

REPUBLIC OF VANUATU
BILL FOR THE
FORESTRY ACT NO. OF 2018

Explanatory Note

The purpose of the Bill is to:

- (a) strengthen sector collaboration and update institutional framework; and
- (b) streamline operational Regulations; and
- (c) improve the regulation of domestic operations and markets; and
- (d) reform the forestry Act in order to enable the Department of Forestry (“the Department”) to address prevailing concerns and carry out its functions more effectively.

Some of the main features of this Bill are:

1 Improved institutional framework and sector collaboration

The Bill establishes a new Committee known as the *Forestry Development Committee*. The main functions of the Committee is to advise on the granting of timber rights agreements and has further advisory functions on any matter affecting forestry in Vanuatu. This institutional rearrangement with cross-sectoral inclusion of high level representatives (from the Department of Lands, the Department of Environmental Protection and Conservation, the Department of Local Authorities, the Vanuatu Cultural Centre and the Secretary General of the respective Provincial Government Region) provides for harmonized forest management and points towards concerted land use planning.

2 Harmonization of legislative standards

The Bill clarifies the jurisdiction of protected areas on land either under this Act or under the Environmental Protection and Conservation Act [CAP 283]. For this purpose the term *conservation area* as provided under this Act is replaced by the term *Forest Protected Area* so that it will not be in conflict with the term *Community Conservation Area* under the Environmental Protection and Conservation Act [CAP 283].

3 Streamlining Regulations for forestry enterprises

The Bill streamlines the Regulations in order to improve the operating environment for forestry enterprises through reduced bureaucracy. The process for an agreement of acquisition of timber rights (Timber Rights Agreement) has been considerably simplified.

4 Improving legal certainty

The Bill removes the provisions which restrict the lighting of fires in forest areas. It also removes the requirements for the individual licensing of chainsaws and chainsaw owners.

5 Encouraging local markets

In order to encourage the development of domestic forestry and processing industries, this Bill assigns new powers to the Minister to restrict or prohibit the importation of specified forestry products.

This Bill repeals the Forestry Act [CAP 265].

Minister of Agriculture, Quarantine, Forestry, Fisheries and Biosecurity



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An Act to provide for the protection, development and sustainable management of forests in Vanuatu and for related purposes.

Be it enacted by the President and Parliament as follows-

PART 1 PRELIMINARY

1 Application

This Act applies to all forests and all forestry operations in Vanuatu.

2 Interpretation

In this Act, unless the contrary intention appears:

agreement means a timber right agreement approved under paragraph 12(1)(a);

certified owner means an owner of timber rights under section 10;

chainsaw means a portable and mechanical equipment used for felling or processing of trees or logs for domestic purposes;

Code of Logging Practice means the Vanuatu Code of Logging Practice contained in the Forestry (Vanuatu Code of Logging Practice) Order No. 26 of 1998 as amended from time to time;

commercial forestry operation means:

- (a) the felling of trees in a forest for the purpose of its sale, or the sale of its products; or
- (b) the removal of timber or other forest products from a forest for the purpose of its sale, or the sale of its products; or
- (c) sandalwood operations; or

- (d) any of the following if done in relation to the sale of timber or forest products:
- (i) the construction of skid tracks or log landings; or
 - (ii) skidding, log measurement, loading or hauling of logs; or
 - (iii) the planning, surveying, construction or grading of any road or track; or
 - (iv) the construction of any stabilisation works or watercourse crossing; or
 - (v) the extraction and spreading of any gravel, coral or rock onto any road or track; or
 - (vi) mobile sawmilling,

but does not include the felling of trees or removal of timber or other forest products by custom owners for sale in accordance with current customary usage;

Committee means the Forestry Development Committee established under section 3;

Department means the Department of Forestry;

Director means the Director of Forestry;

Director General means the Director General of the Ministry responsible for Forestry;

forest means any area in Vanuatu greater than 0.5 ha outside established agricultural production systems or urban parks and gardens:

- (a) with trees higher than 5 meters and a canopy cover of more than 10 percent of the area; or
- (b) with young trees able to reach the criteria under paragraph (a) over time; or
- (c) with planted trees able to reach the criteria under paragraph (a); or

- (d) with bamboos higher than 5 meters and a canopy cover of more than 10 percent of the area; or
- (e) with vegetation not meeting the criteria under paragraphs (a), (b), (c) and (d) resulting from human intervention or natural causes, when it can be expected that a forest meeting the criteria under paragraph (a), (b), (c) and (d), re-establishes due to reforestation or natural regeneration over time;

forest product means timber and any other material yielded by a forest;

Forest Protected Area means an area declared to be a Forest Protected Area under section 35;

licence means a licence granted under Part 5;

licensee means the holder of a licence granted under Part 5;

logging means the felling of trees in the course of a commercial forestry operation;

mobile sawmill means any type of sawmill or any timber-producing machine that is designed to be set up and moved from one location to another, and includes all portable or wokabout-type sawmills, any chainsaw minimills and all chainsaws in a commercial forestry operation used for felling trees or processing timber;

protected species means a species of plant prescribed as a protected species under section 36;

