Commencement: 1 March 1984

CHAPTER 163

LAND LEASES

Act 4 of 1983
Act 32 of 1985
Act 10 of 1987
Act 30 of 1988
Act 38 of 1989
Act 24 of 2003
Act 11 of 2004
Act 35 of 2006
Act 5 of 2007
Act 32 of 2013
Act 35 of 2014
Act 10 of 2016
Act 2 of 2017

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY
1. Interpretation

PART 2 – LAND RECORDS OFFICE AND DIRECTOR'S POWERS
2. Land Records Office
3. (Repealed)
4. The Land Leases Register
5. Manner of registration
6. New editions of register
7. Cancellation of obsolete entries
7A. Power of Director to cancel lease relating to land acquired
8. General powers of Director
9. Immunity

PART 3 – PLANS, COMBINATION AND SUBDIVISION AND PARTY WALLS
10. Land survey plans
11. Correction of land survey plans
12. Combination and subdivision
13. Party Walls

PART 4 – EFFECT OF REGISTRATION
14. Interest conferred by registration
15. Rights of proprietor
16. Voluntary transfer
17. Overriding interests
18. Entries to constitute actual notice

PART 5 – SEARCHES AND CERTIFIED COPIES
19. Searches
20. Certified copies of registers and documents
21. Evidence

PART 6 – DISPOSITIONS – GENERAL
22. Instruments ineffectual until registered
23. Protection of persons dealing in registered interests in land
24. Exoneration of the Director
25. Additional fee for delayed registration
26. Power to compel registration
27. Priority of registered instruments
28. Stay of registration
29. Merger of registered interests
30. Corporations

PART 7 – LEASES
31. Leases
31A. Change of lease boundary
32. Term of a lease
32A. Application of sections 32B and 32C
32B. Extension of leases
32C. Right of renewal of a lease
32D. Premium payable for the issue of a new lease
32E. Effect of removal of a company from the register of companies
33. Periodic tenancies
34. Commencement of leases
35. Registration of leases
36. Lessor's consent to disposition of leased land
37. Holding over
38. Purpose and development conditions to be specified
38A. Development requirement for certain leases
38B. Transitional provisions for existing leases to be developed
39. Rent review
39A. Annual lease rental payments

40. Agreements implied in leases on the part of the lessor
41. Agreements implied in leases on the part of lessee
41A. Implied agreement relating to disposition of leased land
42. Meaning of "in good repair"
43. Lessor's right of forfeiture
44. Effect of forfeiture on subleases
45. Notice before forfeiture
46. Relief against forfeiture
47. Variation of agreements and conditions of a lease
48. Subleases
48A. Payment for sale of a rural lease
48B. Payment for transfer of urban lease
48C. Exemption from payment for transfer of lease
49. Surrender of leases
49A. Surrender and subdivision of lease for purposes of rectification
50. Determination of leases
50A. Settling of taxes and other charges

PART 8 – MORTGAGES
51. Form and effect of mortgages
52. Supplementary provisions relating to mortgages
53. Further advances
54. Variation of mortgages
55. Discharge of mortgage
56. Obligations implied in mortgages
57. Mortgagee's consent to transfer etc.
58. Action for recovery of debt
59. Enforcement of mortgages

PART 9 – TRANSFERS
60. Transfer
60A. Declaration of transfers by corporations
61. Restriction on transfer
62. Matters implied in transfer
63. Entitlement of a transferee of a mortgage
64. Registration of transfer of mortgage
65. Transfer of lease subject to sublease
66. Transfer of part

PART 10 – EASEMENTS, RESTRICTIVE AGREEMENTS, PROFITS AND LICENCES
67. Easements
68. Restrictive agreements
69. Profits
70. Release and extinguishment of easements, restrictive agreements and profits
71. Extinguishment and modification of easements, restrictive agreements and profits
72. Licences

PART 11 – CO-PROPRIETORSHIP
73. Co-proprietorship
74. Proprietorship in common
75. Joint proprietorship

PART 12 – INSTRUMENTS AND AGENTS
76. Form of instruments
77. Execution of instruments
78. Verification of execution
79. Stamps
80. Disposal of instruments
81. Persons who are mentally infirm
82. Powers of attorney
83. Effect of registered powers of attorney

PART 13 – TRANSMISSION AND TRUSTS
84. Transmission on death of sole proprietor or proprietor in common
85. Effect of transmission on death
86. Wills
87. Transmission on bankruptcy
88. Transmission in other cases
89. Trusts
90. Survivor of trustees
91. Statutory trusts
92. Transmission on death of a joint proprietor

PART 14 – CAUTIONS
93. Lodging of cautions
94. Effect of cautions
95. Director's caution
96. Duration of cautions
97. Application for removal of caution
98. Definition

PART 15 – RECTIFICATION AND INDEMNITY
99. Rectification by the Director
100. Rectification by the Court
100A. Recorded interest in land
101. Indemnity
102. Amount of indemnity
103. Procedure for claiming indemnity
104. Recovery of indemnity paid
105. Errors in survey

PART 16 – APPEALS
106. Appeals against the Director

PART 17 – MISCELLANEOUS
107. Presumption as to age
108. Service of notices
109. Offences
109A. Penalty Notice

PART 18 – FEES AND RULES
110. Fees
111. Rules
112. Provisions of this Act to prevail

SCHEDULE – Registration Fees

LAND LEASES

To provide for the creation and disposition of leases of land, for their registration and for matters connected therewith.

PART 1 – PRELIMINARY

1. Interpretation

In this Act unless the context otherwise requires –

"Act" means the Land Reform Act [Cap. 123];

"corporation" means any body corporate whether incorporated in Vanuatu or elsewhere and includes but is not limited to any of the following:

(a) a company under the Companies Act No. 25 of 2012;

(b) a Charitable Association incorporated under the Charitable Associations (Incorporation) Act [CAP 140];

(c) a partnership under the Partnership Act [CAP 92];

(d) an international company under the International Companies Act [CAP 222];

"custom owners" means any lineage, family, clan, tribe or other group who are recognised by the rules of custom, following the custom of the area in which the land is situated, as the perpetual owners of that land and, in those custom areas where an individual person is regarded by custom as able to own custom land, such individual person;

"the Court" means the Supreme Court;

"dealing" includes disposition and transmission;

"Director" means the Director of the department responsible for land;

"disposition" means any act *inter vivos* by a proprietor whereby his rights in or over his registered lease, sublease or mortgage are affected, but does not include an agreement to transfer, sublease or mortgage;

"easement" means a right attached to the land comprised in a registered lease which allows the proprietor thereof to either use the land comprised in another registered lease in a particular manner or to restrict its use to a particular extent, but does not include a profit;

"encumbrance" means a liability to which a registered lease is subject and includes a sublease, mortgage, casement, restrictive agreement and a profit;

"file" means place in the relevant parcel file;

"guardian" means a person who, according to law, is empowered to act on behalf of a person who is incapable, by reason of mental infirmity, of so acting;

"improvements" includes the reclaiming of land from the sea, clearing levelling or grading of land, drainage or irrigation of land, reclamation of swamps, surveying and making boundaries, erection of fences of any description, landscaping of land, planting of long-lived crops, trees or shrubs, laying-out and cultivation of nurseries, buildings and structures of all descriptions which are in the nature of fixtures, fixed plant and machinery, roads, yards, gates, bridges, culverts, ditches, drains, soakaways, cesspits, septic tanks, water tanks, water, power and other reticulation systems, dips and spray races for livestock;

"instrument" includes any deed, judgment, decree, order or other document requiring or capable of registration under this Act;

“interest” in relation to land includes a recorded interest in land, lease, sublease, mortgage, easement, restrictive agreement and profit; and "person interested" has a corresponding meaning and includes custom owners;

“land” includes land above the mean high water mark, all things growing on land and buildings and other things permanently affixed to land but does not include any minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working and does not include any rights to the foreshore or any waters adjacent to the land;

“Land Leases Register” means the Land Leases Register established under section 4;

“lease” means the grant with or without consideration, by the owner of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

“lessee” means the proprietor of a lease or his successor in title;

“lessor” means the person or custom owner group who has granted a lease or his successors in title;

“licence” means a permission by the proprietor of a registered lease which allows the licensee to do some act in relation to that lease which would otherwise be a trespass but does not include an easement or a profit;

“mean high water mark” means the mark showing the average level reached by a body of water at high tide, which may be subject to variation over time due to natural causes;

“mortgage” means an interest in a registered lease given as security for the payment of money or money's worth, and includes a sub-mortgage and the instrument creating a mortgage;

“National Coordinator” means the National Coordinator of Land Dispute Management under the Custom Land Management Act No. 33 of 2013;

“parcel” means an area of land separately delineated by a survey plan prepared by or under the direction of the Director of Surveys;

“periodic tenancy” means a tenancy from year to year, half year to half year, quarter to quarter, month to month, week to week or the like;

“personal representative” means the executor of a will or administrator of an estate;

“profit” means the right to go on land comprised in a registered lease held by another and take a particular substance from that land whether it is the soil or products of the soil and includes the taking of wild animals;

“proprietor” means:

(a) in relation to a registered lease the person named in the register as the proprietor thereof; and

(b) in relation to a mortgage of a registered lease the person named in the register as the person in whose favour the mortgage is made;

“recorded interest in land” is an interest in land created under the Custom Land Management Act No. 33 of 2013;

“the register” means the leaf of the Land Leases Register kept in respect of a registered lease;

“to register” means to make an entry in the Land Leases Register under this Act and “registered”, “unregistered” and “registration” shall be construed accordingly;

“registrable”, in relation to an instrument, means required to be registered or capable of registration under this Act;

"statutory trusts" means the trusts declared by section 91;

"survey plan" means the plan prepared under section 10;

"transfer" means the passing of an interest by act of the parties and not by operation of law and also the instrument by which such passing is effected;

"transmission" means the passing of an interest from one person to another by operation of law on death or insolvency or otherwise howsoever;

"trust" means any settlement, disposition, act of delivery, declaration, acknowledgement or conduct by which a person (known as trustee) holds or has vested in him property (which is called trust property) for the immediate, prospective, contingent or conditional benefit of a beneficiary or beneficiaries (being a person or persons, whether living or unborn or being a lawful purpose or object) but shall not include a unit trust, or other collective investment scheme;

"valuable consideration" includes marriage, but does not include a nominal consideration;

"Valuer-General" means the Valuer-General appointed under the Valuation of Land Act [Cap. 288];

"will" includes a codicil and any other testamentary instrument.

