposts or taxes (except income tax) which apply with respect to the mine, the product extracted, the miner, or the operations realized by the latter with the product (article 68) The mining of alluvial gold is exempt from any impost or tax (*ibidem*, paragraph 1)

The income tax to which the gold miner is subject is fixed at 8 per cent (*ibidem*, paragraph 2)

EXEMPTIONS AND FAVOURABLE RATES

Mining enterprises are allowed exemption from import duties on machines, apparatus, tools, models, and consumption material which do not exist on equal conditions in Brazil (article 71) In addition, they enjoy minimum tariff from railways, navigation companies, dock service, and trans-shipment in ports maintained or guaranteed by the Government, not only for the transportation of workmen but also for material, ores, fuel, and the manufactured products (*ibidem*)

Canada (Manitoba)

FORMS

The Mining Royalty and Tax Act of Manitoba, Canada, imposes a tax on mining claims and a royalty tax in respect of minerals and mineral products

The mining claim tax payable by a lessee is fixed at five dollars in, and for, each year during the term of the original base, and at ten dollars in, and for, each year during the term of each subsequent renewal, see section 17, subsection (1) The mining claim tax payable by the owner of a mining claim held under a patent consists of five dollars in and for each year—*ibidem*, subsection (2)

The royalty tax is payable annually by the operator of each mine, and consists of 8 per cent of the income derived from the operation of the mine, in excess of ten thousand dollars, see section 7, subsection (1) The rate is lower for the first three years in the case of a mine which comes into production after 30 November 1947, the rates for such years being fixed as follows (a) during the balance of the year in which the mine first comes into production, 6 per cent of the income, (b) during the first year following, 7 per cent of the income, and (c), during the second year following, 8 per cent of the income In the latter two years, there is a reducing

by one-twelfth of one per cent for each month in which the mine was not in production during the year in which it first came into production—*ibidem*, subsection (2)

DEDUCTIONS FROM GROSS REVENUE IN APPLICATION OF ROYALTY TAX

As mentioned above, the royalty tax is based on income derived from the operation of the mine Income, in turn, is defined as the net profit derived, or deemed by the mine assessor to have been derived, from mining operations, see section 2, subsection (1), clause (f) In the ascertainment of net profit, the following specified deductions are allowed

(a) the actual cost of transportation of any output sold, if paid or borne by the operator of the mine,

(b) the actual and proper working expenses of the mine, both underground and above ground,

(c) the salaries of employees,

(d) the actual and proper operating costs of milling, smelting, or otherwise beneficiating, the minerals extracted,

(e) the actual cost of insurance and mint and other charges incurred in the marketing of the mineral products,

(f) municipal taxes or contributions made to essential municipal or public services in lieu of municipal taxes,

(g) the actual cost of any research designed to reduce the cost of the mineral products obtained or to recover additional mineral products,

(h) an annual allowance for depreciation of the value of depreciable assets used in the production of the output of a mine, not to exceed 15 per cent of the value of the depreciable assets,

(i) expenditure on actual exploration for new mineral occurrences in the province,

(j) the actual cost of workman's compensation and other contributions to the safety, welfare, and health of the employees of the operator, and

(k) the mining claim tax paid by the operator of a mine in respect of mining claims deemed by the mine assessor to have been acquired for the operation of the mine, see section 3, subsections (1) and (3)

Where the mineral reserves of a mine justify a larger rate of depreciation than that allowed under (h) above, the Minister of Mines and Natural Resources may permit a larger sum, not to exceed 30 per cent of the depreciable assets—*ibidem*, subsection (4) "Depreciable assets" are defined to mean the assets resulting from (i) the pre-production development costs in respect of a mine, and (ii) the aggregate expenditures for the purchase and installation of mining, milling, and power, plant and equipment essential to the production of the output of a mine, and all other expenditure for such purpose that is not deducted as working expenses of the mine The definition expressly

excludes expenditure on the purchase of, or acquisition of an option to purchase, mining properties, see section 2, subsection (1), clause (3). Further, exploration expenditure (see (1) under preceding paragraph) cannot become a part of the depreciable assets of a mine, see section 3, subsection (3), clause (1).