Provincial Government Council has the same meaning as in the Decentralization Act [CAP 230];

Provincial Government Region has the same meaning as in the Decentralization Act [CAP 230];

sandalwood harvesting season means the period during which sandalwood trees can be legally felled for sale that starts on 1 June and ends on 31 August of each year, unless varied under paragraph 54(2)(i);

sandalwood operations means the purchasing or trading of sandalwood and the processing and exporting of sandalwood, sandalwood oil or any sandalwood product;

sandalwood trading season means the period during which sandalwood can be purchased and collected from sandalwood owners by a person under a sandalwood

licence, being the period that starts on the same day as the sandalwood harvesting season, but ends 2 months after the end of that season;

sawmill means a facility that manufactures lumber, veneer, plywood, wood-chips, pulp, paper or newsprint;

timber means any tree which has been felled or has fallen, and all wood whether sawn, split, hewn or otherwise fashioned, and includes flitches, slabs and logs;

timber permit means a timber permit issued under Part 4;

timber rights means the rights to fell, cut, remove, sell and dispose of growing or dead trees, whether standing or fallen, and any part of such trees, and any other vegetable growth, and includes the right to remove gravel and other roadmaking materials;

tree includes a shrub, palm or bush of any kind and of any age, and any sapling, seedling or reshoot;

watercourse includes any channel with continuous or temporary water flow, any body of standing water or any wetland indicated on the official topographical maps, and any watercourse designated in an agreement or timber permit, coupe harvesting plan prepared under the Code of Logging Practice or licence.

PART 2 FORESTRY DEVELOPMENT COMMITTEE

3 Establishment of Forestry Development Committee

The Forestry Development Committee is established.

4 Composition of the Committee

The Committee consists of the following members:

- (a) the Director General; and
- (b) the Director of the Department of Lands, or a senior officer of that Department nominated by its Director; and
- (c) the Director of the Department of Environment, or a senior officer of that Department nominated by its Director; and
- (d) the Director of the Department of Local Authorities, or a senior officer of that Department nominated by its Director; and
- (e) the Director of the Cultural Centre, or a senior officer of that Centre appointed by its Director; and
- (f) the Secretary General of the Provincial Government Region to which an application or agreement relates.

5 Functions of the Committee

The Committee has the following functions:

- (a) to advise the Director on the exercise of his or her powers under Part 4; and
- (b) to advise the Director on the importation, licensing and control of mobile sawmills and chainsaws; and
- (c) to approve an agreement before it is executed; and
- (d) to advise the Minister on matters relating to the forestry policy and other issues affecting forestry in Vanuatu with the view to ensuring the achievement of the purposes of this Act; and
- (e) to advise the Director on any matter concerning the development of forestry and forestry industry in Vanuatu that the Director may determine.

6 Powers of the Committee

The Committee has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

7 Chairperson and Deputy Chairperson of the Committee

- (1) The Director General is the Chairperson of the Committee.
- (2) The members of the Committee are to elect from amongst themselves a Deputy Chairperson.
- (3) The Deputy Chairperson is to hold office for a period of 3 years and may be re-elected.

8 Meetings of the Committee

- (1) The Committee is to meet at least 4 times in a year and may hold such other meetings as are necessary for the proper performance of its functions under this Act.
- (2) The Chairperson of the Committee is to preside at all meetings of the Committee and in his or her absence, the Deputy Chairperson is to preside at these meetings.
- (3) The Department is the secretariat of the Committee.
- (4) The quorum for a meeting of the Committee is 4 members of the Committee, present at the meeting.
- (5) A member present at a meeting of the Committee has one vote and questions arising at a meeting are to be decided by a majority of votes.
- (6) If the voting at a meeting is equal, the Chairperson or the Deputy Chairperson (if he or she is presiding over the meeting), has a casting vote.
- (7) Subject to this Act, the Committee may determine and regulate its own procedures.

9 Sitting Allowance

A member of the Committee including the Chairperson and Deputy Chairperson is entitled to a sitting allowance of VT2,000 for each day in which the Committee meets.

PART 3 AGREEMENT AND CERTIFICATE OF OWNERSHIP

10 Certificate of ownership

- (1) A person who claims to be the owner of timber rights in a forest and who intends to sell the timber rights to another person, must apply to the Director for a certificate of ownership.
- (2) The application must:
 - (a) be in the prescribed form; and
 - (b) be accompanied by the prescribed fee.
- (3) The Director must not grant a certificate of ownership to the applicant unless he or she is satisfied that the applicant:
 - (a) is the owner of the timber rights in the trees or forest; and
 - (b) has the authority and is applying on behalf of himself or herself or the family or group in accordance with the prevailing custom law of that place; and
 - (c) has complied with the conditions prescribed in the application form for a certificate of ownership.
- (4) The certificate of ownership permits the holder to sell the timber rights to a third party.
- (5) To avoid doubt, **person** or **applicant** under this section means an individual person, a family, a tribe or a clan.