PART 2 – LAND RECORDS OFFICE AND DIRECTOR'S POWERS

2. Land Records Office

There shall be maintained in Port Vila a Land Records Office in which shall be kept –

(a) a register to be known as the Land Leases Register;

(b) parcel files containing the instruments and certified copies of survey plans which support entries in the register;

(c) a book to be known as the presentation book, in which there shall be kept a record of all applications numbered consecutively in the order in which they are presented to the Land Records Office;

(d) an index, in alphabetical order, of the names of the proprietors of registered leases showing the numbers of the titles in which they are interested;

(e) an index, in alphabetical order, and file of powers of attorney; and

(f) the names of all custom owners identified in a recorded interest in land.

3. *(Repealed)*

4. The Land Leases Register

(1) The Land Leases Register shall comprise a register maintained in both the English and French languages in respect of each lease required to be registered by this Act.

(2) Each register shall be divided in the following manner –

(a) the property section, containing a brief description of the lease together with particulars of its appurtenances; and

(b) the proprietorship section, containing:

(i) if the lessee is an individual - his or her name, postal or residential address in Vanuatu, a note of any caution or restriction affecting his or her right of disposition, and any other information required by the Director relating to the lease; or

(ii) if the lessee is a corporation incorporated in Vanuatu – provide the following information:

(A) corporation's name and address; and

(B) a copy of the corporation's certificate of registration with the Vanuatu Financial Services Commission; and

(C) a copy of the approval certificate issued by the Board of the Vanuatu Investment Promotion Authority – if the corporation is owned by a foreign investor; and

(D) a copy of the corporation's business license; or

(iii) if the lessee is a corporation incorporated in a jurisdiction other than Vanuatu:

(A) provide the relevant incorporation documentation or certification of the jurisdiction where the corporation has been registered; and

(B) provide any other document as required by the Director; and

(ba) the lessor or custom owners section, containing the details of the lessor or the custom owners; and

(bb) the inclusion of a recorded interest in land where applicable in accordance with section 100A; and

(c) the encumbrances section, containing a note of every encumbrance affecting the lease required by this Act or any other law, to be registered.

(3) In addition to subsection (2), the Director may add into the register any further sections that he or she deems necessary from time to time.

(4) A lessee must within 90 days of being notified by the Director provide the information required under paragraph (2)(b).

(5) A person who contravenes paragraph (2)(b), commits an offence punishable on conviction:

(a) in the case of an individual - by a fine not exceeding VT1 million or imprisonment for a term not exceeding 1 year, or both; or

(b) in the case of a body corporate - by a fine not exceeding VT2 million.

(6) The Director may serve a penalty notice on a person if it appears to the Director that the person has committed an offence under paragraph (2)(b).

(7) The Director is to cancel the lease if a person or corporation:

(a) does not comply with the notice issued under subsection (4); and

(b) does not pay the amount stated in the penalty notice within the prescribed time.

5. Manner of registration

Registration shall be effected by an entry in the register in such form as the Director may from time to time direct and by the cancellation of the entry, if any, which it replaces.

6. New editions of register

The Director may at any time open a new edition of a register showing only subsisting entries and omitting therefrom all entries which have ceased to have any effect.

7. Cancellation of obsolete entries

The Director may cancel any entry in the register which he is satisfied has ceased to have any effect.

7A. Power of Director to cancel lease relating to land acquired

(1) Subject to subsection (2), the Director may cancel a lease from the register relating to a land which has been acquired for the purposes of the Land Acquisition Act [CAP 215].

(2) The Director may only cancel a lease under subsection (1), on or after the date of commencement of an order made by the Minister under section 16 of the Land Acquisition Act [CAP 215].

8. General powers of Director

The Director may exercise the following powers in addition to any other powers conferred on him by this Act –

(a) he may require any person to produce any instrument or other document or plan relating to the registered interest and that person shall produce the same;

(b) he may summon any person to appear and give any information or explanation respecting a registered interest, and such person shall appear and give such information or explanation;

(c) he or she must refuse to proceed with any registration if:

(i) an instrument, document, plan, information or explanation required to be produced or given is withheld; or

(ii) an act required to be performed under this Act is not performed; or

(iii) he or she is in possession of an information which he or she reasonably believes would, if the instrument were to be registered, result in the rectification of the register under section 99 or 100;

(d) he may administer oaths or take a declaration in lieu thereof, and may require that any proceeding, information or explanation affecting registration shall be verified on oath or by declaration;

(e) he may order that the costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit;

(f) he may, at his discretion, dispense, with the production of any signature, or the supply of any information or any advertisement or notice required by this Act; and

(g) he may state any case or reserve any question for consideration by the Court.

9. Immunity

(1) The Director or any other staff of the Department of Land are not liable for anything done or omitted to be done in good faith in exercising his or her functions or powers under this Act.

(2) Subsection (1) does not apply, if it is proven that the Director or any of his officers acted in bad faith or in dereliction of their duties or exercise of their powers under this Act.

PART 3 – PLANS, COMBINATION AND SUBDIVISION AND PARTY WALLS

10. Land survey plans

(1) The Director of Land Surveys upon application, and on payment of the prescribed fee, shall prepare or cause to be prepared in respect of each parcel, the subject of a lease required to be registered, a survey plan, the original copy of which shall be retained by him, and certified copies of which signed by the parties to the instruments shall be attached to the original instrument of lease to be presented for registration and to the copies of the instrument to be retained by the lessor and the lessee.

(2) The plan shall bear a distinguishing number and shall be referenced to the cadastral plan.

11. Correction of land survey plans

If it appears to the Director that there is any error in a survey plan he may, after taking such steps as he thinks fit to bring to the notice of any person shown by the register to be interested his intention so to do and giving every such person an opportunity to be heard, require the Director of Land Surveys to correct the error:

Provided that the Director may without such notice, require the Director of Land Surveys to correct the survey plan whenever such correction does not materially affect the interest of any person.

12. Combination and subdivision

(1) Where registered leases granted by the same lessor, free from any registered encumbrances other than the agreements and liabilities contained or implied in the lease, of contiguous parcels are held by the same proprietor, upon application by him accompanied by a surrender of the existing leases in the prescribed form and a new lease in the prescribed form the Director shall effect combination by closing the register relating to the surrendered leases and opening a new register in respect of the new lease.

(2) Subject to section 49(2) upon application by the proprietor of a registered lease for the division of the land comprised in his lease into two or more parcels accompanied by a surrender of the existing lease in the prescribed form and new leases in the prescribed form the Director shall effect the division by closing the register relating to the surrendered lease and opening new registers in respect of the new leases resulting from the division:

Provided that –

(a) a proprietor of a lease shall not be entitled to subdivide the land comprised in his lease without the written consent of the Director of Land Surveys;

(b) any person aggrieved by a decision of the Director of Land Surveys refusing consent under paragraph (a) may appeal to the Court which may make such order as it thinks just.

(3) A proprietor of a registered lease must not subdivide land comprised under that lease into more than 10 parcels unless it is done in accordance with the requirements under the Land Reform Act [CAP 123].

13. Party walls

(1) Where any wall or structure lies along the boundary of two parcels which are comprised in separate registered leases, that wall or structure shall be deemed to be severed vertically in two and the land comprised in each lease shall include the appropriate vertical part thereof.

(2) Either of the two proprietors of the leases may apply to the Director for the registration of the wall or structure as a party wall or party structure; and the Director may, after giving notice of the application to the other proprietor and affording him an opportunity to be heard, register it as such.

(3) Where a wall or structure is registered as a party wall or party structure, each proprietor shall have such rights to support and use over the part thereof which is not comprised in his parcel as may be requisite.

PART 4 – EFFECT OF REGISTRATION

14. Interest conferred by registration

Subject to the provisions of this Act, the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease together with all implied and expressed rights belonging thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

15. Rights of proprietor

The rights of a proprietor 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 by the proprietor together with all rights, privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –

(a) to the encumbrances and to the conditions and restrictions shown 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 Act not to require registration and are subsisting:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as trustee.

16. Voluntary transfer

Every proprietor who has acquired a registered interest by transfer without valuable consideration, shall hold it subject to any unregistered rights or interests subject to which the transferor held it and subject also to the provisions of any law relating to bankruptcy or the winding up of companies, but save as aforesaid, such transfer shall in all respects have the same effect as a transfer for valuable consideration.

17. Overriding interests

Unless the contrary is expressed in the register, the proprietor of a registered lease shall hold such lease subject to such of the following overriding liabilities, rights and interests as may, for the time being, subsist and affect the same, without their being noted on the register –

(a) rights of way, rights of water, easements and profits subsisting at the time of first registration of that lease under this Act;

(b) natural rights of light, air, water and support;

(c) rights to sites of trigonometrical stations and navigational aids conferred by any law;

(ca) any classification as national heritage of any site under the Preservation of Sites and Artifacts Act [CAP 39];

(d) rights of compulsory acquisition, resumption, entry, search and user conferred by any law;

(e) the interest of a tenant in possession under a sublease for a term of not more than 3 years or under a periodic tenancy;

(f) any charge for unpaid rates or other moneys, which, without the condition of registration under this Act, are expressly declared by any law to give rise to a charge on land;

(g) the rights of a person in actual occupation of land save where enquiry is made of such person and the rights are not disclosed; and

(h) rights and powers relating to electric supply lines, telegraph and telephone lines or poles, pipelines, aqueducts, canals, weirs, dams, roads and ancillary works conferred by any law:

Provided that the Director may direct registration of any of the liabilities rights and interests herein before defined in such manner as he may think fit.

18. Entries to constitute actual notice

Every proprietor acquiring any registered interest shall be deemed to have had notice of every entry in the register relating to the interest and subsisting at the time of acquisition.

PART 5 – SEARCHES AND CERTIFIED COPIES

19. Searches

Any person upon application in the prescribed form and upon payment of the prescribed fee, may search any register or parcel file or both during the hours of public business.

20. Certified copies of registers and documents

On application in the prescribed form and on payment of the prescribed fee, the Director shall furnish to any person a copy of any register, plan, filed instrument or document certified by the Director to be a true copy.

21. Evidence

(1) Every document purporting to be signed by the Director shall, in all proceedings be presumed to be so signed until the contrary is proved.

(2) Every copy or extract from a document certified by the Director to be a true copy or extract shall, in all proceedings, be received as *prima facie* evidence of the contents of the document.

(3) Every entry or note in or on any register shall, subject to the provisions of sections 99 and 100, be received in all proceedings as conclusive evidence of the matter or transaction which it records.

(4) No process for compelling the production of the register or of any filed instrument, plan or document shall issue from the Court except with the leave of the Court which leave shall not be granted if a certified copy will suffice and any such process, if issued, shall bear thereupon a statement that it is issued with the leave of the Court.