The act expressly disallows any deduction for capital invested, or for interest or dividends upon capital, or stock, or investment, or for depreciation in the value of a mine, mining land, or mining property, by reason of exhaustion, or partial exhaustion, see *ibidem*, subsection (6). It further expressly and specifically disallows any deduction in respect of depletion in the determination of the net profit subject to royalty tax, see section 2, subsection (1), clause (f)

Mexico FORMS

The Law of Taxes and Promotion of Mining of Mexico imposes two taxes a tax on mineral exploitation concessions, and a tax on production (article 1)

Patented mineral concessions for the exploitation of metallic minerals are taxed at pesos 15 annually per claim or fraction, independently of their number, while those for the exploitation of non-metallic minerals are taxed at pesos 8 annually per claim or fraction, independently of their number (articles 4 and 5) This tax on patented mineral concessions is levied by reason of the fact that such concessions do in effect exist, even though the mineral claims included are not exploited (article 7)

As regards the production tax, specific percentages are prescribed for eighteen different minerals (article 13) The percentage for each mineral also varies in most cases, depending upon whether it is refined, or consists of ore For example, the production tax on gold is as follows

- Refined, 19.7 per cent
- Unrefined bars, Doré, and precipitates, 20 per cent
- Concentrates, 20.3 per cent
- Ore, 20.6 per cent.

EXEMPTIONS OR REDUCTIONS FROM PRODUCTION TAX

The gold, silver, copper, lead, and zinc in ores or metallic compounds are not subject to production taxes when the assays are less than the following (article 48, paragraph a)

- Gold, 1 gramme per ton
- Silver, 50 grammes per ton
- Copper, 1 per cent
- Lead, 3 per cent
- Zinc, 10 per cent

Placer gold, and gold originating in concentrating plants of low capacity or those that treat only placer gold, may also be subject to a reduction in the production tax

under terms regulated by the Secretary of Economic Affairs, provided that it is delivered to the Bank of Mexico (article 49) It is provided that the tax on silver and gold contained in concentrates, assaying 49 per cent or more zinc, will be fixed by taking 75 per cent of the corresponding tax (article 53)

Exemption from production tax is granted to legally constituted co-operative societies for a period of five years, starting from the date of their official registration with the Secretary of Economic Affairs This immunity is not granted to co-operatives working the same claims or deposits that another co-operative has exploited using the said five-year exemption, except in cases of claims that have not been worked for ten years or longer (article 51)

For new minerals exploitations, or for those that have not been worked for ten years or more, the production tax will be reduced by 50 per cent during the first two years, starting from the first day of the month in which initial presentation of products is made, or, if there is no direct presentation, from the first introduction to the smelter or custom metallurgical plant, by 30 per cent during the following two years, and by 10 per cent in the fifth year (article 52)

Provision is also made for exemption from production taxes for coal consumed in the operation of the coal company producing it or treated by distillation processes with utilization of the by-products Metals contained in certain mineral samples, or in mining-metallurgical specimens, or certain metal samples, iron and manganese ores used in smelters in the country for the production of iron and steel, and ores, metals and metallic compounds in amounts not commercially utilizable (article 48, paragraphs b-h).

Pakistan FORMS

The Mining Concession Rules, 1949, of Pakistan embody provisions concerning the following forms of revenue fees, royalty and rent

FEES

Under the provisions referred to above, fees are charged in the following specified amounts

For inspecting the registers of applications for certificates of approval, prospecting licences and mining leases, a fee of Rs 5 an hour, see rule 8 (2),

In an application for a certificate of approval, a fee of Rs 100 per mineral, see rule 9 (3),

In an application for a prospecting licence, Rs 50 per mineral for the first square mile and Rs 10 per mineral for each additional square mile or part thereof (*ibidem*),

In an application for a mining lease, Rs 100 per mineral (*ibidem*),

In an application by a licensee or lessee for the assignment of a licence or lease, Rs 50 (rule 14),

For the renewal of a certificate of approval, a fee of Rs 50,

and a fee payable by a licensee in the amount of Rs 1 per acre of the land covered by the licence for each year or portion thereof for the term for which the licence is granted (rule 42)

If the application for a certificate of approval, a prospecting licence or a mining lease is refused, half of the fees mentioned above paid therewith are refunded, see rule 9 (3) The above fee of one rupee an acre payable by the licensee may be reduced, at the discretion of the licencing authority, to a minimum of four annas an acre in respect of minerals for which prospecting licences and mining leases are to be issued by the collectors, but in all such cases the licensing authority is required to record his reasons for fixing the fee at less than one rupee an acre (rule 42)

ROYALTY

A licensee and a lessee are both required to pay royalty at rates which vary, depending upon the minerals, as follows (rules 43 and 57, and third schedule)

Precious stones, 18 $\frac{3}{4}$ per cent on the value at pit-head (for mining leases only),

Coal, including coal dust and coal used on the works, 10 per cent on the pithead value,

Mica, limestone, gypsum and silica sand, and fire-clay, 5 per cent on the pithead value,

Gold and silver, 5 per cent of the market value; and

All other minerals, 5 per cent on the pithead value, or on the surface, of the dressed ore metal, convertible at the option of the licensing authority to an equivalent charge per ton to be fixed annually or for a term.