11 Agreement

- (1) An agreement for the acquisition of timber rights must:
 - (a) be in the prescribed form, and contain all the particulars provided for by that form; and
 - (b) be executed by the owner of the timber rights referred to in subsection 10(1); and

- (c) include an endorsement by the head custom chief or the authorized custom chief of the owner of the timber rights that the decision to enter into the agreement was taken by the owner of the timber rights in accordance with their custom law.
- (2) A certified owner must lodge an agreement with the Director for approval by the Committee.
- (3) An agreement has no effect unless it is approved by the Committee.
- (4) The period for an agreement must not exceed 10 years.
- (5) The holder of an agreement may apply for a renewal of the agreement, 3 months prior to the expiry of the agreement.
- (6) The application for renewal of an agreement must:
 - (a) be in the prescribed form; and
 - (b) be accompanied with the prescribed fee.

12 Approval of agreement

- (1) The Committee, upon receiving an agreement lodged under section 11 may:
 - (a) approve the agreement; or
 - (b) refuse the agreement.
- (2) The Committee in making a decision under subsection (1), must consider the following:
 - (a) the proposed forestry operations under the agreement; and
 - (b) whether there are adequate provisions in the agreement for:
 - (i) flora and fauna reserves; and
 - (ii) environment protection; and
 - (iii) protection of watercourses; and
 - (iv) meeting the needs of the custom owners of the land and timber rights; and

- (v) protection of rights of way or other access rights under custom; and
 - (vi) protection of sacred sites and other sites of cultural significance under custom.
- (3) The Committee may, in making its decision, require additional information about the agreement from the certified owner.
- (4) The Committee is to notify the certified owner, in writing, of its decision within 7 business days after receiving an agreement.
- (5) If the Committee approves an agreement under subsection (1), the Committee must provide:
 - (a) the original copy of the agreement to the certified owner; and
 - (b) a copy of the agreement to:
 - (i) the Provincial Government Council and the Island Council of Chiefs or area Council of Chiefs for the area to which the agreement relates; and
 - (ii) the committee or other controlling body of each indigenous group who signed the agreement.
- (6) If the Committee refuses to approve an agreement under subsection (1), the Committee must provide the reasons for refusing to approve the agreement.

PART 4 TIMBER PERMIT

13 Application for a timber permit

An application for a timber permit must be submitted to the Director:

- (a) in the prescribed form; and
- (b) be accompanied by the prescribed application fee; and
- (c) include a map of the location of the permit area.

14 Granting of a timber permit with an approved agreement

- (1) The Director, upon receiving an application under section 13 may:
 - (a) grant a timber permit with or without conditions; or
 - (b) refuse to grant a timber permit.
- (2) The Director in making a decision under subsection (1), must consider the following:
 - (a) payment of the prescribed royalties to the owners of the timber rights; and
 - (b) payment of forest management charges, any timber licence fees and any other charges or fees due to the Government; and
 - (c) whether there is an agreement approved by the Committee under section 12.
- (3) The term for a timber permit must not exceed 1 year and may be renewed.
- (4) The holder of a permit may apply for a renewal of the timber permit, 3 months prior to the expiry of the timber permit.

15 Granting of a timber permit without an approved agreement

- (1) Despite sections 13 and 14, if the Director is of the opinion that:
 - (a) the custom owners of the land are willing to sell timber rights in the land; and
 - (b) the volume or value of the timber concerned is not sufficient to justify the effort and expense of an agreement under section 12,

the Director may, on behalf of the custom owners of the land and timber rights, issue a permit under this Part.

- (2) For the purpose of paragraph (1)(b), the Minister may by Order, prescribe the volume (not exceeding 200 cubic metres) and the value of the timber.

16 Cancellation of a timber permit

The Director may cancel a timber permit if he or she is satisfied that:

- (a) the holder of the timber permit has failed to comply with a condition of the timber permit; or
- (b) the permit has been issued on false grounds or false or misleading information; or
- (c) there are other overriding grounds, such as safeguarding an overarching general public interest, to react to severe land tenure, land use or land use planning conflicts, to prevent a severe hazard, or in response towards a state of emergency.

PART 5 LICENCES

Division 1 General

17 Requirement for commercial forestry operation

A commercial forestry operation must not carry out any forestry operation unless the commercial forestry operation has been granted with a licence under this Part.

18 Application

- (1) A person who intends to apply for a licence under this Part, must apply to the Director.
- (2) The application must:
 - (a) be in the prescribed form; and
 - (b) be accompanied by the prescribed application fee.

19 Granting of licence

- (1) The Director, upon receiving an application under section 18, may:
 - (a) grant a licence with or without conditions; or
 - (b) refuse to grant a licence.
- (2) The Director must notify the applicant, in writing, of his or her decision under subsection (1).
- (3) If the Director refuses to grant a licence, the notification given under subsection (2), must include the reasons for the decision.

20 Effect of licence

- (1) The licensee, the licensee's employees and any person nominated in the licence as an agent or sub-contractor of the licensee, may carry out a commercial forestry operation according to the conditions provided in the licence.
- (2) A condition of a licence authorising a commercial forestry operation to be inconsistent with the condition of an agreement or timber permit applying to the land that is subject to the licence, is null and void.

