

REPUBLIC OF VANUATU

BILL FOR  
THE LAND REFORM (AMENDMENT) (No. 2) ACT No. 20 OF 1981

Explanatory Note

The main purpose of this law is to provide for the registration of interests in land other than custom ownership. The provisions are mainly of a technical nature.

Particular note should be taken of Sections 17C and 17R.

Section 17C provides that rights registered shall not be defeated but shall be subject to the encumbrances provided for in the regulation.

Section 17R provides for Government to indemnify persons suffering loss as a result of mistakes in the register. The effect of the two sections is to provide a guarantee of interests. This State guarantee is an internationally recognised practice which gives confidence in the land registration system.

Note should also be taken of the fees provided for in Schedule 2.

JULY, 1981.

T. REUBEN SERU  
MINISTER OF LAND

REPUBLIC OF VANUATU

BILL FOR  
THE LAND REFORM (AMENDMENT) (No. 2) ACT No. OF 1981

Arrangement of Sections

1. Amendment of J.R. 31 of 1900.
2. Commencement.

BILL FOR  
THE LAND REFORM (AMENDMENT) (No. 2) ACT No. OF 1981

To amend the Land Reform Regulation No.31 of 1980 by providing for the registration of interests in land, for the payment of fees and for matters connected therewith.

Be it enacted by the President and Parliament as follows :-

Amendment of  
J.R. 31 of  
1980.

1. The Land Reform Regulation No.31 of 1980 is amended as follows :-

(a) by adding the following definitions to section 1 -

"Lease" means an instrument which contains the conditions of a contract of letting and which is intended to vest the right of exclusive possession in the lessee, and includes a sublease;

"Mortgage" includes every instrument by virtue whereof an interest is in any manner conveyed, assigned, pledged or charged as security for the repayment of money or moneys worth lent, and to be reconveyed, reassigned, or released on satisfaction of the debt and includes a submortgage of a mortgage;

(b) by substituting "sections 3 and 13" for "section 3 and 9" in the third line in section 8 (1) (a);

(c) by numbering the schedule as schedule 1;

(d) by adding after Part 8 the following new part -

"PART 8A - REGISTRATION OF LAND TRANSACTION

Interpretation.

17A.

In this Part unless the context otherwise requires

"Court" means the competent court;

"Director" means the Director of Land Records;

"interest" means an interest in land other than ownership of land and includes an encumbrance;

"Register" means the Alienated Land Register.

Priority of  
registered  
interests.

17B. (1)

Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented at the Land Records Office irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed.

- (2) Instruments sent by post or under cover and received during the hours of business shall be deemed to be received simultaneously immediately before the closing of the office for that day and those received between the time of closing and the next opening of the office for business shall be deemed to be received simultaneously immediately after such opening.
- (3) When more than one instrument or application are presented on the same day or at so short an interval from each other that in the opinion of the Director a question of priority for registration between them arises, the Director may refuse registration until he has heard and determined the rights of the parties interested thereunder.

Effect of registration.

17C.

The rights of a holder of a registered interest whether acquired on first registration or subsequently for valuable consideration or by an order of the Court shall be rights not liable to be defeated except as provided in this Act and shall be held together with all privileges and appurtenances belonging thereto free from all other interests and claims whatsoever but subject -

- (a) to encumbrances and other liabilities and to the conditions and restrictions if any, entered in the register;
- (b) unless the contrary is expressed in the register, to such of the liabilities, rights and interests as are declared by this Regulation not to require registration and are subsisting;
- (c) where the holder is not entitled for his own benefit to an interest (as between himself and the person beneficially entitled) to any unregistered rights or interests to which such person may be entitled.

Voluntary Transfer of Lease.

17D.

Where the holder of a lease is entitled to such lease by a transfer made without valuable consideration he shall hold the same subject to any unregistered rights or interests subject to which the transferor held the same and subject to the powers and provisions contained in any insolvency law for the time being in force, but save as aforesaid such transfer when registered shall in all respects and in particular as regards any registered dealing on the part of the holder of a lease have the same effect as a transfer of the same for valuable consideration.

Effect of transfer.