Minimum royalties are fixed for coal at Rs 3 a ton, for limestone at six annas a ton, for gypsum and silica sand at twelve annas a ton, and for fireclay at one rupee a ton. The pithead value is determined by deducting from the market value the actual expenditure in carrying the mineral from the pithead to the market, unless otherwise fixed in accordance with any act or government order for the time being in force in respect of any mineral

The licensee is permitted to take away free of royalty for purposes of experiment, maximum quantities the amount of which depends upon the mineral concerned (rule 43 and fourth schedule)

DEAD RENT

The lessee is required to pay for every year a fixed yearly dead rent at a rate not less than the following

For coal, lignite, minerals used in agriculture and chemical manufactures, such as bauxite, gypsum, iron pyrites and pyritous shales, four annas an acre,

For gold and silver, precious stones and all minerals not included in the above and excepting iron ore, two rupees an acre, and

For iron ore, one anna an acre (fifth schedule).

It is provided, however, that no lessee shall pay both royalty and dead rent in respect of the same lease, but only such one of them as may be of the greater amount (rule 58).

Peru

FORMS

The mining code of Peru contains provisions for payments to be made by an applicant for an exploration right, and for ground rents and a tax on profits payable by every concessionaire.

On requesting a mining concession for exploration, the applicant is required to pay Soles 0 50 a year per hectare for the right of exploration (article 48).

Every concessionaire of mines and of dumps, tailings and slags is obliged to pay a ground rent a year per hectare in the following amount (article 49)

Soles 1.50 for gold concessions

Soles 20.00 for all other metal concessions, and

Soles 7 50 for coal and other non-metallic concessions.

The concessionaire of treatment plants and of general tunnels is required to pay Soles 100 00 a year per hectare or fraction thereof of superficial or subterranean area that he occupies (*ibidem*).

After the fifth year of the exploitation period, every concessionaire whose profit and loss account for the preceding year does not show that he has effected expenditure in wages and materials of Soles 50 00 a hectare of his concession, or of each of the concessions which he owns and groups together in each mining district, is required to pay an extra ground rent equal to that mentioned in the preceding paragraph (article 51)

Every concessionaire of mine is also subject to the tax on profits of industry and commerce (article 50)

The accumulated sum total of any extra ground rents paid by a concessionaire may be deducted from the first profits tax which he may have to pay (article 51) Payment of the ground rent and the profits tax exonerates the concessionaire during the twenty-five years from the promulgation of the mining code from all other charges or taxes, as well as from any other tributary contribution on the concession or the products thereof, including the actual export duties, the unemployment tax and the profits surtax (article 53).

DEDUCTIONS ALLOWABLE IN DETERMINATION OF PROFITS TAX
DEPLETION ALLOWANCES

Petit The mining code provides that, from the total gross value of the products extracted, the concessionaire may reserve as an allowance for depletion, free of all taxes other than the ground rent, 5 per cent for coal and other non-metallic concessions and 15 per cent for metallic concessions, subject to a limit of 50 per cent of the net profits for that year's operations (article 54)

DIRECT PARTICIPATION IN CONCESSIONAIRE'S PROFITS

The concessionaire may apply to the Executive Power for participation by the State in the profits of the exploitation as a substitute for the profits tax. The participation is to be fixed by common consent between 10 per cent and 20 per cent.

In marginal operations, when the concessionaire, because of possible risks, desires to protect the capital invested or to be invested and offers to apply the entirety of his first profits to the preferential amortization of such capital, he may be permitted to do so (article 56)

VARIATIONS IN PROFITS TAX

When circumstances justify, the Executive Power is authorized to make contracts with the concessionaires providing for the installation of new power plants and treatment plants, and for the development of the exploitation, fixing between 10 per cent and 20 per cent the amount of the profits tax to be paid during a fixed period (article 56)

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