

NATIONAL LAND CODE

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EXPLANATORY STATEMENT

INTRODUCTION

Under the present law of the States of Malaya two quite different systems of land tenure exist side by side—

(a) The States of Penang and Malacca retain a system peculiar to the pre-war "Straits Settlements" (modelled on the English laws of property and conveyancing) whereby privately-executed deeds are the basis of title to land;

(b) The nine Malay States, by contrast, employ a system based on the principle that private rights in land can derive only from express grant by the State or secondarily from State registration of subsequent statutory dealings.

2. The nine States in (b), notwithstanding their adoption of a common system, do not enjoy a common law. The four States of Negri Sembilan, Pahang, Perak and Selangor do indeed share the "F.M.S. Land Code" but the remaining five States have each their own separate land enactment. However, these six different land laws all derive from a single source, viz. the 1911 land legislation of the "Federated Malay States", which established a complete code of tenure and dealing appropriate to Malayan needs at that time.

3. Because of this common origin all six laws are substantially the same in general principle and content. They are however of unequal merit and show considerable differences in detail: much of the value of their general similarity is therefore lost. The local variations—particularly in procedures—are inconvenient and the cause of unnecessary confusion.

Further, none of these laws reflects the social and economic changes of the last half-century: even where amendments have been introduced—and all amendments are of pre-war date—they have concerned matters of minor importance only.

4. The purpose of the present Bill is to remedy this state of affairs—to replace the complex of seven separate and out-moded laws by a single statute of general application throughout all eleven States and so establish a uniform system of land tenure and dealing appropriate to the present day.

For such a unified system there can be only one model—that already in existence in the majority of the States as described in (b) above. In itself it is entirely acceptable; it is efficient, well tried and familiar and can without difficulty be modified to suit modern requirements. In nine States its introduction will mean no break in continuity and in Penang and Malacca the way for its introduction has already been prepared by the National Land Code (Penang and Malacca Titles) Act 1963 which, when brought into force, will abolish the system described in (a).

5. The most complete and up-to-date expression of the chosen system is supplied by the "F.M.S. Land Code 1926" and it is this statute therefore which is used as the basis of this new National Code, and to which references are alone made in this Explanatory Note. Direct comparison shows that there has been a great increase in bulk (from 259 sections in the F.M.S. Code to 444 clauses in this Bill). This increase is not a direct measure of the new provision required to "modernise" the Code. A large part of the increase is due to the fact

that the opportunity has been taken to re-write and supplement existing provisions in order to remove ambiguities, to remedy omissions, or to express in statutory form what was previously only implicit or supplied by subsidiary legislation of varying structure in different States.

6. To make detailed reference to all such drafting changes is not only impossible but is unnecessary since they involve no change of any principle of the F.M.S. Code: they merely give those principles more precise expression.

Accordingly, this Statement is, for convenience, divided into two portions—

- (1) A "General Description" which, *inter alia*, includes brief mention of the more important instances in which the text of the F.M.S. Code has been supplemented without change of meaning.
- (2) A "Detailed Statement of New Provisions". This is confined strictly to the explanation of those provisions which are entirely new, whether—
 - (i) major innovations and policy changes to meet social and economic change, or
 - (ii) relatively minor changes of principle made for a variety of reasons, such as the removal of anomalies, or administrative and general convenience, etc.

GENERAL DESCRIPTION OF THE BILL

7. The F.M.S. Code is neither well-arranged nor always clearly expressed and a major improvement effected here is the clear arrangement of material according to subject and the development of subjects in logical sequence. Subjects are classified into 35 Parts and these in turn grouped into six major Divisions.

The emphasis on alienated lands should be noted: no less than three of the Divisions, viz. III, IV and V deal exclusively with different aspects of "Alienated Land". Primarily the Code relates to the rights and liabilities of proprietors holding by registered title: by bulk these three Divisions amount to 70% of the whole.

8. The more significant features of the Divisions are summarised below.

Division I.

Essentially this defines—

- (a) the general administrative powers of the State and of its officers (Clauses 11-39);
- (b) the nature and extent of State rights of property in land and its more particular powers of disposing of those rights to private persons or bodies—including the extent to which certain rights are automatically reserved to the State (Clauses 40-50 and 57-61);
- (c) the classification of land by situation and use (Clauses 51-56).