- 17E. (1) Subject to the provisions of this Regulation, upon the registration of a transfer, made by a registered holder, of an interest of which he is entitled to dispose, so much of the interest as is set out in such transfer, with all rights, powers, and privileges pertaining thereto, shall pass to the transferee who shall thereupon become the registered holder thereof.
- (2) Upon registration of every such transfer, the right to sue upon any instrument affecting the interest transferred and to recover any debt, sum of money, or damages thereunder, and all the interest of the transferor in any such debt, sum of money, or damages, shall vest in the transferee, but nothing in this subsection shall prevent the enforcement of a trust affecting such debt, sum of money, or damages, if the transferee holds as trustee.

Dealings.

- 17F. (1) No interest to which this Regulation applies, except so far as it may be excluded from registration under this Regulation shall be capable of being created, extinguished, transferred, mortgaged or otherwise dealt with except in accordance with the provisions of this Regulation and every attempt to create, transfer, mortgage or otherwise deal with an interest otherwise than in accordance with the provisions of this Regulation shall be ineffectual to create, extinguish, transfer, vary or affect any interest.
- (2) Nothing in this section shall be construed as preventing any unregistered instrument operating as a contract.

Trustees.

- 17G. Where the holder of an interest is a trustee he shall hold the same subject to any unregistered rights or interests to which the same is liable by virtue of the instrument creating the trust, but for the purpose of any registered dealings he shall be deemed the absolute owner thereof and no person dealing with any interest so registered shall be deemed to be affected with notice of the trust.

Transmission.

- 17H. (1) Whenever a holder of an interest shall die, the representative of the deceased holder appointed by the Court shall apply to the Director for registration of himself as holder in his capacity as representative of the deceased and shall produce for registration an authenticated copy of the order of the court appointing him such representative.
- (2) The representative of a deceased holder of an interest may, instead of applying for registration of himself as holder, apply for the registration of the heir or beneficiaries under any will of the deceased as holders of such interest.

- (3) The representative shall produce to the Director an authenticated order of the court containing names of the heirs and the shares in which they are entitled, and such heirs or beneficiaries shall be registered as holders in accordance with the order.

Effect of  
transmission.

- 17I. (1) Subject to any restriction on the power of disposing of an interest appearing from the order made under section 17H, the representative or the heirs or beneficiaries of the deceased holder as the case may be shall hold the interest subject to any unregistered rights and interests subject to which the deceased holder held the same, but for the purpose of any dealing he or they shall be deemed to have been registered as the holder or holders thereof with all the rights conferred by this Regulation on the holder who has acquired an interest for valuable consideration.
- (2) Until registered, transmission shall not effect the interest to which it relates.

Instruments  
requiring  
registration.

- 17J. (1) Subject to subsection (2), every instrument creating, disposing of, mortgaging, extinguishing or purporting to create, dispose of, mortgage, or extinguish an interest shall be registered.
- (2) It shall not be necessary to register -
  - (a) any lease for a period not exceeding 3 years or any tenancy, periodic or otherwise, not capable of renewal or extension beyond 3 years;
  - (b) any transfer, mortgage, security or other instrument disposing of any lease, being a lease for a period not exceeding three years, or any tenancy, periodic or otherwise, not capable of renewal or extension beyond 3 years;
  - (c) any will;
  - (d) any appointment of a special representative;
  - (e) any appointment of a trustee in bankruptcy or any receiving order in bankruptcy; or
  - (f) any order of a court, unless the registration thereof or of the effect thereof is specifically required by this Regulation.
- (3) The Director may, if requested so to do, register every such instrument as is mentioned in subsection (2).

Documents to  
be furnished.

- 17K. (1) In effecting the registration of an interest, the Director shall be furnished with the deed or instrument establishing such interest.

- (3) The representative shall produce to the Director an authenticated order of the court containing names of the heirs and the shares in which they are entitled, and such heirs or beneficiaries shall be registered as holders in accordance with the order.

effect of  
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- 17I. (1) Subject to any restriction on the power of disposing of an interest appearing from the order made under section 17H, the representative or the heirs or beneficiaries of the deceased holder as the case may be shall hold the interest subject to any unregistered rights and interests subject to which the deceased holder held the same, but for the purpose of any dealing he or they shall be deemed to have been registered as the holder or holders thereof with all the rights conferred by this Regulation on the holder who has acquired an interest for valuable consideration.
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  - (a) any lease for a period not exceeding 3 years or any tenancy, periodic or otherwise, not capable of renewal or extension beyond 3 years;
  - (b) any transfer, mortgage, security or other instrument disposing of any lease, being a lease for a period not exceeding three years, or any tenancy, periodic or otherwise, not capable of renewal or extension beyond 3 years;
  - (c) any will;
  - (d) any appointment of a special representative;
  - (e) any appointment of a trustee in bankruptcy or any receiving order in bankruptcy; or
  - (f) any order of a court, unless the registration thereof or of the effect thereof is specifically required by this Regulation.
- (3) The Director may, if requested so to do, register every such instrument as is mentioned in subsection (2).