PART 6 – DISPOSITIONS – GENERAL

22. Instruments ineffectual until registered

(1) No registered lease or mortgage shall be capable of being created or disposed of except in accordance with this Act. Every attempt to create or dispose of a registered lease or mortgage or to create, extinguish, transfer, vary or affect, any right or interest in a registered lease or mortgage otherwise than in accordance with this Act shall be ineffectual to create, or dispose of a registered lease or mortgage or to create, extinguish, transfer, vary or affect any right or interest in the lease or mortgage.

(2) Subject to the provisions of subsection (3) every instrument creating or disposing of a registered lease or mortgage shall be registered.

(3) It shall not be necessary to register –

(a) any lease for a period not exceeding 3 years unless it is required to be registered under section 35;

(b) any transfer, mortgage, or other instrument disposing of any lease being a lease for a period not exceeding 3 years which is not registered or required to be registered under section 35;

(c) any will;

(d) any appointment of a personal 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 Act.

(4) If requested so to do, the Director shall register such instrument as is mentioned in subsection (3)(d) or (e) and may register any other instrument mentioned in subsection (3) save a will which shall not be capable of registration.

(5) Nothing in this section shall be construed so as to prevent any unregistered instrument from operating as a contract.

(6) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof and any such instrument may be presented for registration as if the death had not occurred.

23. Protection of persons dealing in registered interests in land

(1) No person dealing or proposing to deal for valuable consideration with a proprietor of a registered interest shall be required or in any way concerned –

(a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered; or

(b) to see to the application of any consideration or any part thereof; or

(c) to search any register kept under any previous law.

(2) Where the proprietor of such an interest is a trustee, he shall in dealing therewith, be deemed to be the absolute proprietor thereof and no disposition by such trustee to a *bona fide* purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

24. Exoneration of the Director

Where by this Act any person is exonerated from enquiring as to any matter of fact relating to a registered interest, or to a power of dealing therewith, or is protected from the effect of notice of any such matter or fact, then, in registering any instrument relating to that interest, the Director shall not be concerned to make any enquiry or search in relation to that interest which such person need not have made nor shall the Director be affected by any notice with which such person need not have been affected.

25. Additional fee for delayed registration

Where an instrument is presented for registration more than 3 months after the date of the instrument, then as well as the registration fee an additional fee equal to the registration fee shall be payable.

26. Power to compel registration

(1) If he is satisfied that any person has failed to register any instrument which is required to be registered under this Act, the Director may by notice in writing order such person to present such instrument for registration and thereupon the registration fee,

including any additional fee payable under section 25 shall become due and shall be payable whether the instrument is presented for registration or not.

(2) Any person who without just cause fails to comply with an order of the Director under subsection (1) within 1 month of the service of the notice, shall be liable on conviction to a fine not exceeding VT 500,000.

27. Priority of registered instruments

(1) Subject to section 28, interests appearing in the register shall have priority according to the order in which the instruments or applications which led to their registration were presented in registrable form to the Land Records Office, irrespective of the dates of the instruments or applications and notwithstanding that the actual entry in the register may be delayed.

(2) All instruments or applications sent by post or under cover and received during the hours of business shall be deemed to have been presented simultaneously immediately before the closing of the office on that day.

(3) Where 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 there is doubt as to their order of priority, the Director may refuse registration until he has heard and determined the rights of the parties interested thereunder.

28. Stay of registration

(1) Any person proposing to deal for value with the proprietor of a registered interest may, with the consent in writing of such proprietor, and on stating the particulars of the proposed dealing, lodge with the Director an application for a stay of registration in the prescribed form.

(2) If, as shown by the register, the proprietor is free to deal with his interest the Director shall make an order certifying that the proprietor is so free and staying registration of any instrument affecting the interest for 2 months from the date of the order, and such order shall be registered.

(3) If, within the said period of 2 months, a properly executed instrument effecting the proposed dealing is lodged for registration such instrument shall have priority over any other instrument lodged for registration after the date of the order and shall be registered notwithstanding any caution lodged with, or any copy of a writ of execution or judgment decree or order of any court served on the Director after the date of the order.

29. Merger of registered interests

Where, upon the registration of a dealing, the interests of –

(a) lessor and lessee; or

(b) mortgagor and mortgagee; or

(c) the proprietor of a lease which is burdened with an easement, profit or restrictive agreement and the proprietor of a lease which benefits therefrom,

vest in the same proprietor, such interests shall not merge unless a surrender or discharge is registered or there is a declaration of merger which may be contained in the instrument evidencing the dealing.

30. Corporations

(1) In favour of any person dealing with a registered interest a corporation shall be deemed to have the same powers of acquisition and disposition as a natural person of full age and legal capacity.

(2) This section shall apply to all corporations, whether sole or aggregate, whether created directly by Act, Order or otherwise, and notwithstanding any stipulation, restriction or qualification imposed in the constitution of the corporation or elsewhere.

(3) Nothing in this section shall be held to diminish the personal liability of any individual or group of individuals controlling or responsible for the management of a corporation for acting in excess of its corporate powers.

(4) Where a corporation holds a registered interest in a fiduciary capacity this section shall not be held to extend the powers of the corporation in respect of that interest nor otherwise to affect the liability of the corporation to the beneficiaries for acting in excess of these powers.

(5) An application for registration of an instrument whereby a corporation acquires a registered interest shall be accompanied by such evidence of incorporation or such other evidence as the Director may require.

PART 7 – LEASES

31. Leases

Subject to the provisions of this Act and of any other law, the owner of land may lease the land or part of it to any person for a definite term.

31A. Change of lease boundary

(1) If since the date of a previous survey, the Director is satisfied that:

(a) there has been a change in the position of the mean high water mark (which forms the boundary of that lease); and

(b) that change has occurred as a result of a natural cause,

the boundary of that lease is also to be altered accordingly by a surveyor to the newly determined mean high water mark and the register is to be amended to reflect the reduction of the lease boundary.

(2) The lessor of a lease ending on the mean high water mark is not responsible for the reduction of the lease boundary caused by natural causes.

32. Term of a lease

(1) A lease, shall not be granted for a term in excess of 75 years, and if granted for a lesser term with provision for extension shall not be capable of being extended beyond 75 years.

(2) A lease granted in excess of, or extended beyond, such term, shall be deemed to be for a term of 75 years.

32A. Application of sections 32B and 32C

(1) Sections 32B, 32C and 32D apply only to leases of public land.

(2) In subsection (1), public land means land:

(a) declared to be public land under the Land Reform Act [Cap. 123] or any other Act; or

(b) acquired for a public purpose under the Land Acquisition Act [Cap. 215].

32B. Extension of leases

(1) Subject to subsection (3), the Minister may extend the term of a lease that is less than 75 years to 75 years.

(2) An application for an extension is to be made by the lessee in the form approved by the Minister and is to be accompanied by the prescribed fee.

(3) The term of a lease is not to be extended unless:

(a) the lessee pays to the Minister a premium which is to be determined by the Principal Valuation Officer within the meaning of the Valuation of Land Act [Cap. 288]; and

(b) the Minister is satisfied that the lessee has complied with all the conditions of the lease.

(4) A premium referred to in paragraph (3) (a) is to be determined based on the unimproved market value of the land at the date of the application.

32C. Right of renewal of a lease

(1) This section applies only to a lease that has a term of 75 years.

(2) A lessee of the lease may apply for a renewal of the lease.

(3) An application is to be made to the Minister in the form approved by the Minister and is to be accompanied by the prescribed fee. An application is to be made not later than 3 months before the expiry of the lease.

(4) The Minister may renew a lease for a term not exceeding 75 years if the Minister is satisfied that the lessee has complied with all the conditions of the lease.

(5) To avoid doubt, this section applies despite section 32(2) of this Act.

(6) For the purposes of this section, the premium is to be calculated based on the full rental value of the unimproved value of the land and the annual contract rent as agreed to by the lessor and the lessee.

32D. Premium payable for the issue of a new lease

(1) This section applies to:

(a) a new lease on land not previously subject to a lease; or

(b) a new lease as part of a subdivision; or

(c) a new lease as part of a strata title development.

(2) A new lease is not to be issued unless the lessee or the registered proprietor pays to the lessor a premium based on the full rental value of the unimproved value of the land as determined by the Minister from time to time and the contract rent as agreed to by the lessor and the lessee.

(3) A lessee must pay to the Minister the premium referred to in subsection 32D (2) before the lease is issued to the lessee.

(4) The Minister may by order, prescribe the full rental value of the different classes of leases which are to be reviewed every 5 years.

32E. Effect of removal of a company from the register of companies

(1) This section applies to a company that is a registered lessee and that has been removed from the register by the Registrar of companies under the Companies Act No. 25 of 2012.

(2) The Director may cancel any lease that has been registered to a company that has been removed from the register of companies, 12 months after the date of the notice signed by the Registrar of companies under section 139 of the Companies Act No. 25 of 2012.

(2A) Subsection (2) does not apply where a lease registered to a company under subsection (2) has an existing mortgage registered as an encumbrance over that lease at the time the company was removed from the register of companies.

(3) If a company that has been removed from the register of companies is restored under section 150 of the Companies Act No. 25 of 2012, any registered lease that has been cancelled by the Director under subsection (2) cannot be claimed by that company.

33. Periodic tenancies

(1) Where in any lease the term is not specified and no provision is made for the giving of notice to determine the tenancy, the lease shall be deemed to have created a periodic tenancy.

(2) Where the owner of land or proprietor of a lease permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

(4) No periodic tenancy shall be capable of registration but for the avoidance of doubt a periodic tenancy is hereby declared to be an interest for the purposes of section 93.

34. Commencement of leases

(1) Where the period of a lease is expressed as commencing on a particular day, that day shall be included in computing that period.

(2) Where no day of commencement is named, the period shall be deemed to commence on the date of first execution of the lease, and that day shall be included in computing the period.

(3) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

35. Registration of leases

(1) A lease for a term exceeding 3 years or which contains an option where the lessee may require the lessor to grant him or her a further term or terms which, together with the original term, exceeds 3 years must be in the prescribed form and is to be completed by:

(a) opening a register in respect of the lease in the name of the lessee; and

(b) filing the lease.

(2) To avoid doubt the original term and the option to renew must not exceed 75 years.

36. Lessor's consent to disposition of leased land

Notwithstanding any provision to the contrary that may be contained in this Act or in any other law, any disposition of any land leased under a registered lease or any disposition of any part of such land or interest comprised therein shall not be registered until the written consent of the lessor for such disposition verified in accordance with section 78 has been produced to the Director.

37. Holding over

(1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the determination of the lease, he shall, subject to any written law and in the absence of any evidence to

the contrary, be deemed to be a tenant holding the land on a periodic tenancy on the same conditions as those of the lease, so far as those conditions are appropriate to a periodic tenancy.

(2) For the purposes of this section, the acceptance of rent in respect of any period after the determination of the lease shall, if the former tenant is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

38. Purpose and development conditions to be specified

Every lease shall specify –

(a) the purpose and use for which the land is leased; and

(b) the development conditions, if any.

