

Act 124



THE HUNDRED AND TWENTY-FOURTH

ACT

OF THE PARLIAMENT OF THE REPUBLIC
OF GHANA

ENTITLED

THE CONCESSIONS ACT, 1962

AN ACT to provide that the provisions of the Concessions Ordinance shall cease to apply in respect of stool lands, to continue in force certain existing concessions subject to their terms and to provide for purposes connected therewith or incidental thereto.

DATE OF ASSENT: *14th June, 1962*

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows:—

The Ordinance except certain provisions, to cease to apply to stool lands.

1. Subject as hereinafter provided in this Act the Ordinance, other than section 30, Part 4 and section 40, shall cease to apply to stool lands with effect from the date of the commencement of this Act.

Certain existing concessions to continue in force subject to their terms.

2. Every concession in respect of any stool land which is in force on the day immediately preceding the date of the commencement of this Act shall continue in force on and after that date according to the terms of the concession:

Provided that—

(a) such terms may be varied by agreement between the parties to the concession, subject to the written consent of the Minister; and

- (b) all persons authorised by the Minister may use for any purpose any road made on any land specified in such concession and may enter and inspect such land for any purpose which the Minister may think appropriate.

3. (1) The Minister may at any time apply to the Tribunal to determine any concession referred to in section 2 of this Act if he is satisfied that—

Determina-
tion of
existing con-
cessions by
Tribunal on
application
made by
Minister.

- (a) there has been a breach of any of the terms of the concession; or
- (b) two or more holders of any concession whether individuals or corporations are so intimately related to each other in respect of a substantial unity of directorate, or financial control, or otherwise, that the commercial interests of both or all are in substance bound with one another, and therefore they can be deemed to be one person for the determination of the area of land which such person is legally entitled to hold under the law in force at the time of the said application of the Minister; or
- (c) a holder of any concession unreasonably withholds consent to a variation of such of the terms of the concession as in the opinion of the Minister have become oppressive by reason of a change in economic conditions; or
- (d) a holder of any concession has lost the financial ability to develop the concession, or a holder of any concession not resident in Ghana has not appointed an attorney so resident in accordance with the provisions of section 9 of this Act; or
- (e) the land specified in the concession has not been developed or used in accordance with the object for which the concession was granted during the eight years preceding the said application of the Minister; or
- (f) the limits as to area prescribed under the law in force at the time of the grant of the concession have been exceeded.

(2) The Tribunal on an application made by the Minister under subsection (1), shall, within three months of such application, after calling and hearing such evidence as it may think fit and subject to section 7, make a recommendation to the Minister, if the Tribunal is satisfied that any of the conditions specified in subsection (1) has been fulfilled, that the concession shall be determined.

Modifica-
tion of terms
of conces-
sion on
application
by Minister.

4. (1) The Minister may at any time apply to the Tribunal for a modification of the terms of any concession referred to in section 2 if he is satisfied that the limits relating to term or area which have been prescribed under the law in force at the time of the said application of the Minister and appropriate to such concession have been exceeded.

(2) The Tribunal on an application made by the Minister under subsection (1) shall within one month of such application, notify the holder of the concession of the fact of, and reason for, such application and request such holder to select within three months of such notification the boundaries of the area he is desirous of retaining in the event of the Tribunal deciding to restrict the area of such concession.

(3) If, within the three months referred to in subsection (2), the holder of the concession does not select the boundaries referred to in that subsection, the Tribunal shall notify the fact to the Minister and the Minister within one month of such notification, shall select the boundaries of the area which in his opinion such holder should retain and recommend the boundaries so selected to the Tribunal.

(4) The Tribunal in fixing the area for the purpose of this section shall take into account the boundaries selected by the holder of the concession only if—

- (a) it is satisfied that the holder of the concession has furnished adequate evidence that he has used the area within those boundaries in accordance with the terms of the concession; or
- (b) it is satisfied that such holder intends to commence such use within two years from the date of the application of the Minister under subsection (1).

(5) If the Tribunal is satisfied that condition (a) or condition (b) of subsection (4) has not been fulfilled, and, accordingly, does not take into account the boundaries selected by the holder of the concession, it shall request the Minister, within one month of the request, to select the boundaries that such holder should retain and recommend the boundaries so selected to it.

(6) The Tribunal, within three months from the date of the selection of the boundaries by the Minister or, if the boundaries selected by the holder satisfy the Tribunal, by the holder of the concession, as the case may be, after calling and hearing such evidence as it may think fit and subject to section 7, shall make a recommendation modifying the concession in respect of term or area.

5. (1) Subject to the provisions of this section, the President may cancel any concession held by any of the persons referred to in subsection (5), if he considers that it is or may prove prejudicial to public safety or interests. Such cancellation shall have effect notwithstanding anything to the contrary in any other law.