With the exception of (c), these provisions are a recapitulation, though in a rationalised form, of the principles of the F.M.S. Code.

Division II.

This Division supplements the clauses described in I (b) above by specifying detailed provisions for disposal of land—

- (a) by various minor modes of disposal (Part Four) and
- (b) by alienation under title (Part Five).

Both Parts substantially follow the existing law but the text of the F.M.S. Code has been supplemented by incorporating the contents of Land Rules with respect to the use of land by temporary occupation and use for extraction of rock materials (Part Four) and with respect to approval of land for alienation and the computation and collection of dues (Part Five).

Division III.

Although the general incidents of title—Rents, Conditions and Restrictions, Differences in Forms of Title Registers, etc.—remain the same as under the F.M.S. Code the details are so altered that this Division is better considered Part by Part under the Head of "New Provisions" below.

Division IV.

With the exception of Part Seventeen on "Easements" this Division in essence recapitulates the provisions of Parts VI, VIII-X and XIII-XV of the F.M.S. Code. There is a notable increase in length (125 clauses in place of 89) but this is almost entirely due to the need to remedy omissions and to produce a comprehensive and unambiguous body of law: there is little change of principle. Some examples of such provisions, largely for the removal of doubt, are—

- (a) *Clauses 214, 225 and 241.* Although land may be held by two or more persons in common, and though land as a whole or the whole of an undivided share in land may be transferred, the same is not true of an interest in land. Leases and charges may not be held by two or more persons otherwise than as trustees or representatives (i.e. jointly).
- (b) *Clauses 221 and 241.* Although land (but not a share in land) may be leased in whole or in part, a charge may be given only over the whole of land or of a lease.
- (c) *Clauses 230-233 and 249-252.* Comprehensive details are here given of the special agreements which are implied in documents of lease or charge or, in the absence of contrary intention, so implied.
- (d) Throughout there is far greater procedural detail e.g. the methods of remedying breaches of lease or charge, and the actions of the Registrar in the registration of instruments.

Division V.

Parts Twenty to Twenty-two on Indefeasibility, Co-proprietorship, Trusts and Transmissions are very little changed from the corresponding provisions of the F.M.S. Code.

Part Twenty-three is partially, and the remaining two Parts Twenty-four and Twenty-five wholly, new (*see below*).

Division VI.

The miscellaneous provisions collected here mainly concern matters of routine administration and do not materially depart from the corresponding provisions of the F.M.S. Code. There are however a few additional provisions of an original nature (*see below*).

DETAILED STATEMENT OF NEW PROVISIONS

Part One—Preliminary

Clause 4 is self-explanatory. Traditional, customary and religious practices will not be affected and recent laws to facilitate development or to control use of land will be saved.

Clause 5. All definitions have been revised and a great many new ones added.

Part Two—Administration

Chapter 1—Powers of the Federation.

The Federation has limited but definite powers of intervention in land matters—

- (a) Under the Constitution the National Land Council, of which the Minister is Chairman, has a responsibility to advise on land matters if asked and to formulate policy. The provisions of clause 9 confer on the Minister such powers as are necessary to enable these constitutional responsibilities to be effectively discharged. Clauses 7 and 8 are more or less ancillary to clause 9 and enables routine action to be delegated to and performed by the Federal Lands Commissioner.
- (b) The Survey Department is a Federal one under the control of the Minister. Clause 10 provides for the necessary discharge of its duties within the States.

Part Three—Rights and Powers of the State Authority

Chapter 2—Classification and Use of Land.

Clause 51 preserves the traditional classification of lands as either "Country" or "Town and Village". Restriction to these two classes is however inadequate for modern needs and therefore in this Chapter an additional classification into three "Categories" is superimposed.

Clause 52 provides that one of these new categories, viz., Agriculture, Building or Industry, shall be imposed on all land alienated in future, and that thereby land is made subject to the special terms and conditions appropriate to the category imposed. [These terms and conditions are separately specified in Part Seven.]

The effect of this new provision is to ensure that land—

- (a) shall at all times be fully and properly used for the purpose for which it was alienated, and
- (b) shall at no time be used for any other purpose.