38A. Development requirement for certain leases

(1) The proprietor of:

(a) a rural agricultural lease; or

(b) a rural residential lease of 5,000 square meters or more; or

(c) a rural commercial lease; or

(d) an urban commercial lease,

for a proposed development purpose must, within 5 years of acquiring the lease, carry out such development related to the description of the lease.

(2) In addition to subsection (1) and to avoid doubt, if a lease is a:

(a) rural agricultural lease, the lessee must carry out the development related to agricultural purposes on that lease on more than 50% of the total land area of that lease; or

(b) rural residential lease, the lessee must carry out the development related to residential purposes on that lease on more than 50% of the total land area of that lease; or

(c) rural commercial lease, the lessee must carry out the development related to rural commercial purposes on that lease on more than 50% of the total land area of that lease; or

(d) urban commercial lease, the lessee must carry out the development related to urban commercial purposes on that lease on more than 50% of the total land area of that lease.

(3) If a lessee fails to comply with subsection (1), the lessor is to forfeit the lease unless the lessee can prove to the satisfaction of the Valuer-General that for some unforseen circumstances, it is not possible to carry out the development related to the description of the lease.

(4) If the lessor is satisfied that it is not possible for a lessee to carry out the development related to the description of the lease, he or she may extend the period referred to in subsection (1) for up to 3 years.

(5) If a person is not satisfied with a decision of the lessor under this section, he or she may appeal to the Valuer-General for relief.

(6) The Valuer-General may grant or refuse relief, as the Valuer-General having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if he or she grants relief, may grant it on such terms as he or she thinks fit.

(7) Sections 44 to 46 apply in relation to forfeiture under this section.

(8) This provision overrides the provisions, terms or clauses of any lease instrument or other instrument concerning the development of a lease.

38B. Transitional provisions for existing leases to be developed

(1) This section applies to a lessee who on or before the commencement of this Act, is a proprietor of a registered lease provided under subsection 38A(1).

(2) A lessee who has acquired the lease for a period of:

(a) 10 years or more prior to the commencement of this Act, must within 1 year from the commencement of this Act, carry out such development related to the description of the lease as set out in subsection 38A(2); or

(b) 5 years to less than 10 years prior to the commencement of this Act, must within up to 3 years from the commencement of this Act, carry out such development related to the description of the lease as set out in subsection 38A(2).

(3) If a lessee fails to comply with paragraph (2)(a) or (b), the lessor is to forfeit the lease.

(4) Sections 44 to 46 apply in relation to a forfeiture under this section.

39. Rent review

(1) Notwithstanding anything to the contrary contained in any lease, the rent reserved under all leases may be reviewed in accordance with the provisions of this section and in the following manner –

(a) either the lessor or lessee as the case may be, may initiate the review by serving upon the other party a written notice to review;

(b) such notice shall specify:

(i) the proposed rent (hereinafter referred to as the "new rent"), and

(ii) the date from which the new rent is required to be paid, which date shall not be earlier than 5 years from any of the following events –

(a) the date of the lease; or

(b) the date of the last rent review under this section; or

(c) the date from which there took effect a direction from the Valuer-General that the rent should continue unchanged;

whichever is the later;

and shall be served on the other party not less than 3 months before the date from which the new rent is required to be paid;

(c) The party upon whom the notice to review is served shall within 2 months from receipt of the notice:

(i) signify in writing to the other party acceptance of the new rent; or

(ii) negotiate with the other party a written agreement for a new rent other than that proposed in the notice to review; or

(iii) serve a counter notice on the other party requesting that the Valuer-General reviews the rent;

(d) If the party upon whom a notice to review was served fails within the time specified in paragraph (c) to either signify his acceptance of the new rent or negotiate a written agreement for a new rent or serve a counter notice, in accordance with paragraph (c)(i), (ii) or (iii), as the case may be, the party who

initiated the review may, within a period of 1 month thereafter, refer the rent to the Valuer-General for review.

(2) In reviewing the rent, the Valuer-General shall have regard to the fair open market rental value of the land at the relevant review date as if the full term of the lease had yet to run and shall also have regard to all the terms, conditions and agreements of the lease (other than those relating to the rent) on the assumption that the environment of the leased land is in all respects as it is or may reasonably be expected to be as at the date from which the new rent is to become payable, but disregarding -

(a) any effect on rent of the fact that the lessee or any person claiming through or under him is in occupation of the leased land; and

(b) the value of any improvements on or to the leased land made or carried out, or in respect of which valuable consideration was provided, by the lessee or his predecessors in title.

(3) This section shall not apply to –

(a) subleases;

(b) *(Repealed)*

(c) leases under which the rent is expressed to be an amount per annum determined by reference to the gross takings of an undertaking on the leased land except that any minimum rent reserved may be reviewed under this section.

39A. Annual lease rental payments

(1) If a lessee pays a total amount of the annual lease rent multiplied by 4, within the first 12 months from the date on which the annual rental amounts are fixed for 5 years, the payment made is deemed to be the full payment of the 5 years annual lease rent.

(2) Subsection (1) only applies to payments made on or before the due date for the first payment of an annual lease rent, which is fixed for a period of 5 years.

40. Agreements implied in leases on the part of the lessor

Save as otherwise expressly provided in the lease and subject to any written law there shall be implied in every lease the following agreements by the lessor with the lessee binding the lessor –

(a) that, so long as the lessee pays the rent and observes and performs the agreements and conditions contained or implied in the lease and on his part to be observed and performed, the lessee shall peaceably and quietly possess and enjoy the leased land during the period of the lease without any interruption from or by the lessor or any person rightfully claiming through him;

(b) not to use or permit to be used any adjoining or neighbouring land of which he is the owner or lessee in any way which would render the leased land unfit or materially less fit for the purpose for which it was leased;

(c) where part only of a building is leased, or where a dwelling house is leased furnished, to keep the roof, main walls, main drains, the common passages and common installations in good repair;

(d) where any dwelling house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy;

(e) that if at any time the leased land or any part thereof is destroyed or damaged by earthquake, hurricane, cyclone, fire, civil commotion or accident not attributable to the

negligence of the lessee, his servants or his licensees so as to render the leased land or any part thereof wholly or partially unfit for occupation or use, the rent or a just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased land has again been rendered fit for occupation and use; but that if the leased land has not been so rendered fit for occupation and use within 6 months of its destruction or damage as aforesaid, the lessee may at his option, and on giving 1 month's written notice of his intention so to do, determine the lease; and

(f) such other agreements as the Minister may have prescribed by Order prior to the execution of the lease.

41. Agreements implied in leases on the part of lessee

Save as otherwise expressly provided in the lease and subject to any written law, there shall be implied in every lease the following agreements by the lessee with the lessor binding the lessee –

(a) to pay the rent reserved by the lease at the times and in the manner specified therein;

(b) *(repealed)*

(c) except where part only of a building is leased, or where a dwelling-house is leased furnished, to keep all buildings comprised in the lease and all boundary marks in good repair;

(d) where part only of a building is leased or where a dwelling-house is leased furnished, to keep the leased land except the roof, main walls, main drains, the common passages and common installations in good repair;

(e) where the lease is of furnished premises, to keep the furniture in as good a condition as it was at the commencement of the period, fair wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;

(f) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased land and examine its condition;

(g) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice;

(h) not to dispose of the leased land or any part thereof or interest comprised therein without the previous written consent of the lessor but such consent shall not be unreasonably withheld;

(i) not to permit or suffer any part of the leased land to be used for any purpose other than that for which it was leased without the previous consent of the lessor but such consent shall not be unreasonably withheld;

(j) on determination of the lease peaceably and quietly to deliver up vacant possession of the leased land and all improvements thereon; and

(k) such other agreements as the Minister may have prescribed by Order prior to the execution of the lease.

41A. Implied agreement relating to disposition of leased land

(1) Notwithstanding any provision to the contrary that may be contained in this Act or in any other law, there shall be implied –

(a) in every registered lease created prior to the relevant date and which is valid on that date; and

(b) in every registered lease created on or after the relevant date,

the following agreement between the lessee and the lessor –

Notwithstanding any provision to the contrary contained in the lease, with effect from the relevant date, not to dispose of the leased land or part thereof or interest comprised therewith by the lessee without the previous written consent of the lessor, and not to withhold such consent by the lessor unreasonably.

(2) For the purposes of this section 'relevant date' means the date on which this section comes into force.*

42. Meaning of "in good repair"

Where an agreement is contained or implied in any lease to keep a building or a particular part of a building "in good repair", it shall, in the absence of an express provision to the contrary, mean in such a state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building or such part thereof at the commencement of the lease:

Provided that there shall not be read into such an agreement any undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

43. Lessor's right of forfeiture

(1) Subject to the provisions of section 45 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee commits any breach of, or omits to perform any agreement or condition on his part expressed or implied in the lease.

(2) The right of forfeiture may be –

(a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or

(b) enforced by a reference to the Valuer-General.

(3) Subject to subsection (4), the right of forfeiture may not be exercised if:

(a) the lessor has shown an intention to treat the lease as subsisting; and

(b) the lessor is or should by reasonable diligence have become aware of the commission of the breach of the agreement or condition which entitled the lessor to forfeit the lease.

(4) The lessor's right to forfeiture is not waived if the lessor accepts the rent associated with that lease.

44. Effect of forfeiture on subleases

The forfeiture of a lease determines every sublease and every other registered interest relating to that lease, but –

(a) where the forfeiture is set aside by the Valuer-General on the grounds that it was procured by the lessor in fraud of the sublessee; or

(b) where the Valuer-General grants relief against the forfeiture under section 46;

every such sublease and other interest shall be deemed not to have determined.

* *Editor's note: This section came into force on 29 December 1989.*

45. Notice before forfeiture

Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee and every other person shown by the register to have an interest a notice in writing which –

(a) shall specify the particular breach complained of; and

(b) if the breach is capable of remedy, shall require the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent may require the lessee to make compensation in money for the breach;

and the lessee has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money if so required.

46. Relief against forfeiture

(1) A lessee or other person upon whom a notice has been served under section 45, or against whom the lessor is proceeding, by reference to the Valuer-General or by re-entry, to enforce his right of forfeiture, may apply to the Valuer-General for relief; and the Valuer-General may grant or refuse relief, as the Valuer-General having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if he grants relief, may grant it on such terms as he thinks fit.