Cancellation of concession by President.

(2) Any person affected by the cancellation of any concession may apply to the Minister, within three months of the date of such cancellation for transmission to the Tribunal for the making of an order in settlement of the variation of rights between the parties to the concession resulting from such cancellation, if in its opinion the circumstances and justice of the case shall seem so to require.

(3) The Minister upon an application made under subsection (2) shall transmit such application, within one month from the date of its receipt by him to the Tribunal.

(4) The Tribunal shall, within three months of the ~~cancellation of the concession by the President~~, after calling and hearing such evidence as it may think fit and subject to section 7, make the order referred to in subsection (2).

- (5) The persons referred to in subsection (1) shall include—
- (a) any individual who is not a citizen of Ghana within the meaning of the Ghana Nationality Act, 1961 (Act 62);
 - (b) any body corporate—
 - (i) which is not incorporated or registered in Ghana, or
 - (ii) the effective control of the operations of which is in the hands of such individuals, and
 - (c) any partnership or any union or association of partners or bodies corporate, any partner or body corporate being a person as defined in the provisions immediately preceding.

6. (1) The Minister shall within fourteen days of the receipt of any recommendation under section 3 or section 4 submit such recommendation to the President. The President may by order confirm or vary the terms of such recommendation.

Powers of President in respect of recommendations.

(2) Every order under subsection (1) shall have effect, notwithstanding anything to the contrary in any other law.

7. The Tribunal in the exercise of its functions under this Act may reserve for the consideration of the Supreme Court any question of law and section 11 of the Courts Act, 1960 (C.A. 9) shall, *mutatis mutandis*, apply accordingly.

Tribunal to reserve questions of law for consideration of Supreme Court.

Constitution of Tribunal.

8. (1) There shall be established, for the purposes of this Act, a Tribunal constituted in accordance with the provisions of subsection (2).

(2) The Tribunal shall consist of the following five members appointed by the President, one of whom shall be appointed by the President as Chairman :—

- (a) a member appointed to represent the Minister responsible for lands;
- (b) a member appointed to represent the Minister responsible for mining;
- (c) a member appointed to represent the Minister responsible for forests; and
- (d) two other members.

Appointment of attorneys for non-resident persons.

9. (1) Any person entitled to a benefit under a concession being a non-resident of Ghana, or a body corporate not incorporated or registered in Ghana, or a partnership having its principal place of business outside Ghana, or any union or association of partners or bodies corporate having such place of business, shall appoint by instrument, an attorney resident in Ghana to act on behalf of such person, body corporate, partnership, union or association.

(2) Every instrument referred to in subsection (1), shall be void, unless such instrument has, as far as may be practicable, been proved and registered in a registry office in the manner prescribed by the Land Registry Act, 1962.

(3) The reasons specified in the Land Registry Act, 1962, for refusal to register an instrument shall be deemed to include, in the case of any instrument referred to in subsection (1), the fact that the instrument had not been made or the power of attorney contained therein is not in accordance with the law in force in the country where, if the person executing such instrument is—

- (a) an individual, such individual is resident;
- (b) a body corporate, such body corporate is registered or incorporated, and
- (c) a partnership or any union or association of partners or bodies corporate, its principal place of business is situated.

10. (1) Every holder of a mining concession shall, with effect from the date of the commencement of this Act, pay the mining rent prescribed by the terms of the concession: Rents for mining concessions.

Provided that—

- (a) where a certificate of validity has not been issued in respect of a concession by the date of the commencement of this Act, the aforesaid rent shall commence to be paid two years after such date; and
- (b) the preceding provisions of this section shall be subject to the other provisions of this Act and the Rent Stabilization Act, 1962 (Act 109).

11. Every option not exercised within the period prescribed by section 10 (6) of the Concessions Ordinance (Cap. 136) or within three months after the date of the commencement of this Act, whichever period terminates earlier, shall become null and void and the right of the holder shall thereupon determine absolutely. Option to be determined.

12. A copy of every order of the President under this Act or order of the Tribunal under section 5 shall be transmitted to the holder of, and the grantor of, the concession, and shall be published in the *Gazette*. Transmission of decisions.

13. (1) Any transaction which is an assignment, sub-demise, mortgage or surrender of the whole or of any part of the rights granted by any concession referred to in section 2 of this Act shall be void unless made with the written consent of the Minister. Assignments, etc., of concessions invalid without Minister's consent.