- (3) A commercial forestry operation carried out by a nominated agent or sub-contractor of a licensee is taken to be a commercial forestry operation carried out by the licensee.
- (4) If a nominated agent or sub-contractor of a licensee fails to carry out a commercial forestry operation, the failure is taken to be a failure to carry out the commercial forestry operation by the licensee.

21 Conditions of licence

A licence is subject to:

- (a) the provisions of the Code of Logging Practice; and
- (b) the restrictions on commercial forestry operations contained under section 38,

which are implied conditions of the licence except to the extent, that they are expressly varied or waived in the licence.

22 Transfer of licence

A licence must not be transferred under this Act.

23 Surrender of licence

- (1) A licensee may, with the written consent of the Director, surrender the licence in whole or in part.
- (2) A consent under subsection (1), may be subject to any conditions which the Director may impose.
- (3) The surrender of the licence does not come into effect until the Director is satisfied that the conditions imposed have been met.

24 Variation of licence

- (1) An application to vary a licence must be made to the Director in writing and may be made by;
 - (a) the licensee; or
 - (b) an agent or sub-contractor nominated by the licensee.
- (2) Despite subsection (1), a licensee or an agent or sub-contractor nominated by the licensee, cannot apply to vary a licence if it is to authorise any commercial forestry operation over land that is not authorised under a agreement or timber permit.

- (3) Without limiting subsection (1), the Director may vary a licence to increase or reduce the area to which the licence applies.
- (4) The Director must provide a notice to the licensee if he or she decides to vary a licence.

25 Suspension and cancellation of licence

- (1) If the Director is satisfied that:
 - (a) there is a breach of a condition of a licence; or
 - (b) there is a breach of a provision of the Act or its Regulations; or
 - (c) the licensee is conducting a commercial forestry operation not authorised by the licence,the Director must serve a notice of non-compliance to the licensee as required under subsection (3).
- (2) In addition to subsection (1), if the Director is satisfied that there is a serious breach of the licence, the Director may suspend the licence.
- (3) A notice of non-compliance must specify:
 - (a) the conditions of the licence or provision of the Act or its Regulation that was breached; and
 - (b) the compensation or penalty payable under the licence; and
 - (c) the period the breach is to be rectified; and
 - (d) the period the compensation or penalty must be paid.
- (4) If the licensee fails to rectify the breach of the licence or fails to pay the compensation or penalty within the period specified in the notice, the Director may:
 - (a) suspend the licence; and
 - (b) serve a notice of suspension to the licensee; and
 - (c) allow the licensee to provide reasons why the licence should not be cancelled.

- (5) If the Director is of the opinion that:
- (a) there is a serious dispute between the custom owners of the land that is subject to a licence; and
 - (b) the conduct of the commercial forestry operations under the licence is likely to worsen the dispute,
- the Director may, by written notice to the licensee, suspend the licensee's operations in the disputed land, for a period not exceeding 6 months.
- (6) If a dispute is not resolved after serving a notice under subsection (5), the Director is to cancel the licence and the Director must serve a notice of the cancellation to the licensee.
- (7) To avoid doubt, a suspension under subsection (5) applies whether or not a licensee complies with a notice of non-compliance.
- (8) Subject to subsection (4), all commercial forestry operations must cease until the Director certifies that the suspension is lifted.
- (9) If the licensee fails to comply with paragraph (4)(c), the Director may cancel the licence and the Director must serve a notice of the cancellation to the licensee.

26 Termination of licence

A licence may be terminated if:

- (a) the licensee becomes bankrupt; or
- (b) for a body corporate, the Court appoints a liquidator in respect of the licensee; or
- (c) the licensee, 3 months after being granted a licence, fails to enter into a bond under section 27; or
- (d) the licensee is convicted of an offence under section 44.

27 Bonds

- (1) Subject to subsection (6), the licensee must:
- (a) enter into a bond , within 3 months after the date of being granted a licence; and

- (b) maintain such bond until a written notice of cancellation of the bond is received from the Director.
- (2) A bond provides security for:
 - (a) the licensee's compliance with the conditions of the licence; and
 - (b) payment to the Government of all taxes, duties, levies, charges, fees and penalties payable by the licensee under any law; and
 - (c) payment by the licensee of any rental, royalties, penalties or compensation to which customary groups are entitled to under an agreement or timber permit.
- (3) The bond must take the form of a bank guarantee or equivalent instrument in the form that is acceptable to a bank that is the holder of a licence within the meaning of the Financial Institutions Act [CAP 254].
- (4) The amount of the bond must be fixed by the Director according to the annual quota of the operation applied for.
- (5) Upon the granting of a licence, the Director must give written notice to the licensee of the amount of the bond fixed under subsection (4).
- (6) The Director may exempt a licensee from the requirement of a bond if, in the opinion of the Director:
 - (a) the licensee has a proven record of compliance with the requirements of a licence; or
 - (b) the scale of the commercial forestry operations authorised by the licence is not sufficient to justify the effort and expense of securing a bond.