(2) The Valuer-General, on application by any person claiming as sublessee or mortgagee of the land or part of the land comprised in the lease forfeited or sought to be forfeited, may make an order vesting the leased land or such part in such sublessee or mortgagee for the remainder of the term of the lease or any less period, upon such conditions as the Valuer-General in the circumstances thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the land leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

47. Variation of agreements and conditions of a lease

(1) Subject to the provisions of this Act and any other written law, the agreements and conditions contained or implied in any registered lease may be varied, negatived or added to, by an instrument in the prescribed form executed by the lessor and lessee for the time being and registered before the expiration of the current term of the lease.

(2) Any variation of rent under a lease shall be notified to the Director by the lessor. No variation shall have effect unless so notified and registered by the Director in the register.

48. Subleases

(1) Subject to the provisions of this Act and to any provisions in his lease affecting his right to do so, a proprietor of a registered lease may sublease for any period which is less than the remainder of the period of his lease by an instrument in the prescribed form.

(2) Save as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees, shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.

(3) If a lease is determined by operation of law or by surrender under any law relating to bankruptcy or winding up, such determination shall determine the sublease.

(4) In addition to the agreements specified by this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and conditions thereof.

(5) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

48A. Payment for sale of a rural lease

(1) This section applies only to leases of rural land.

(2) Subject to subsection (2A), if a proprietor of a registered lease sells that lease, the proprietor must pay to the lessor 10% of the difference in amount between:

(a) the unimproved market value of the land at the time it was purchased or the purchase price at the time it was purchased, whichever is lower; and

(b) the unimproved market value of the land at the time of the present sale or the sale price at the time of present sale, whichever is higher.

(2A) Subsection (2) does not apply where the lessor and lessee have entered into other arrangements.

(3) If the proprietor of a registered lease sells a lease that is created by a subdivision, the proprietor must pay to the lessor, 5% of the unimproved market value of the land at the time of the sale, or the sale price of the land at the time of sale, whichever is higher, unless the lessor and lessee have entered into other arrangements.

48B. Payment for transfer of urban lease

(1) This section applies only to the transfer of an urban lease.

(2) If a proprietor of an urban lease transfers that lease, the proprietor must pay to the lessor 5% of the difference in amount between:

(a) the unimproved market value of the land at the time it was purchased or the purchase price at the time it was purchased, whichever is lower; and

(b) the unimproved market value of the land at the time of the present sale or the sale price at the time of present sale, whichever is higher.

(3) Subject to subsection (4), subsection (2) does not apply where the lessor and lessee have entered into other arrangements.

(4) The Minister must obtain the prior approval of the Council of Ministers before entering into any other arrangements under subsection (3).

48C. Exemption from payment for transfer of lease

(1) Section 48B does not apply if the proprietor transfers the lease to a member of his or her nuclear family or extended family.

(2) A proprietor who intends to transfer a lease to a member of his or her nuclear family must provide such information as required by the Director in the prescribed form.

(3) If a proprietor intends to transfer a lease to a member of his or her extended family, he or she must:

(a) provide any information as required by the Director in the prescribed form; and

(b) require such information to be certified by a Commissioner of Oaths.

(4) In this section:

"extended family" means a family unit extending beyond a nuclear family and must be related through blood ties or by adoption recognised by custom or law;

"nuclear family" means a family unit consisting of a father, mother and their children whether biological or adopted by law or according to custom and includes any other child of either the mother or father from a previous marriage or relationship.

49. Surrender of leases

(1) Where the lessor and the lessee agree that the lease shall be surrendered it shall be surrendered in the following manner, that is to say –

(a) an instrument shall be prepared in the prescribed form;

(b) the instrument shall then be executed by the lessee and lessor;

(c) the Director shall then cancel the registration of the lease; and

(d) the instrument shall then be filed.

(2) No lease which is subject to a mortgage or sublease shall be surrendered without the consent in writing of the proprietor of the mortgage or sublease and upon registration of the surrender the mortgage or sublease shall cease to have effect.

49A. Surrender and subdivision of lease for purposes of rectification

(1) If a determination has been made:

(a) by a custom institution under the Custom Land Management Act No. 33 of 2013; or

(b) an institution mentioned under section 57 of the Custom Land Management Act No. 33 of 2013,

and that determination affects the boundaries of a registered lease, the lease must be surrendered in the manner set out in subsection (2).

(2) The surrender of a lease under subsection (1) is to be made in the following manner:

(a) an instrument is to be prepared in the prescribed form; and

(b) the instrument is to be executed by the lessee and lessor; and

(c) the Director is to amend the registration of the lease,

for the purposes of rectifying the boundary of the lease.

(3) The Director is to prescribe the fee to be paid by the lessor in relation to the surrendering of a lease under this section.

50. Determination of leases

(1) Where a registered lease has expired or been determined the lessor may apply in writing to the Director to cancel the registration.

(2) An application under this section shall be supported by such evidence of the determination as the Director may require and the Director on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

50A. Settling of taxes and other charges

(1) If a proprietor of a registered lease or sub-lease intends to:

(a) transfer the lease or sublease; or

(b) surrender the lease or sublease for the purposes of varying the nature or class of the lease or sublease; or

(c) mortgage a lease or sub-lease or vary the mortgage,

he or she must ensure that any outstanding rates, charges or other debts due to the Government or an agency as defined in the Public Finance and Economic Management Act [CAP 244], in relation to that lease or sublease, is settled.

(2) The Director must not register any matter referred to in paragraph (1)(a), (b), or (c), if there are outstanding rates, charges or other debts owed by the proprietor in relation to that lease or sublease.

PART 8 – MORTGAGES

51. Form and effect of mortgages

(1) A proprietor may by an instrument in the prescribed form, mortgage his registered lease to secure the payment of an existing or a future or contingent debt or other money or money's worth.

(2) The mortgage shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as the mortgagee and by filing the instrument.

(3) A mortgage shall not operate as a transfer but shall have effect as a security only.

52. Supplementary provisions relating to mortgages

(1) A proprietor of a registered lease may not create any security for the payment of money enforceable against that lease other than a mortgage under and in accordance with this Part.

(2) The proprietor of a registered lease may create one or more mortgages in respect of such lease which shall rank according to the order in which they are presented for registration.

(3) A security for the payment of money, purporting to be enforceable against a registered lease otherwise than by way of a mortgage under the provisions of this Act, or a mortgage which is not registered, may give rise to a personal liability but shall not be enforceable under this Part.

53. Further advances

(1) A prior mortgagee shall have a right to make further advances to rank in priority to a subsequent mortgage, if, and only if –

(a) an arrangement to that effect has been made with the subsequent mortgagee; or

(b) the mortgage imposes an obligation to make such further advances; or

(c) the mortgage was made expressly for securing a current account up to a specified limit, in which case the right shall extend only up to such limit.

(2) Where a mortgage imposes an obligation to make further advances or is made expressly for securing a current account up to a specified limit, the Director shall, when registering it, include in the relevant memorandum the words "subject to further advances" or words to that effect.

54. Variation of mortgages

(1) Subject to the provisions of this Act the terms of a mortgage may be varied by an instrument in the prescribed form made between the parties for the time being to the mortgage but no such variation shall affect the rights of the proprietor of any subsequent mortgage registered before registration of the variation unless he has

consented thereto in writing endorsed on the instrument of variation and verified in accordance with section 78.

(2) Notwithstanding the provisions of section 27, where more than one mortgage is created in respect of a lease their respective priorities may be varied by a written agreement between the mortgagees. Such agreement shall be filed with the Director and shall be noted in the register relating to the lease.

55. Discharge of mortgage

(1) The Director shall, if required by the mortgagee, or on proof of the satisfaction in whole or in part of a mortgage, in either case, in the prescribed form, register the discharge in whole or in part of the mortgage.

(2) Where a mortgagor is desirous of wholly satisfying a mortgage, and the mortgagee, or if there are two or more mortgagees, any of the mortgagees, is or are dead or cannot be found, the mortgagor may pay the moneys owing into the Court, and upon proof of such payment the Director shall register the discharge of the mortgage, and thereupon the mortgage shall cease to have effect.

56. Obligations implied in mortgages

(1) There shall be implied in every mortgage unless the contrary is expressed therein, on the part of the mortgagor, the following obligations –

(a) to pay to the mortgagee the principal sum secured, and interest (if any) thereon, at the appointed time and rate;

(b) to pay the rent and perform the obligations incident to the lease comprised in the mortgage;

(c) not, by any disposition, to subdivide or dispose the leased land or any part thereof or any interest comprised therein without the previous written consent of the mortgagee but such consent shall not be unreasonably withheld.

(2) A mortgage may provide for the payment of interest at a higher rate than that appointed if the interest at the appointed rate is not paid within a specified period after the same shall have become due; but so that the higher rate shall not exceed the appointed rate by more than 3 per centum per annum.

(3) A mortgage may provide for the mortgagee to remedy a breach of an agreement by the mortgagor to pay the rent reserved under the lease.

57. Mortgagee's consent to transfer etc.

Where a mortgage contains an agreement, express or implied, by the mortgagor with the mortgagee that he will not by any disposition subdivide or dispose of the leased land or any part thereof or any interest comprised therein without the written consent of the mortgagee, the agreement shall be noted in the register relating to the lease and no such subdivision, or other disposition, shall be registered until the written consent of the mortgagee verified in accordance with section 78 has been produced to the Director.

58. Action for recovery of debt

Any principal sum or interest due under a mortgage may, subject to the provisions of section 59(4), be recovered by action in any competent court.

59. Enforcement of mortgages

(1) Except as provided in section 46 a mortgage shall be enforced upon application to the Court and not otherwise.

(2) Upon any such application, the Court may make an order –

(a) empowering the mortgagee or any other specified person to sell and transfer the mortgaged lease, and providing for the manner in which the sale is to be effected and the proceeds of the sale applied;

(b) empowering the mortgagee or any other specified person to enter on the land and act in all respects in the place and on behalf of the proprietor of the lease for a specified period and providing for the application of any moneys received by him while so acting; or

(c) vesting the lease in the mortgagee or any person either absolutely or upon such terms as it thinks fit but such order shall, subject to subsection (5), not take effect until registration thereof.

(3) The Court shall, in exercising its jurisdiction under this section, take into consideration any action brought under section 58 and the results thereof.

(4) After the Court has made an order under paragraphs (a) or (c) of subsection (2) or while an order under paragraph (b) of subsection (2) is in force, no action may be commenced or judgment obtained under section 58 in respect of the mortgage except with the leave of the Court and subject to such conditions (if any) as the Court may impose.

(5) Any order made by the Court under this section shall for the purposes of subsection (4) be effective from the time when it is made.

PART 9 – TRANSFERS

60. Transfer

(1) A proprietor may, subject to the provisions of this Act, transfer his registered lease or mortgage to any person, with or without consideration, by an instrument in the prescribed form.

(2) The transfer shall be completed by registration of the transferee as proprietor of the lease or mortgage and by filing the instrument.