(2) The preceding provisions of this section shall apply to any transaction referred to in subsection (1) and made before the commencement of this Act in respect of which the provisions of subsection (1) or subsection (2) of section 31 of the Ordinance were not complied with:

Provided that any such transaction shall be deemed to be valid, with effect from the date of the execution of the instrument embodying such transaction, if—

- (a) a fee calculated at the rate of five pounds for every day of the period, commencing on the date of the execution of such instrument and ending on the date of the payment of such fee, is paid;
- (b) stamp duty calculated at the rate of five pounds for every square mile or outstanding part thereof of the area referred to in the instrument is paid;
- (c) all other duties payable under any enactment for the time being in force are paid; and

(d) the Minister's written consent to the transaction is granted.

Regulations.

14. (1) The Minister may by legislative instrument make regulations—

- (a) in respect of the records to be maintained for the purposes of this Act and for the imposition of any fees for such purposes;
- (b) in respect of any matter relating to the Tribunal including the payment of fees and allowances to the members thereof; and
- (c) for the purposes of giving effect to the principles and provisions of this Act.

(2) Any statutory instrument made under the provisions of the Ordinance and in force on the day immediately preceding the date of the commencement of this Act shall continue in force on and after that date as if the instrument was made under this Act.

Pending matters.

15. Any matter relating to any concession referred to in section 2 of this Act, and pending before any Court on the day immediately preceding the date of the commencement of this Act shall be continued and concluded on or after that date in accordance with the provisions of the Ordinance:

Provided that if such matter is not concluded within twelve months from that date, such matter shall be deemed to have lapsed and the concession to which it relates shall be determined subject to the payment of any rent or royalty due up to the date of such lapse.

Forest reserves and timber concessions.

16. (1) All lands referred to in subsection (2) or subsection (4) of section 4 of the Forests Ordinance (Cap. 157) and which have been constituted or proposed to be constituted as forest reserves under that Ordinance and all lands deemed to be constituted as forest reserves under subsection (7) of this section are hereby vested in the President in trust for the stools concerned:

Provided that all rights, customary or otherwise, in such lands validly existing immediately before the commencement of this Act shall continue on and after such commencement subject to this Act and any other enactment for the time being in force.

(2) All lands which in the future shall be proposed to be constituted as forest reserves under the Forests Ordinance (Cap. 157) shall become vested in the President in trust for the stools concerned with effect from the date of the publication of the notice relating to such land and prescribed under section 5 (1) of that Ordinance.

(3) Any land, other than land referred to in the preceding subsections, subject to the Administration of Lands Act, 1962 and in respect of which rights have been granted with respect to timber or trees under any concession and in force immediately before the commencement of this Act are vested in the President in trust for the stools concerned, subject to the terms of the concession, this Act and any other enactment for the time being in force.

(4) All rights with respect to timber or trees on any land other than land specified in the preceding subsections of this section are vested in the President in trust for stools concerned.

(5) It shall be lawful for the President to execute any deed or do any act as a trustee in respect of lands or rights referred to in this section.

(6) Any revenue from lands or rights vested in the President under this section or derived under subsection (11) shall be collected, paid in and disbursed as provided by the Administration of Lands Act, 1962.

(7) Forest reserves established under any law relating to local government shall be deemed to be forest reserves constituted under the Forest Ordinance (Cap. 157) and paragraph 27 of Part II of the First Schedule to the Local Government Act, 1961 (Act 54) is hereby rescinded.

(8) The Forest Ordinance (Cap. 157) shall apply *mutatis mutandis* to any land outside a forest reserve in respect of which rights relating to timber or trees have been or shall be granted.

(9) Section 30 of the Concessions Ordinance and the Concessions (Timber Restriction) Order, No. 55 of 1939, shall apply *mutatis mutandis* to all land in Ghana in respect of which rights relating to timber or trees have been or shall be granted.

(10) The Minister may terminate the concession of any holder, if he is found guilty of an offence under section 30 (4) of the Concessions Ordinance (Cap. 136).

(11) Any person who has been convicted of an offence under paragraph (1) of section 22 of the Forests Ordinance (Cap. 157) shall, in addition to any other punishment imposed under that section, be liable to pay twice the value of each tree or of the timber which is the subject-matter of the offence.

17. In this Act, unless the context otherwise requires—

“concession” and “certificate of validity” shall have the same meanings as in the Ordinance (Cap. 136) and, for the resolution of doubts, shall include concessions excluded in whole or in part from the provisions of the Ordinance;

Interpretation.

- “ Minister ” means the Minister to whom functions under this Act have been assigned by the President;
- “ Ordinance ” means the Concessions Ordinance (Cap. 136);
- “ stool lands ” means stool lands to which the Administration of Lands Act, 1962, applies;
- “ terms of concession ” include, where applicable, the terms of a certificate of validity; and
- “ Tribunal ” means the Tribunal established under section 8 of this Act.