28 Enforcement and cancellation of bonds

- (1) If a licensee fails to make payment of a sum secured by a bond, the Director may enforce the bond against the issuing bank in accordance with the procedure set out in subsections (2) and (3).
- (2) The Director must give written notice of his or her intention to enforce a bond, to the licensee:
 - (a) stating the amount and nature of the sum in respect of which the bond is to be enforced; and

- (b) providing the licensee 30 days to pay the outstanding amount of the bond or make representations to the Director as to why the bond should not be enforced.
- (3) If, after the end of the period specified in the notice given under subsection (2), any of the outstanding amount secured by the bond remains unpaid, the Director may enforce the bond and pay the proceeds to the party entitled to the bond.
- (4) After the expiry, cancellation or termination of a licence to which a bond relates, the Director must, if he or she is satisfied that there are no outstanding sums secured by the bond, cancel the bond and give written notice of the cancellation to the issuing bank and the licensee.

29 Code of Logging Practice

- (1) The Code of Logging Practice applies to all commercial forestry operations in Vanuatu and such operations are to be conducted in accordance with the Code of Logging Practice.
- (2) The Code of Logging Practice must contain practices and standards for logging and forest management.
- (3) Without limiting subsection (2), the Code of Logging Practice may contain all or any of the following practices and standards:
 - (a) protection of the environment and promotion of forest development consistent with the principles of sustainable management;
 - (b) planning of commercial forestry operations;
 - (c) harvesting and removing timber, or the construction of roads and other works in association with the harvesting and removal of timber;
 - (d) selection of silvicultural regimes;
 - (e) supervision of commercial forestry operations and the licensing of forest operators;
 - (f) log measurement and branding;
 - (g) protection of non-timber forest values;
 - (h) training, health and safety of forest operators.

- (4) The Code of Logging Practice may contain provisions for the enforcement of its requirements, and penalties not exceeding VT 1,000,000 for a breach of the Code of Logging Practice.
- (5) The Director may propose amendments to the Code of Logging Practice to the Minister.
- (6) Before proposing an amendment under subsection (5), the Director must consult with such persons, government agencies and bodies who, in the Director's opinion, have a significant interest on the proposed amendments.
- (7) The Minister may amend the Code of Logging Practice by Order to give effect to a proposal made by the Director under subsection (5).

Division 2 Licences

30 Granting a timber licence

- (1) The holder of an agreement, approved under section 12, must apply to the Director for a timber licence.
- (2) Without limiting paragraph 19(1)(a), the licensee cannot obtain in any one year more than 30 percent of the timber volume that is allowed to be harvested under the timber licence by using timber permits.
- (3) The Director must not grant a timber licence to the holder of an agreement unless he or she is satisfied that the:
 - (a) person is the owner of the timber rights in the trees or forests to which the agreement relates; and
 - (b) person has the authority on behalf of himself or herself or the owning family or group in accordance with the prevailing custom law of that place, to acquire a timber licence to sell the timber rights; and
 - (c) person has complied with the conditions prescribed in the application form; and
 - (d) timber licence contains the requirements for the operation of a sawmill as may be prescribed by the Regulations.
- (4) Without limiting paragraph (3)(d), the following requirements may be prescribed:

- (a) the maximum volume of timber that may be harvested and any sawmill operation under the timber licence considering the sustainable yield of the resource; or
 - (b) the location of the mill; or
 - (c) the time period of its operation.
- (5) The term for a timber licence must not exceed 10 years and may be renewed.
- (6) The holder of a timber licence may apply to the Director for the renewal of the timber licence, within 3 months prior to the expiry of the timber licence.

31 Granting of a mobile sawmill licence

- (1) Without limiting paragraph 19(1)(a), the following conditions must apply to a licence:
- (a) the maximum annual volume of logs to be cut is 500 cubic metres; and
 - (b) a mobile sawmill must only be operated for commercial forestry operations and not for domestic purposes.
- (2) The Director must not grant a mobile sawmill licence to the applicant unless he or she is satisfied that the applicant has complied with the conditions prescribed in the application form.
- (3) The term for a mobile sawmill licence must not exceed 5 years and may be renewed.
- (4) The holder of a mobile sawmill licence may apply to the Director for the renewal of the mobile sawmill licence, within 3 months prior to the expiry of the timber licence.

32 Granting of a sandalwood licence

- (1) The Director must not grant a sandalwood licence to a person unless he or she is satisfied that the person has complied with the conditions prescribed in the application form.
- (2) The term for a sandalwood licence must not exceed 10 years and may be renewed.

- (3) The holder of a sandalwood licence may apply to the Director for the renewal of the sandalwood licence, within 3 months prior to the expiry of the timber licence.
- (4) Despite subsection (2), a sandalwood licence may be granted for a period not exceeding 5 years on the conditions that require the licensee to:
 - (a) develop sandalwood processing facilities; and
 - (b) assist with the replanting of sandalwood.
- (5) Without limiting this section, the Director may call for tender to purchase sandalwood for the whole or any part of Vanuatu pursuant to the Government Contracts and Tenders Act [CAP 245].