(3) A transfer shall dispose of the registered lease or mortgage transferred for the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the lease or mortgage was registered.

60A. Declaration of transfers by corporations

(1) Despite section 60, if there is a transfer of shares made by a corporation to another corporation or by a corporation to a person, and the transfer includes a registered lease, the corporation transferring the registered lease must:

(a) declare the transfer to the Director, in the prescribed form; and

(b) pay to the lessor 10% of the difference in amount between the unimproved market value of the land at the time it was purchased and the unimproved market value of the land at the time of the present sale, unless the lessor and lessee have entered into other arrangements.

(2) A corporation that contravenes paragraph (1)(a) or (b) commits an offence and is liable on conviction by a fine not exceeding VT1,000,000.

61. Restriction on transfer

(1) A transfer shall not be expressed to take effect on the happening of any event or on the fulfilment of any condition or at any future time.

(2) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest transferred shall be void.

(3) A proprietor of a registered interest may not dispose of the interest for the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the interest was registered, otherwise than by way of transfer in accordance with the provisions of this Act.

62. Matters implied in transfer

(1) On the transfer of a registered lease there shall be implied –

(a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that the rent and obligations incident to the lease have been paid and performed up to the date of transfer;

(b) on the part of the transferee, an agreement with the transferor that so long as the lease subsists, the transferee and the persons deriving title under him shall pay the rent and shall perform the obligations incident to the lease and shall keep the transferor indemnified against all consequences and liabilities arising out of the non-payment of the rent or the non-performance of any of the obligations.

(2) On the transfer of a registered lease subject to a mortgage, there shall be implied –

(a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that nothing has been done or omitted up to the date of transfer (including the payment of any moneys payable under the mortgage) which would render the mortgage liable to be enforced; and

(b) on the part of the transferee, an undertaking with the transferor that so long as the mortgage subsists the transferee and the persons deriving title under him shall pay all money payable thereunder, shall perform the obligations contained therein, and shall keep the transferor indemnified against all consequences and liabilities of or arising out of the non-payment of the said moneys or the non-performance of any of the said obligations.

63. Entitlement of a transferee of a mortgage

Upon registration of a transfer of a mortgage, the transferee shall be entitled to all of the rights, powers and remedies of the mortgagee expressed or implied in the mortgage including the right 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.

64. Registration of transfer of mortgage

A mortgagor shall not be bound to account to any person who has acquired an interest in the mortgage unless the instrument whereby such person became entitled has been registered and the mortgagor has been notified in writing of the registration by such person.

65. Transfer of lease subject to sublease

A transfer of a lease which is subject to a sublease shall be valid without the sublessee acknowledging the transferee as sublessor, but nothing in this section shall –

(a) affect the validity of any payment of rent made by the sublessee to the transferor; or

(b) render the sublessee liable on account of his failure to pay rent to the transferee or any breach of agreement to pay rent;

before notice is given to the sublessee by the transferee, in the case of a registered lease of registration of the transfer and in the case of an unregistered lease, of the transfer.

66. Transfer of part

No part of the land comprised in a registered lease shall be transferred unless the proprietor has first subdivided the land comprised in the lease and new registers have been opened in respect of each subdivision in accordance with section 12(2).

PART 10 – EASEMENTS, RESTRICTIVE AGREEMENTS, PROFITS AND LICENCES

67. Easements

(1) The proprietor of a registered lease may, by an instrument in the prescribed form, grant an easement over the land comprised in his lease to the lessee of other land for the benefit of that other land.

(2) Any proprietor transferring or subleasing a registered lease may in the transfer or sublease grant an easement for the benefit of the lease transferred or subleased, over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly –

(a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and

(b) the land burdened by the easement and, if required by the Director, the particular part thereof so burdened; and

(c) the land which enjoys the benefit of the easement;

and shall if so required by the Director, include a plan sufficient in the Director's estimation to define the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the lease burdened and in the property section of the register of the lease which benefits and by filing the instrument.

(5) An easement granted by the proprietor of a registered lease shall be capable of subsisting only during the subsistence of the lease.

68. Restrictive agreements

(1) Where an instrument other than a lease or mortgage contains an agreement (hereinafter referred to as a "restrictive agreement") by one proprietor restricting the building on or the use or other enjoyment of the land comprised in his registered lease for the benefit of the proprietor of any other registered lease and is presented to the Director, the Director shall note the restrictive agreement in the encumbrances section of the register of the lease burdened by the restrictive agreement, either by entering particulars of the agreement or by referring to the instrument containing the agreement and shall file the instrument.

(2) Unless it is noted in the register a restrictive agreement shall not bind the proprietor of the lease burdened by it.

(3) The note of a restrictive agreement in the register does not give the agreement any greater force or validity than it would have had if it had not been registrable under this Act and had not been noted.

(4) In so far as the restrictive agreement is capable of taking effect not only the proprietors themselves but also their respective successors in title shall be entitled to the benefit and subject to the burden of it respectively, unless the instrument otherwise provides.

69. Profits

(1) The proprietor of a registered lease may, by an instrument in the prescribed form, grant a profit.

(2) The instrument shall indicate clearly –

(a) the nature of the profit and the period for which it is to be enjoyed;

(b) whether it is to be enjoyed in gross, or as appurtenant to any other registered lease; and

(c) whether it is to be enjoyed by the grantee exclusively, or by him in common with the grantor.

(3) The grant of a profit shall be completed –

(a) by its registration as an encumbrance in the register of the lease which it affects;

(b) where it is appurtenant to another registered lease by its registration in the property section of the register of the lease concerned; and

(c) by filing the instrument.

(4) A profit which is not appurtenant to a registered lease may be dealt with as though it were such a lease.

(5) A profit granted by the proprietor of a registered lease shall be capable of subsisting only during the subsistence of the lease.

70. Release and extinguishment of easements, restrictive agreements and profits

(1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement, restrictive agreement or profit shall be cancelled and thereupon the easement, restrictive agreement or profit shall become extinguished.

(2) On the application of any person affected thereby, the Director may cancel the registration of an easement, restrictive agreement or profit upon proof to his satisfaction that –

(a) the period of time for which it was intended to subsist has expired; or

(b) the event upon which it was intended to determine has occurred; or

(c) it has been abandoned.

71. Extinguishment and modification of easements, restrictive agreements and profits

The Court has power, on the application of any proprietor of a registered lease affected by an easement, restrictive agreement or profit, by order wholly or partially to extinguish or modify the easement, restrictive agreement or profit (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order), on being satisfied that –

(a) by reason of changes in the character of the property or the neighbourhood or other circumstances which the Court deems material, the easement, restrictive agreement or profit ought to be held to be obsolete; or

(b) the continued existence of the easement, restrictive agreement or profit impedes the reasonable use of the land for public or private purposes without securing practical benefits to other persons or as the case may be, will unless modified so impede such user; or

(c) the proposed extinguishment or modification will not adversely affect the person entitled to the benefit of the easement, restrictive agreement or profit.

72. Licences

(1) Without prejudice to section 93 a licence shall not be capable of registration.

(2) A licence relating to the use or enjoyment of the land comprised in a registered lease is ineffective against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under section 93.

PART 11 – CO-PROPRIETORSHIP

73. Co-proprietorship

(1) Every instrument required to be registered under this Act whereby an interest would become vested in more than five persons shall, notwithstanding anything to the contrary contained therein, operate to vest the interest in the first five persons named in the instrument as joint proprietors on the statutory trusts.

(2) An instrument required to be registered under this Act made in favour of two or more persons shall declare whether such persons are joint proprietors or proprietors in common and in the case of proprietors in common, the share of each such owner.

74. Proprietorship in common

(1) Where a registered interest is vested in proprietors in common, the proprietors shall be entitled to undivided shares in the interest in such proportion as may be registered and on the death of any of the proprietors in common his share shall be administered as part of his estate.

(2) No proprietor in common of a registered interest shall dispose of his undivided share in favour of any person other than another proprietor in common of the same interest except with the consent in writing of the remaining proprietor or proprietors of the interest, but such consent shall not be unreasonably withheld.

75. Joint proprietorship

(1) Where a registered interest is vested in joint proprietors, the joint proprietors shall hold on the statutory trusts.

(2) Where two or more persons are joint proprietors of such a registered interest –

(a) a disposition of that interest shall be made only by all the joint proprietors; and

(b) on the death of a joint proprietor the interest shall vest in the surviving proprietor or proprietors.

PART 12 – INSTRUMENTS AND AGENTS

76. Form of instruments

(1) Every disposition of a registered interest shall be effected by an instrument in the prescribed form or in such other form as the Director may in any particular case approve.

(2) When a lease or mortgage is registered, and a duplicate or triplicate thereof is produced to the Director, particulars of registration shall be noted thereon, and the duplicate and triplicate shall be returned to the person who presented them, but such note shall not be taken to involve the Director in liability for any inaccuracy which may exist in any such duplicate or triplicate.

(3) Instruments shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any), and an acknowledgement of the receipt of the consideration.

77. Execution of instruments

(1) Every instrument evidencing a disposition shall be executed by all persons shown by the register to be proprietors of the interest affected and by all other parties to the instrument:

Provided that the Director may dispense with execution by any particular party (other than a donee under a disposition by way of gift) where he considers that such execution is unnecessary.

(2) An instrument shall be deemed to have been executed only –

(a) by a natural person, if signed by him or his duly authorised attorney;

(b) by a corporation –

(i) if sealed with the common seal of the corporation affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation, or in the presence of and attested by two members of such board, council or other governing body; or

(ii) if signed by such persons as are authorised in that behalf by any law or by the statute or charter of the corporation or in the absence of any express provision, by the persons duly appointed in writing for that purpose, evidence of which has been produced to the satisfaction of the Director.

78. Verification of execution

(1) Subject to subsection (5), a person other than a body corporate, executing an instrument required to be registered under this Act shall appear before an authorised officer for the purposes of this section and, unless he is personally known to the authorised officer, he shall be accompanied by a credible witness for the purpose of establishing his identity.

(2) The authorised officer shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed and appeared fully to understand the instrument and shall complete a certificate to that effect.

(3) Authorised officers for the purpose of this section are –

(a) within Vanuatu –

(i) the secretary to any local government council;

(ii) a magistrate;

(iii) the Registrar of the Supreme Court;

(iv) the Registrar and Receiver General;

(v) persons for the time being registered as legal practitioners;

(vi) Notaries Public;

(vii) Commissioners for Oaths;

(viii) managers for the time being of any bank or branch thereof;

(ix) surveyors in the Department of Surveys;

(x) such other persons or class of persons as the Minister may by notice published in the Gazette approve;

(b) in any foreign country –

(i) consular officers or proconsular officers of Vanuatu;

(ii) Notaries Public;

(iii) such other persons or class of persons as the Minister may by notice published in the Gazette approve.