The power to enforce these two conditions will greatly facilitate State control of planned development.

Clauses 53-56. These clauses permit the extension of similar controls to lands alienated under previous land laws and thereby so far free of such restraints. The extension will be made in two stages, the first of which is automatic—

By clause 53, at the date of commencement of the Act, all such lands will become subject to a negative condition as in (b) above, i.e., their use for improper purposes will be prohibited.

By clause 54, the second stage can be introduced at any time thereafter subject to one year's notice. At this stage an appropriate category will be imposed and thereupon the land will become subject to a positive condition as in (a).

Part Five—Disposal by Alienation

Clause 77: *Forms of Title.* Provision is now made for title to be of two kinds—"Final and Qualified". Final title corresponds with "title" as understood in the F.M.S. Code but Qualified title is an entirely new entity. Essentially, in this context, it is in substitution for the "approved

occupation in expectation of title"—now abolished—and its purpose is to permit an applicant to go into occupation of approved land prior to its survey. A fuller explanation is given below in Part Eleven—Qualified Title, where its uses in other contexts are made clear.

Clauses 86-88: *Documents of title.* As general measures of rationalisation—

- (i) the new Forms of title-documents have been re-drafted concisely and free of verbiage, and
- (ii) the formality of requiring the Rulers' signature on Grant and State Leases has been abandoned.

Part Six—Rent

Three fundamental changes are made—

Clauses 97 and 100. Rent is no longer expressed as being a "first charge" on land and sale by auction in default of payment has been abandoned. Instead, non-payment of rent is now treated as a breach of the basic consideration on which alienation is made and action to enforce payment is analogous with that for the enforcement of any other condition (see Part Seven below). Failure to pay after service of a notice of demand results in the automatic forfeiture of the land.

Clause 98. Provision is made to safeguard the rights of innocent parties adversely affected by a proprietor's failure to pay rent. Notice of demand is to be served not only on the proprietor but also on every chargee, lessee or tenant so that, should the proprietor default, any of these latter may preserve their interest by paying the rent themselves and later recovering it from the proprietor.

Clause 101. All lands, irrespective of their dates of alienation, are now made liable to periodic revision of rent: each such revision is to be on a uniform date in all States. In addition, the period between successive revisions is reduced from 30 years to 15.

Clause 102. A new and more drastic power of revision has been provided in respect of lands which bear no rent—or bear rent at sub-standard rates. Once and once only—at a date before the first routine revision under clause 101—the State is empowered to impose rent at the full prevailing rate.

Part Seven—Conditions and Restrictions in Interest

Clauses 109-117 are supplementary to the provisions of clauses 52-56 (see Part Three above). Both sets of clauses must be read in conjunction to establish the specific conditions associated with each Category of Land Use and the circumstances in which they are applicable to different classes of land.

Clauses 125-129 (and clause 103). Enforcement of conditions by virtue of these clauses has been greatly simplified by relating procedure in cases of breach to the nature of the condition instead of to the nature of the breach as is the case in the F.M.S. Code. Every condition must, by definition in clause 103, inevitably be either one which "requires continuous performance" or one which "is subject to a fixed term": the distinction is a simple one to make and the appropriate procedure is never in doubt. Failure to remedy a breach after due notice results in the automatic forfeiture of the land.

Part Eight—Forfeiture

Clauses 130-134 provide a single simple procedure to effect the registration of a reversion to the State whether the act of forfeiture arises from non-payment of rent or from breach of condition. (Parts Six and Seven). Every possible safeguard is provided to protect the dispossessed proprietor who seeks to appeal against, or obtain annulment of, forfeiture.

*Part Nine—Sub-Division, Partition and Amalgamation**Chapters 1, 2 and 3.*

Proprietors no longer enjoy a prescriptive right to sub-divide, partition or amalgamate their lands at will. All such action is now made subject to State control.

Clause 136 specifies new and stringent conditions which must be satisfied before sub-division is approved and by clauses 141 and 147 the same criteria are respectively applied to cases of partition and amalgamation.

Power of approval normally rests with the State Commissioner or the Collector, as specified in clause 135, but by virtue of clause 136 (1) (c) (iii) the State may by direction reserve that power to themselves in any case or class or cases.