Documents to  
be furnished.

- 17K. (1) In effecting the registration of an interest, the Director shall be furnished with the deed or instrument establishing such interest.

- (2) In addition to the documents required under subsection (1) the Director may require of a person whose interest is being registered the production of plans, maps, certificates or information, relating to the registration of that interest.
- (3) The Director may refuse registration of an interest where a person fails to comply with a request made under subsection (2).

Termination  
and surrender  
of lease.

- 17L. (1) The Director shall on proof to his satisfaction of the termination of a registered interest enter in the register a memorandum of the fact of the termination.
- (2) No lease subject to a mortgage shall be surrendered without the consent of the mortgagee.

Cautions.

- 17M. (1) Any person who claims any unregistered right or interest in respect of a registered interest or any person who has presented a bankruptcy petition against the holder of any registered interest may lodge a caution with the Director to the effect that no disposition of an interest be registered nor any entry affecting the same be made, either at all or except in such manner and to such extent only as is expressed in the caution, until notice has been served on the cautioner, and, subject to the provisions of this section, a memorandum of such caution shall be entered in the register in respect of the interest to which it relates.
- (2) A caution shall be in the prescribed form and shall state what is claimed by the person lodging it and the Director may require him to support it by affidavit.
- (3) The Director shall reject a caution in any case where he considers it unnecessary or that its purpose can be effected by the registration of an instrument under this Regulation except that he may allow a caution to protect monetary advances.
- (4) The Director shall give notice in writing of any caution to the person whose interest is affected thereby.
- (5) So long as any caution is subsisting in the register, no registration inconsistent with the terms of the caution shall be effected relating to the interest affected thereby except with the consent of the cautioner or by order of the court.
- (6) A caution may be removed from the register either with the consent of the cautioner or by an order of the court.



- (7) (a) The Director may, on the application of any person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice.
- (b) At the expiration of the time stated, if he has not heard from the cautioner, the Director may remove the caution.
- (c) If the cautioner objects to the removal of his caution he shall notify the Director in writing of his objection, within the time specified in the notice, and the Director, after giving the parties an opportunity of being heard, shall make such order as he thinks fit.
- (8) The Director may refuse to accept a further caution by the same person or any one on his behalf in relation to the same matter as a previous caution.
- (9) Any person lodging or maintaining a caution wrongfully and without reasonable cause shall be liable in an action for damages at the suit of any person who may thereby have sustained damage to pay compensation to such person.

Searches.

17N. The Director shall on payment of the prescribed fee, allow any person to inspect the Register at any time during office hours and shall also upon payment of the prescribed fee give copies or extracts of or from any entry in the Register and shall certify all such copies or extracts.

Fees.

17O. The Director shall demand and receive the ad valorem fees proscribed in schedule 2 in respect of any act mentioned therein for which such fees are specified, and any other fees which the Minister may by order prescribe.

Rectification  
of the Register  
by the Court.

- 17P. (1) Subject to subsection (2) rectification of the Register may be ordered by the Court by annulling the registration of an interest or in any such other manner as the court thinks fit where the court is satisfied that the registration of any interest has been obtained through any error or omission or by reason of any entry procured by fraud or made under a mistake.
- (2) As against a person who has acquired an interest for valuable consideration the Court shall not rectify the register unless such person is a party or privy to the fraud or mistake or has caused or substantially contributed thereto by his act, neglect or default.