(4) Every certificate of verification required for the purpose of this section shall be in the following form which may be printed on or otherwise incorporated in any instrument presented for registration –

"I certify that the above-named .....

appeared before me at ..... on this .....

day of ..... 20 .....

*being identified to me by .....

of .....

*(or) being personally known to me and, that *he/*she/*they freely and voluntarily signed and appeared fully to understand this instrument.

**delete the underlined alternatives inapplicable.*

.....

Signature, name, designation and seal/stamp of office of person completing certificate."

(5) The Director may dispense with verification under this subsection –

(a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or

(b) in cases in which to his knowledge the document has been properly executed,

and shall record on the document his reasons for dispensing with verification.

79. Stamps

No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

80. Disposal of instruments

(1) All instruments accepted by the Director shall be retained in the Land Records Office for as long as they support a current entry in the register and for 6 years thereafter.

(2) On the expiry of 6 years after an entry in the register has been superseded or has ceased to have effect, the Director may destroy any instrument which supported the entry.

81. Persons who are mentally infirm

(1) If the Director has reason to believe that any person whose name is entered on the register is incapable by reason of mental infirmity of acting, he shall refuse to register any instrument to which that person is expressed to be a party or affecting any right or interest owned by or vested in that person unless the instrument is executed or approved in writing by the guardian of that. person.

(2) Where any person claims to be the guardian of a person whose name is entered on the register and who in the opinion of the Director is incapable by reason of mental infirmity of acting, the Director shall require him to produce an order of a court of competent jurisdiction appointing him, or recognising him as such guardian.

(3) On the hearing of an application under subsection (2) the Court may make an order –

(a) declaring that the applicant is the guardian of the person in question; or

(b) appointing some other person to be such guardian.

82. Powers of attorney

(1) The Director shall, subject to the provisions of this section, maintain an index of powers of attorney in such form and manner as he may deem fit.

(2) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any registered interest in land, such power shall be entered in an index of powers of attorney and the original, or with the consent of the Director, a copy thereof certified by the Director, shall be filed.

(3) Every such power shall be in the prescribed form and shall be executed and verified in accordance with sections 77 and 78 except where the Director in any particular case otherwise permits.

(4) The donor of a power of attorney recorded under this section may at any time give notice to the Director in the prescribed form or in such other form as the Director may approve, that the power has been revoked.

(5) Any interested person may give notice in writing to the Director that a power of attorney which has been registered under this section has been revoked by the death, bankruptcy or disability of the donor, accompanied by such evidence as the Director requires.

(6) Subsections (4) and (5) shall not apply to any power of attorney given for valuable consideration during any time during which it is by virtue of the terms thereof, irrevocable.

(7) If owing to the length of time since the execution of a power of attorney or for any other reason the Director considers it desirable, he may require evidence that the power has not been revoked and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

83. Effect of registered powers of attorney

(1) A power of attorney which has been recorded under section 82 and of which no notice of revocation has been received under that section shall be deemed to be subsisting as regards the Director and any person acquiring any interest in land

affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.

(2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney recorded under section 82, shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the payment or act.

PART 13 – TRANSMISSION AND TRUSTS

84. Transmission on death of sole proprietor or proprietor in common

(1) If a sole proprietor or a proprietor in common of a registered interest dies, his personal representative, on application to the Director in the prescribed form accompanied by proof of his authority to act, shall be entitled to require the Director –

(a) to register him by transmission as proprietor in place of the deceased with the addition after his name of the words "as executor of the will of ..... deceased" or "as administrator of the estate of ..... deceased" as the case may be; or

(b) to register some other specified person as proprietor or proprietor in common of the deceased's interest.

(2) For the purpose of subsection (1) authority to act shall consist of a grant of probate of the will, a grant of letters of administration or an order of a court.

85. Effect of transmission on death

Subject to any restriction on his power of disposing of the registered interest contained in his appointment, if any, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the interest subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any registered dealing he shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Act on a proprietor who has acquired a registered interest for valuable consideration.

86. Wills

A registered interest in land may be disposed of by a valid will, that is to say, a will which is valid under the law in force in Vanuatu.

87. Transmission on bankruptcy

(1) A trustee in bankruptcy shall, upon production to the Director of a certified copy of the order of the Court adjudging a proprietor bankrupt, or directing that the estate of a deceased proprietor be administered according to the law of bankruptcy, be registered as proprietor of any registered interest of which the bankrupt or deceased proprietor is proprietor in his place, and a copy of the order shall be filed.

(2) A trustee in bankruptcy shall be described in the register "as trustee of the property of ..... a bankrupt".

(3) The trustee in bankruptcy shall, hold any interest of which he is registered as proprietor subject to any restrictions contained in any law relating to bankruptcy or in any order of the Court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt or deceased proprietor held the same, but for the purpose of any dealing in such interest the trustee in bankruptcy shall have all the rights and be subject to all the limitations

conferred by this or any other law on a proprietor who has acquired the interest for valuable consideration.

88. Transmission in other cases

Where any person has become entitled to any registered interest under any law or by virtue of any order or certificate of sale made or issued under such law, the Director shall, on the application of any interested person supported by such evidence as he may require, register the person entitled as proprietor of that interest.

89. Trusts

(1) A person acquiring a registered interest in a fiduciary capacity may be described by that capacity in the instrument of acquisition and, if so described, shall be registered with addition of the words "as trustee", but the Director shall not enter particulars of any trust on the register.

(2) An instrument which declares or is deemed to declare any trust, or a certified copy thereof, may be deposited with the Director for safe custody; but such instrument or copy shall not form part of the register or be deemed to be registered.

(3) Where the proprietor of a registered interest is a trustee, he shall hold the same subject to any unregistered liabilities, rights or interests to which it is subject by virtue of the instrument creating the trust, but for the purpose of any registered dealings for valuable consideration he shall be deemed to be the absolute proprietor thereof, and no person dealing with the interest shall be deemed to have notice of the trust, nor shall any breach of the trust create any right to indemnity under this Act.

90. Survivor of trustees

Whenever two or more proprietors are registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise alone the powers which were vested in them, the Director shall enter a restriction to that effect.

91. Statutory trusts

(1) For the purpose of this Act, a registered interest held upon the statutory trusts shall be held upon trust to sell the same with power to postpone such sale as the trustee thinks fit and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rent and profits until sale, after payment of all outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons beneficially interested in the interest.

(2) A registered lease held upon the statutory trusts may subject to the provisions of section 12 be divided by the trustees among the beneficiaries under the trust, and on any such division the trustees may provide for the payment either in cash or by way of a mortgage of equality money.

(3) Any beneficiary under a trust who objects to the exercise of the powers granted by subsection (2) may, either before such exercise or within 6 months thereafter, apply to the Court, which may make such order as it thinks just and may order rectification of the register under section 100.

(4) The trusts and powers set out in this section shall be deemed to be incorporated in any instrument which operates expressly to vest any registered interest in any person upon the statutory trusts or whereby any person expressly declares that he holds upon the statutory trusts any registered interest already vested in him.

92. Transmission on death of a joint proprietor

On proof of the death of any person registered as the joint proprietor of a registered interest, the Director shall register the survivor or survivors as proprietor or proprietors of the interest and he or they shall thereupon become the transferee or transferees of such interest.

PART 14 – CAUTIONS

93. Lodging of cautions

(1) Any person who –

(a) claims any interest in land under an unregistered instrument or otherwise;

(b) claims a benefit under a trust affecting a registered interest;

(c) claims a licence affecting a registered interest; or

(d) has presented a bankruptcy or winding up petition against the proprietor of a registered interest;

may lodge with the Director a caution in the prescribed form forbidding the registration of any person as transferee of, or any instrument affecting, that interest, either absolutely or conditionally.

(2) A note of every caution shall be entered on the register and the Director shall take such steps as he thinks fit to bring the caution to the notice of the registered proprietors of interests affected by it.

(3) Every caution shall specify an address in Vanuatu of the cautioner and the cautioner may at any time prior to the receipt by the Director of an application for the removal of the caution under section 97, by notice in writing to the Director, appoint an address in Vanuatu in lieu of the address specified in the caution, whereat notices relating to the caution or proceedings in respect thereof may be served on the cautioner.

(4) Every notice relating to any caution and any proceedings in respect thereof shall be deemed to be duly served if served at the address in Vanuatu specified under subsection (3).

94. Effect of cautions

So long as any caution remains in force the Director shall not, except in accordance with the provisions of the caution or with the consent in writing of the cautioner or his legal representative enter on the register any change in proprietorship (except a transmission under section 84, 87, 88 or 92) or any dealing (except a dealing which is shown to the satisfaction of the Director not to be to the prejudice of the person for whose protection the caution has been lodged) affecting the interest or licence in respect of which the caution is lodged; but no instrument already lodged and acceptable for registration shall be affected by any caution lodged subsequently.

95. Director's caution

The Director may enter a caution to prohibit any dealing with any registered interest belonging or supposed to belong to a person under a disability or absent from Vanuatu or to prohibit dealings with any interest in any case in which it appears that an error has been made in the register or in any instrument, or to prevent any fraud or improper dealing.

96. Duration of cautions

(1) Subject to the provisions of this section, a caution, other than a caution entered by the Director, shall lapse, as to any interest affected by any transfer or other dealing, except –

(a) a transmission under sections 84, 87 or 88;

(b) a transfer or dealing to which the cautioner or his legal representative has lodged with the Director his consent in writing; or

(c) a transfer or dealing which is shown to the satisfaction of the Director not to be to the prejudice of the person for whose protection the caution has been lodged;

upon the expiration of 30 days after notice given by the Director to the cautioner that a transfer or dealing has been lodged for registration, which notice shall be given whenever any transfer or dealing is lodged.

(2) Notwithstanding the provisions of subsection (1) but subject to the provisions of section 97(3) the Director may at any time and from time to time and on such conditions as he deems fit extend the operation of a caution or revive a lapsed caution; and if the cautioner serves upon the Director a certified copy of pending court proceedings the Director shall extend the operation of the caution until the outcome of these proceedings.

(3) If a cautioner dies, the caution may be withdrawn or a consent to registration under subsection (1)(b) may be given by his personal representative.

97. Application for removal of caution

(1) The cautioner or his legal representative, may at any time apply to withdraw the caution.

(2) Any person adversely affected by any caution may apply to the Director for the removal of the caution.

(3) The Director on his own motion may, or on the application of any interested person, shall, give notice to the cautioner requiring him to withdraw his caution or substantiate his claim, and if the cautioner does not comply with the notice or file with the Director a certified copy of pending court proceedings within 30 days from the date of the notice the Director shall remove the caution from the register.