Clause 145. With respect to Partition new provision for the resolution of disputes between co-proprietors is now made. The Collector has been relieved of his present duty of settling such disputes and his powers have been transferred to the Court. Since an element of coercion may be necessary to achieve a settlement it is only proper that a decision should rest with the Court rather than with an individual officer.

Chapter 4—Sub-Division of Buildings

The whole of this Chapter is entirely new. Its purpose is to enable large buildings to be sub-divided internally into "parcels" so that separate title may be issued to individual flats, office-suites, etc.

The circumstances of such sub-division are very different from those of a simple sub-division of the surface of land since the area actually occupied by the sub-divided building must always be less than that of the land on which it stands: there must always be surrounding gardens or internal courts, light-wells, etc., while within the building itself there will be corridors, vestibules, lift-shafts, etc., not included within any parcel. All such external and internal space which is not part of any parcel, together with the roof and external walls, is expressed as being "common property".

The sum total of the common-property and the privately-owned parcels makes up the land as a whole but because of the indissoluble relationship between parcels and between them and the common-property, it is no longer possible to fragment the original title to the land into completely separate sub-divisional titles. Instead, the original title remains in being—although endorsed as relating to the common-property alone—and title to individual parcels is issued in a new form of document "subsidiary" to the original title.

To meet these new circumstances it has been necessary to make the following provisions—

Clauses 151 and 152. New criteria in place of those in clause 136 as a basis for approval or rejection of sub-division.

Clauses 153-154. New and more elaborate procedure for making applications for sub-division.

Clause 155. The production of more elaborate survey plans to show not only the boundaries of every parcel, but the extent of the common-property and the relationship of both to the land as a whole.

Clause 156. An entirely new system of registration of the title of individual parcel proprietors by use of a Subsidiary Register, i.e., a separate volume to contain all the subsidiary titles within the building in question. The specific Forms of this register and of the Subsidiary Titles within it are prescribed in Chapter 2 of Part Ten.

Clause 157. The assessment of each parcel by means of share-units which, *inter alia*, will determine the share in the common-property which vests in the proprietor of the parcel.

Part Ten—Preparation and Maintenance of Register of Final Title
Chapter 2—The Subsidiary Register.

This chapter supplements Chapter 4 of Part Nine above by specifying the procedures for opening this Register with respect to any particular building and for the issue of Subsidiary Title to the parcels therein.

Clauses 161 and 162 which prescribe the Forms appropriate to such register and title provide also for the endorsement thereon of such interests and entries appearing in the title to the lot which affect all or any of the individual parcels.

Clause 163 provides for the vesting of the common property in the "management corporation" for the building, i.e., the whole body of subsidiary proprietors—*vide* clause 357 below.

Chapter 3—Title in Continuation.

The general practice of continuing title by issue of fresh documents as necessary is not substantially changed. A major simplification has however been introduced by the abandonment of the present distinction between the original document of "Grant" or "Lease" issued upon alienation and the secondary "Certificate of Title" issued in continuation of such grant or lease.

Clause 170 provides that the documents to be issued in continuation to a grant or lease shall be a new document of grant or lease.

Part Eleven—Qualified Title

As mentioned under clause 77 above, the provisions regarding Qualified Title are all entirely new.

Its fundamental difference from "Final Title" is that it is issued before the boundaries of the land to which it refers (or some of the boundaries) have been determined by survey. Notwithstanding this difference, it constitutes title as fully indefeasible and as capable of being charged, leased or otherwise dealt in, as is final title. It is inferior to final title in two respects only *vide* Clause 176 below.

Clause 176. Sub-section (1) specifies the circumstances in which Qualified Title may be issued. The purpose in paragraph (a) has already been dealt with under clause 77 above: the remaining purpose is to facilitate sub-division, partition or amalgamation of lands which are already held by final title.

Sub-section (2) specifies the two respects in which qualified title is inferior to final.

Delay in survey and in the preparation of final sub-divisional titles may be severe especially where a large area of land is being fragmented

Further, the F.M.S. Code made no provision whatever for the necessary procedures with respect to L.C. 134 or 230, nor for the general effects of the different forms of caveat.