33 Granting of a special licence

- (1) If the Director considers it necessary to authorise a forestry operation on any land and the operation is not provided for under sections 30, 31 and 32, the Director may grant a special licence.
- (2) Without limiting subsection (1), a special licence may be granted for any or all of the following:
 - (a) to prevent the imminent waste of forest products (for example, after a cyclone or fire);
 - (b) to provide for the clearing of land for agricultural or other development;
 - (c) to authorise the harvesting of non-timber forest products;
 - (d) to remove the hazard created by a group of trees during the cyclone season.

PART 6 FOREST PROTECTION

34 Declaration of Forest Protected Area

- (1) The Minister may, by Order, declare a forest area to be a Forest Protected Area for its ecosystem, biodiversity, hydrological, climate, scientific, cultural or social functions of significance or other special value for the general public, for the custom landowners and community concerned, or for future generations.
- (2) Prior to making a declaration under subsection (1), the Director must:
 - (a) conduct such consultations with the relevant Provincial Government Council and Island Council of Chiefs or Area Council of Chiefs for the area subject to the declaration and to obtain the consent of the custom landowners and communities concerned; and
 - (b) take such steps to receive comments from interested members of the public.
- (3) A declaration must be in the prescribed form, and must contain the reasons for the area to be protected and such map or maps as are convenient to indicate the area of forest subject to the declaration.
- (4) After making a declaration, the Director must:
 - (a) forward a copy of the declaration to the relevant Provincial Government Council and Island Council of Chiefs or Area Council of Chiefs for the area that is subject to the declaration; and
 - (b) publish a notice of the declaration in the Gazette and advise interested persons to obtain a copy of the declaration.

35 Prohibition of commercial forestry operations in a Forest Protected Area

It is prohibited to conduct a commercial forestry operation in a Forest Protected Area.

36 Cancellation of declaration

- (1) The declaration of a Forest Protection Area may be cancelled by the Minister if:
 - (a) the reasons for the declaration no longer exist; or

- (b) a Forest Protection Area is to be declared as a Community Conservation Area pursuant to the Environmental Protection and Conservation Act [CAP 283].
- (2) Upon the cancellation of a declaration, the Director must:
- (a) advise the Provincial Government Council and the Island Council of Chiefs or Area Council of Chiefs for the area that is subject to the declaration; and
 - (b) publish a notice of the cancellation of the declaration in the Gazette.

37 Protected species

- (1) The Minister may prescribe species of plants as protected species for the purposes of this Act.
- (2) A protected species must not be felled or removed in the course of conducting commercial forestry operations, unless such felling or removal is expressly authorised by a licence granted under this Act.

38 Restrictions on commercial forestry operations

Commercial forestry operations must not be conducted:

- (a) within the excluded buffer zone areas around watercourses as set out in the Code of Logging Practice; and
- (b) within 100 metres distance from sea level (being the mean high water mark); and
- (c) on land having a slope in excess of 30 degrees, or less if so prescribed by the Code of Logging Practice for particular circumstances; and
- (d) in a protected rainfall catchment area declared under any Act,

except to the extent, that it is expressly authorised by a licence granted under this Act.

PART 7 FOREST PROJECT FUND AND FOREST MANAGEMENT CHARGE

39 Establishment of the Forestry Project Fund

- (1) The Forestry Project Fund is established in accordance with the provisions of the Public Finance and Economic Management Act [CAP 244].
- (2) The Director is to operate the Forestry Project Fund in accordance with the provisions of the Public Finance and Economic Management Act [CAP 244].
- (3) The Forestry Project Fund is to operate for a period of 5 years from the date of its establishment and may be extended by the Council of Ministers following a review under subsection (4).
- (4) The Director must review the operation of the Forestry Project Fund towards the end of its 5 year period, and recommend to the Minister if:
 - (a) the Forestry Project Fund should be extended, and, if so, for what period; and
 - (b) improvements should be made to the operation of the Forestry Project Fund.
- (5) The Minister must submit the Director's recommendations to the Council of Ministers for its decision.

40 Source of the Forestry Project Fund

The Forestry Project Fund consists of:

- (a) the forest management charges and other charges prescribed under this Act; and
- (b) any application or licence fees prescribed under this Act; and
- (c) any grants or any other financial contributions provided for the purposes of reforestation.

41 Use of Forestry Project Fund

- (1) The Forestry Project Fund may be used for all or any of the following:
 - (a) the establishment and maintenance of nurseries;

- (b) the provision of planting material;
 - (c) the planting, care and maintenance of trees;
 - (d) the provision of forestry information, training and advice;
 - (e) the refunds or rebates of forest management charges under section 43;
 - (f) the afforestation and reforestation works;
 - (g) the administration of timber licences, the control of commercial forestry operations and the collection and monitoring of information on forest resources and their utilisation;
 - (h) the conduct of forest research, forestry extension and forest conservation;
 - (i) the control and monitoring of sandalwood operations;
 - (j) the acquisition of any capital asset required to carry out the above activities;
 - (k) international cooperation in forestry.
- (2) The Director is responsible for making payments out of the Forestry Project Fund.