- Order of Court.
- 17Q. A court issuing a judgment, execution, attachment or order affecting an interest shall send an authenticated copy thereof to the Director for registration and until registered no judgment, execution, attachment or order shall affect the interest to which it relates.
- Right to indemnity.
- 17R. (1) Subject to the provisions of this Regulation, any person suffering loss by reason of any rectification of the register under this Regulation, any mistake or omission in the register which cannot be rectified under this Regulation or any error in a copy of or extract from the register, shall be entitled to be indemnified by the Minister out of public funds.
- (2) No indemnity shall be payable under this Regulation to any person who has himself caused or substantially contributed to the loss by his fraud or negligence, or derives his interest from a person who so caused or substantially contributed to the loss.
- Procedure for claiming indemnity.
- 17S. (1) The court may, on the application of any interested party determine whether a right to indemnity has arisen under this section, and, if so, award indemnity.
- (2) In granting any indemnity, the court may have regard to any costs and expenses properly incurred in relation to the matter, and may add the same to the amount of the indemnity which would otherwise be payable.
- Amount of indemnity.
- 17T. Where an indemnity is paid in respect of the loss of any interest in land, the amount so paid shall not exceed -
- (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the loss was made; or
- (b) where the register is rectified, the value of the interest immediately before the time of rectification.
- Recovery of indemnity paid.
- 17U. Where indemnity is paid for a loss the Minister shall be entitled to recover by suit or otherwise the amount so paid from any person who has caused or substantially contributed to the loss by his fraud or negligence, and enforce any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

Direction  
by Court.

- 17V. (1) The Director may in connection with the exercise of his powers under this Regulation, state any case or reserve any question for consideration by the Supreme Court, and the Court shall thereupon have power to hear and determine the case or question.
- (2) Any person aggrieved by a decision of the Director given under this Regulation may appeal to the Supreme Court which may confirm, quash, or vary the decision as it thinks just."

(a) by adding the following schedule after schedule 1 :-

"Schedule 2

Registration fees (ad valorem)

- |    |     |   |    |
|----|-----|---|----|
| 1. | (a) | Transfers of interests other than a mortgage by sale, conveyance, exchange, auction, gift, inheritance or by any other means..... | 5% |
|    | (b) | Creation of interests other than leases granted to alienators by or on behalf of custom owners.....                               | 2% |
|    | (c) | Transfer of mortgages, extension and transfer of leases.....  | 1% |
|    | (d) | Partition.....  | 1% |
2. These ad valorem fees shall be increased by 100% in the following circumstances -
- (a) when a deed or instrument is presented for registration more than six months after the date of commencement of this Act or after the date of signature of the deed or instrument, whichever is the later;
- (b) in the case of any transmission arising on death, when presentation for registration is made more than one year after the death if the heirs are resident in the Republic of Vanuatu, or more than eighteen months after the death if the heirs, or one of them, are resident in any other place.
3. Subject to agreement otherwise between the contracting parties, the payment of these ad valorem fees shall be made by the transferee, the lessee, or the person taking the benefit of an easement or of any other registrable interests with the exception of a mortgage, for which the fee shall be payable by the mortgagor.
4. The Government shall be exempted from payment of any ad valorem fees which would otherwise be payable by it.

5. The fee to be charged for transfers shall be based on the total price expressed in the instrument of transfer. or, if no price is stipulated, upon the value thereof at the date of transfer as declared to the Director by the transferee.
6. The fee to be charged on exchange shall be based on the value of one of the lots when the exchanged lots have the same value, and shall be based on the value of the lot of higher value when the exchanged lots have different values.
7. The fee to be charged on leases for a specific term shall be based on the longest term to which possession may extend. In the case of an unlimited term, the fee shall be based on a period of thirty five years.
8. Where a mortgage has been created and the amount of the advance is not specified in the instrument, the fee payable shall be assessed on the sum advanced as at the date of presentation for registration as evidenced by a certificate from the mortgagee. Any sum or sums subsequently advanced to the mortgagor on the same security, which increase the amount of the advance beyond the sum in respect of which fees have been paid, shall be declared to the Director of Land Records within one month from the date thereof by a further certificate by the mortgagee, and an additional fee at the rate prescribed in paragraph 1 (b) shall be paid in respect of each such increase.
9. The fee payable on partitions shall be based upon the aggregate value of the lots. If the partition involves a balancing payment, the same shall be subject to a fee of 5% as prescribed in paragraph 1 (a).
10. Whenever in respect of an instrument presented for registration the Director of Land Records deems it necessary, he may require a valuation to be made by a qualified valuer. If the valuation is in excess of the price or the declared value, the cost of the valuation shall be borne by the party liable for the fee. Otherwise the cost of the valuation shall be borne by the Government.
11. For the purpose of computing fees, sums shall be rounded up to the next unit of one hundred in official currency.
12. The fees shall be payable in advance, except that in the case of instruments containing a suspensive clause, the ad valorem fees shall be paid within the three months following the fulfilment of such clause, but a specified fee at the rate prescribed in paragraph 1 (a), shall be charged at the time of registration."

Commencement.

2. This Act shall come into force on such date as the Minister may appoint by order published in the Gazette.