In order to remedy these omissions this Part provides in detail for the incidents and effects of four distinct types of caveat—the Registrar's, the Private, the Lien-holder's and the Trust Caveat. It further makes provision for the entry of a caveat against an *interest* in land, where appropriate, instead of an obligatory entry against the *land* in all cases.

A minor additional innovation is that caveats are no longer to be presented and registered as though they were dealings. In nature they are "restraints" on dealings, not dealings themselves. A more appropriate procedure is now provided whereby the interested party applies to the Registrar for the entry of a caveat whereupon the Registrar makes an appropriate endorsement on the title concerned.

Part Twenty-Three—Reversion in Absence of Proprietor

Clause 351 broadly corresponds with existing provisions in the F.M.S. Code (L.C. 30).

Clause 352, however, is entirely new and is designed to meet the circumstances where there is no ground for presuming that an absentee proprietor is dead. Normally where such a proprietor abandons land it will revert to the State for non-payment of rent but these special provisions are necessary to meet the case where the original title is being kept alive by payment of rent by an occupier who may or may not have an equitable claim to the land. The procedure here provided will enable the title to revert to the State so that re-alienation may be made to the occupier if his claims are sufficiently strong.

Part Twenty-Four—Re-Survey of Land having Natural Boundaries

In a small number of early titles the land alienated is described by reference to "natural feature" boundaries—especially the sea-shore or the bank of a river. Such boundaries tend to "fluctuate" through erosion and accretion and are unsuitable for marking what should be clearly-defined and unvarying areas of land.

Clauses 353 and 354 now provide a procedure whereby such fluctuating boundaries of irregular shape can be replaced by precisely surveyed right-line boundaries guaranteed by the State.

Part Twenty-Five—Sub-Divided Buildings

The method whereby buildings are to be sub-divided and the Forms in which Subsidiary Title is to be registered and issued have been described in Chapter 4 of Part Nine and in Chapter 2 of Part Ten respectively.

The present Part is supplementary to these earlier Chapters and contains all those ancillary provisions required for the subsequent conduct of the affairs of the building and its occupants. Since there is mutual physical contact and support between parcels and between them and the various parts of the common-property, there is necessarily an enduring and indissoluble community of interest among all subsidiary proprietors.

Clause 357, accordingly, provides for the automatic creation of a "management corporation" consisting of all those proprietors. The remaining clauses together with the ancillary Seventh and Eighth

Schedules empower the corporation to act for the body of proprietors in most matters of common interest and lays down the requisite procedures.

Chapter 4. This more particularly provides for the rights and obligations of the individual subsidiary proprietors.

Part Thirty—Registration of Statutory Vesting

There are a number of statutes which provide for the vesting of lands in some specified authority without any indication as to how this vesting is to be implemented. These new provisions supply this deficiency in procedure.

Part Thirty-Two—Penalties

Clause 425. In addition to the penalty for unlawful occupation provided by sub-section (1), which follows the present law, there is now provided by the new sub-section (2) a summary procedure for the removal of unlawful occupants. This is in substitution for the corresponding provision of the F.M.S. Code which permits such removal only by Magistrate's warrant after proof of unlawful occupation has been established. This is a time-wasting and indefensible requirement. Occupation of State Land is a question of fact not of law and summary action may be essential to prevent devastation of public resources.

Part Thirty-Three—Service and Publication of Notices

Clause 431. By paragraph (b) (i) of sub-section (1) it is now provided that any notice is duly served if delivered at a person's house or place of business to his servant. Under the F.M.S. Code service upon a servant was specifically excepted.

Part Thirty-Four—Miscellaneous

Clause 434. A procedure for the determination and payment of compensation, where appropriate, to aggrieved parties is now provided.

Part Thirty-Five—Repeals, etc.

Clause 438 contains a general power to repeal or amend any existing law of which any provisions are found to be obsolete or not in accord with the National Land Code. This power also extends to making necessary modifications in the National Land Code itself.

Clause 439. In addition, specific powers to make, with the concurrence of the State Authority, such Orders with respect to Penang and Malacca as may be necessary for the application of the National Land Code in those States.

Clause 440 makes provision for certain modifications in the application of the Code in the State of Kelantan. These are made necessary by different conditions which prevail in that State.