42 Auditing and annual reporting obligations

The Forestry Project Fund is subject to the auditing and reporting obligations of the Public Finance and Economic Management Act [CAP 244].

43 Forest management charge

- (1) The holder of a licence must pay a forest management charge, being an amount equal to half of the royalty paid to the custom owners of the timber rights.
- (2) The Minister may, by Order, and on the application of a licensee and the recommendation of the Director, increase or reduce the licensee's forest management charge by an amount not exceeding one half of that charge to reflect the degree to which the licensee has complied with the requirements for reforestation.

PART 8 OFFENCES

44 Offences

- (1) Any person who:
- (a) negotiates for an agreement without being a certified owner with respect to those timber rights; or
 - (b) conducts a commercial forestry operation without a timber licence granted under Part 5; or
 - (c) knowingly or negligently makes a false or misleading statement in respect of any matter he or she is required to declare or report under this Act, or any licence granted under this Act; or
 - (d) imports a mobile sawmill without a valid mobile sawmill licence; or
 - (e) exports forest products in contravention of section 46; or
 - (f) exports or causes to be exported from Vanuatu any forest products or plant material, other than timber, without the written approval of the Director,

is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.

- (2) Any person who:
- (a) fells or removes a tree of a protected species in contravention of section 37; or
 - (b) improperly influences, hinders or obstructs a member of the Committee in the performance of his or her duties or the exercise of his or her powers; or
 - (c) contravenes the provisions of any Regulation made under section 54,

is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.

- (3) Any person who:

- (a) conducts logging in contravention of the restrictions on logging in section 38; or
 - (b) in any way, directly or indirectly, hinders or obstructs a person in the performance of a function or the exercise of a power vested on him or her by this Act; or
 - (c) collects plant or animal specimens (whether dead or alive) from an area without the prior written approval required under section 52,
- is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 6 months, or both.
- (4) In addition to any penalty imposed for an offence under paragraph (1)(b), (2)(a) or (3)(a), the person convicted:
- (a) must pay to the Director the value as determined by the Court by which the person was convicted, of any tree in respect of which the offence was committed, and of any damage done in the course of the offence to any land; and
 - (b) is liable to confiscation of any forest products which are the subject of the offence, and of any vehicle, machinery, tools or other equipment used in connection with committing the offence.
- (5) The Director may:
- (a) pay the amount to the custom owners of the timber rights, provided that the custom owners have not been involved in committing the offence in question; or
 - (b) pay the amount into the Forestry Project Fund.

PART 9 MISCELLANEOUS

45 Appointment of authorised officers

- (1) The Director may appoint:
 - (a) a suitably qualified and trained person who is not an officer of the Department; or
 - (b) an officer of the Department; or
 - (c) an officer of another department; or
 - (d) an officer of a Provincial Government Council,

as an authorised officer to perform any functions or exercise any powers that may be performed or exercised for the purposes of this Act, for a period of time as determined by the Director.
- (2) For paragraphs (c) and (d), the Director must obtain the approval of the corresponding Director of the other department or Secretary General of the respective Provincial Government Council.
- (3) The Director is to provide to each authorised officer, an identity card that will provide evidence of the identity of that person and of the appointment of that person as an authorised officer.
- (4) An authorised officer who holds an identity card issued under this section must, on the termination of his or her appointment, surrender the identity card to the Director.
- (5) To avoid doubt, a **suitable person** means a person with qualifications and expertise in forestry or related fields.

46 Export of forest products

- (1) Subject to subsections (2) and (4), the export of fitches, logs and slabs from Vanuatu is prohibited.
- (2) The Minister may by an order in writing approve the export of fitches, logs and slabs if:
 - (a) the Minister is, on the advice of the Committee, satisfied that a special case exists for such export; and
 - (b) the Council of Ministers has given its prior approval to the order for export.

- (3) In deciding whether special case exist under subsection (2)(a), the Minister must consider the following:
- (a) whether a higher benefit will be gained for the owners of the timber rights by authorising export of the timber; and
 - (b) whether the timber has been harvested from a crop of trees established under any type of lease for forestry purposes.
- (4) An order made under subsection (2), authorising the export of logs, must not be made unless suitable facilities exist in Vanuatu to process the logs.
- (5) The Minister may, by Order, prohibit or restrict the export of:
- (a) any class or type of timber or other forest products; or
 - (b) timber or other forest products in any condition.
- (6) The Minister, in making an Order made under subsection (5), may prescribe requirements for an export permit.
- (7) In this section, **fitches**, **logs** and **slabs** means:
- (a) any timber not processed into plywood or veneer; or
 - (b) sawnwood of any length, when height or width are more than 153 mm; or
 - (c) sawnwood of any length and width, provided that the height is below 26 mm; or
 - (d) any finished product made therefrom; with the exception of:
 - (i) timber from the species *Cocos nucifera*; and
 - (ii) timber from the species *Santalum austro-caledonicum*.

47 Forfeiture

The Court may order goods to be forfeited for offences committed under section 44.

48 Inspection

- (1) The Director, a Forest Officer or an authorised officer, may, in the interests of the prevention and investigation of a breach of any provisions of this Act:
- (a) enter and inspect any land; and
 - (b) enter any vessel, property or building (other than a private dwelling), and inspect any plant, machinery or equipment, and any records of any description on that vessel or property or in that building; and
 - (c) inspect any timber or other forest products, wherever it may be located; and
 - (d) require any person to execute a statutory declaration relating to matters within that person's knowledge and control; and
 - (e) enter and inspect any area where commercial forestry operations take place.
- (2) For the purpose of this section, **Forest Officer** means an officer of the Department of Forests.

49 Boundaries

- (1) If in this Act, provision is made for a boundary to be identified or described in any instrument, it is sufficient for:
- (a) the boundary to be identified on a map or sketch certified by the Director; and
 - (b) a reference to that certified map or sketch be made in the instrument.
- (2) Boundaries need not be surveyed for the purposes of this Act, except where, and to the extent that, the Director regards a survey as necessary to avoid substantial doubt or dispute over the boundary.

50 Records

- (1) A licensee must keep accurate records, and must submit to the Director, in the manner and at the times required by the Director, reports of:
- (a) the volumes of timber and other forest products harvested; and

- (b) the volumes of timber and other forest products bought or sold, the name and address of the vendor or purchaser, and the prices paid; and
 - (c) the quantities of products manufactured in a sawmill and the prices obtained for them; and
 - (d) any other statistics or information related to the logging operation conducted by the licensee, or the production or sale of timber and other forest products in, or shipment of timber and other forest products from, Vanuatu.
- (2) A licence granted under this Act is a matter of public record, and any person, on application to the Director in the prescribed form and upon payment of the prescribed fee, may receive a copy of the licence.

51 Annual report

The Director must within 3 months after the end of each financial year furnish a report to the Minister relating to the administration of this Act for the preceding year.

52 Collection of specimens

- (1) A person must not collect plant specimens (whether dead or alive) from a forest area for export or commercial purposes unless that person has obtained the prior written approval of the Director.
- (2) A person must not collect a plant or animal specimens (whether dead or alive) from a Forest Protected Area for export or commercial purposes unless the person has obtained the prior written approval of the Director.
- (3) Subsections (1) and (2) does not apply:
- (a) to the custom owners of the area concerned, when acting in accordance with current customary usage; or
 - (b) when a permit has been granted under the Environmental Protection and Conservation Act [CAP 283].
- (4) For an approval under subsections (1) and (2), the person must, in writing, apply for the Director's approval.
- (5) An application under subsection (4) must state the reasons for the application.

53 Immunity

- (1) A civil or criminal proceedings must not be brought against the Director, Forest officer or authorised officer , for anything done or omitted to be done in good faith by him or her in the execution or purported executions of his or her functions and powers under this Act.
- (2) Subsection (1) does not apply if the Director, Forest officer or authorised officer acted in bad faith in executing his or her functions or powers or in dereliction of his or her functions and powers under this Act.

54 Regulations

- (1) The Minister may, on the advice of the Director, make Regulations not inconsistent with this Act for the purpose of carrying out or giving effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make Regulations for all or any of the following:
 - (a) a Forestry Sector Plan;
 - (b) the standards for timber grading;
 - (b) a code of practice for timber preservation;
 - (c) the establishment of advisory or research bodies, including its functions and duties;
 - (d) the management of Forest Protected Areas;
 - (e) the minimum log royalties to be paid for different species or grades of log;
 - (f) to provide for the registration of mobile sawmills;
 - (g) to ban or restrict the importation or sale of mobile sawmills, to or within Vanuatu or any part of Vanuatu;
 - (h) to limit the number of mobile sawmill licences which may be granted to operate in Vanuatu or any part of Vanuatu;
 - (i) vary the sandalwood harvesting season;
 - (j) specify the maximum quantity of sandalwood that can be harvested in any year;

- (k) establish minimum prices for various grades of sandalwood;
- (l) prohibit, restrict or regulate the felling of sandalwood;
- (m) prohibit, restrict or regulate the export of sandalwood;
- (n) conditions to restrict or prohibit the importation of forests products;
- (o) to restrict or prohibit the importation of specified forestry products;
- (p) the requirements for the importation of sawn timber and wood products;
- (q) to provide for a register of chainsaws;
- (r) any other matter required to be prescribed under this Act.

55 Repeal

The Forestry Act [CAP 276] is repealed.

56 Transitional and Savings provision

- (1) Any act or thing done in the name of the Forests Board before the commencement of this Act, is taken to have been done in the name of the Forestry Development Committee.
- (2) Any Regulations, Orders or Instruments made under the Forestry Act [CAP 276] before the commencement of this Act continues to have legal effect under this Act, on or after the commencement of this Act, until such time it is amended or cancelled by this Act.
- (3) This Act does not in any way limit the Forestry Rights Registration and Timber Harvest Guarantee Act [CAP 265].

57 Commencement

This Act commences on the day on which it is published in the Gazette.