(4) A caution which has been removed in pursuance of subsection (2) shall not be renewed by or on behalf of the same person in respect of the same claim.

(5) Any person lodging any caution with the Director or allowing any caution to remain without reasonable cause shall be liable to pay such compensation as the Court thinks just to any person who sustains damage or who has incurred costs or expenses thereby.

98. Definition

In this part the expression "pending court proceedings" means pending proceedings in the Court as a result of which the validity or invalidity of the claim of the cautioner appears likely to be determined.

PART 15 – RECTIFICATION AND INDEMNITY

99. Rectification by the director

(1) Subject to section 100(2), if it appears to the Director that any register does not truly declare the actual interest to which any person is entitled under this Act or is in some respect erroneous or imperfect, the Director after taking such steps as he thinks fit to bring to the notice of any person shown by the register to be interested his intention so to do, and giving every such person an opportunity to be heard, may as from such date as he thinks fit, rectify the register:

Provided that it shall not be necessary for the Director to take steps to bring the rectification to the notice of any person shown by the register to be interested nor to give any such person an opportunity to be heard in formal matters and in the case of errors and omissions not materially affecting the interests of any person.

(2) Upon the written application of any proprietor accompanied by such evidence as the Director may require, the change of name or address of that proprietor shall be recorded in the register.

(3) The Director shall rectify the register to give effect to an order of rectification of the register made by the Court.

(4) In addition to subsection (3), where part of a registered lease has been acquired for the purpose of the Land Acquisition Act [CAP 215], the Director is to rectify that lease and its corresponding survey plan to give effect to that acquisition.

(5) The Director must only rectify a lease under subsection (4), on or after the date of commencement of the order made by the Minister under section 16 of the Land Acquisition Act [CAP 215].

100. Rectification by the Court

(1) Subject to subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is so empowered by this Act or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the interest for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

100A. Recorded interest in land

(1) The Director or the Court under section 99 or 100 may after complying with the procedures set out in those sections rectify the register in the manner specified in those sections based on a recorded interest in land provided for under the Custom Land Management Act No. 33 of 2013.

(2) For the purposes of reaching a decision under section 99 or 100, a certificate from the National Coordinator of the names of custom owners and their appointed representatives is evidence of the recorded interest in land.

(3) In addition to subsection (2), the Director or the Court must be satisfied that the certificate provided to them under that subsection has been produced after complying with the provisions of the Custom Land Management Act No. 33 of 2013 in relation to the identification of custom owners.

101. Indemnity

(1) Subject to the provisions of this Act and of any law relating to the limitation of actions any person suffering damage by reasons of –

(a) any rectification of the register under this Act;

(b) any mistake or omission in the register which cannot be rectified under this Act; or

(c) any error in a copy of or extract from the register or any copy of or extract from any document or plan in each case certified under this Act;

shall be entitled to be indemnified by the Government.

(2) No indemnity shall be payable under this section –

(a) to any person who has himself caused or substantially contributed to the damage by his fraud or negligence or who derives title, otherwise than under a registered disposition made *bona fide* for valuable consideration, from a person who so caused or substantially contributed to the damage;

(b) in respect of any loss or damage occasioned by the breach of any trust; and

(c) in respect of any damage arising out of any matter into which the Director is exonerated from enquiry under section 24.

102. Amount of indemnity

(1) Where an indemnity is awarded in respect of the loss of any registered interest it 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 damage was made; or

(b) where the register is rectified, the value of the interest immediately before the time of rectification.

(2) Every award of indemnity shall include interest thereon at 5 per centum per annum from the date of the award up to the date of payment.

103. Procedure for claiming indemnity

Any person who considers that he has a right to indemnity under the provisions of section 101 may apply to the Court which shall hear and determine the matter and subject to the provisions of section 102 shall make such award, if any, including costs and expenses as it thinks fit.

104. Recovery of indemnity paid

Where any moneys are paid by way of indemnity, the Government may recover by action before the Court the amount so paid, or such lesser amount as the Court thinks fit, from any person who has caused or substantially contributed to the loss by his fraud or negligence or may enforce any express or implied agreement 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 had been paid.

105. Errors in survey

(1) As between the Government and a registered proprietor no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of any land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the register or filed survey plan.

(2) As between a registered proprietor and any person from or through whom he acquired the interest, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey or above or below the area or measurement shown in the register or any filed survey plan after a period of 6 months from the date of registration of the instrument under which the proprietor acquired his interest.

PART 16 – APPEALS

106. Appeals against the Director

Any person aggrieved by a decision of the Director given in pursuance of his powers under this Act, may, within 6 months from the notification of the decision appeal to the Court which may confirm, quash or vary the decision as it thinks just, and may under section 100 order rectification of the register:

Provided that no appeal shall lie under this section where the decision of the Director has been given in conformity with the determination by the Court of a case or question stated or reserved by him in connection with the same matter for its consideration under section 8(g).

PART 17 – MISCELLANEOUS

107. Presumption as to age

The parties to any instrument affecting a registered interest shall, until the contrary is proved, be presumed, to be of the age of 18 or more at the date thereof. A person under the age of 18 years shall not be registered as the proprietor of a lease or of any interest therein.

108. Service of notices

A notice under this Act shall be deemed to have been served on or given to any person –

(a) if served on him personally;

(b) if left for him at his last known place of residence or business in Vanuatu;

(c) if sent by registered post to him at his last known postal address in Vanuatu;

(d) if the person is absent from Vanuatu the notice may be served upon any attorney in Vanuatu appointed by him, and if the person is dead, the notice may be served upon his personal representative;

(e) if it is impracticable to serve notice in any of the manners specified in paragraphs (b) to (d) above, the notice may be served in such manner as may be directed by an order of a court;

(f) notwithstanding anything in paragraphs (a) to (e) –

(i) it shall be the duty of any person seeking to serve the notice to do everything reasonably practical to ensure the contents of the notice come to the knowledge of the person affected thereby;

(ii) a court may in any case make an order directing the manner in which any notice is to be served or dispensing with the service thereof.

109. Offences

(1) Any person who knowingly misleads or deceives any person authorised by or under this Act to require information in respect of any registered interest shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding VT 100,000 or to both.

(2) Any person who –

(a) fraudulently issues or makes or fraudulently procures the issue or making of any document relating to a registered interest in land or any registration, or any erasure or alteration in any document as aforesaid or in any register; or

(b) removes from the Land Records Office any register or any part of any register or any instrument or plan filed in the Land Records Office; or

(c) causes any defacement, obliteration, mutilation or unauthorised entry or alteration to be made on or in any register or filed instrument,

shall be guilty of an offence and shall be liable on conviction for a term of imprisonment not exceeding 3 years or to a fine not exceeding VT 300,000 or to both.

(3) If any person, after the delivery to him of a summons to attend before the Director or to produce any document, neglects or refuses without reasonable cause to attend in accordance with the summons, or to produce any document which he is required by the summons to produce or to answer upon oath or otherwise any question which is lawfully put to him by the Director under the powers conferred by this Act, he shall be guilty of an offence and liable on conviction for a term of imprisonment not exceeding 1 month, or to a fine not exceeding VT 10,000 or to both:

Provided that no prosecution under this subsection shall be instituted without the written consent of the Attorney General.

109A. Penalty Notice

(1) The Director may serve a penalty notice on a person if it appears to the Director that the person has committed an offence under any provision of this Act.

(2) A penalty notice is a notice to the effect that, if the person served does not intend to have the matter determined by a court, the person may pay within a time and to a person specified in the notice the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally, electronically or by post.

(4) If the amount of penalty prescribed for the purposes of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment made under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(6) The regulations may:

(a) specify the offence by referring to the provision creating the offence under this Act; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

PART 18 – FEES AND RULES

110. Fees

(1) The fees specified in the Schedule to this Act shall be paid in respect of the matters specified therein and the Director may refuse registration until the fees are paid.

(2) Unpaid fees payable to the Director shall constitute a civil debt recoverable by the Director in the appropriate court.

111. Rules

The Minister may by order make rules not inconsistent with this Act generally to give effect to the purposes and provisions of this Act and to prescribe all matters that may be prescribed, and in particular and without prejudice to the generality of the foregoing, may –

(a) prescribe agreements to be implied in leases on the part of the lessor or lessee;

(b) prescribe forms to be used under this Act including standard forms of leases of the following classes –

Class A: Agricultural leases
Class B: Residential leases
Class C: Commercial leases

Class D: Industrial leases
Class E: Special leases.

112. Provisions of this act to prevail

Where a provision of this Act conflicts with a provision of any other written law except the Constitution, the provisions of this Act shall prevail.

SCHEDULE

(section 110(1))

REGISTRATION FEES

1. Amount of fees

(a)	Creation of a lease	5%
(b)	Transfer of a lease	5%
(c)	Creation and transfer of a mortgage	1.5%
(d)	Combination and subdivision	2%

2. Reduction of fees

The amounts set out in paragraph 1 are reduced:

(a) to 1% in respect of leases granted to lessees respecting any land of which the lessee was registered as owner or lessee on the 29th day of July 1980 in the Registry of Land Titles established by Joint Regulation 3 of 1930;

(b) to 0.5% in respect of mortgages, created before the 30th day of July, 1980 and registered in the Registry of Land Titles established by Joint Regulation No. 3 of 1930.

3. Payment of ad valorem fees

(a) Subject to agreement otherwise between the parties to an instrument, the payment of these fees shall be made by the transferee, lessee or mortgagor, or the person taking the benefit of any other registrable instrument.

(b) The Government, any Local Government Council, any Municipal Council and the National Housing Corporation shall be exempt from payment of any fees under this Act.

(c) 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 of the interest transferred at the date of transfer as declared to the Director by the parties to the instrument.

(d) The fees to be charged on leases shall be assessed on the value of any premium and on the term in years multiplied by the highest ascertainable annual rent. Where the rent or any part thereof is not ascertainable at the time of registration, a fee of VT 50,000 shall be payable in respect of the said unascertainable rent in addition to any other fee payable.

(e) Where a mortgage has been created and the amount of the advance made or to be made is not specified in the instrument, the fee payable shall be assessed on the maximum sum up to which advances may be made 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 within 1 month from the date thereof by a further certificate by the mortgagee, and an additional fee at the rate prescribed in paragraph 1(c) shall be paid in respect of each such increase.

(f) The fee payable on combinations and subdivisions shall be based on the aggregate value of the parcels. If a subdivision involves the payment of equality money, the same shall be subject to a fee of 2% as prescribed in paragraph 1(d).

(g) Whenever, in respect of an instrument presented for registration, the Director deems it desirable, he may require a valuation to be made by the Valuer-General. 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 shall be borne by the Government.

(h) For the purposes of computing fees, sums shall be rounded up to the next unit of VT 100.

(i) The fees prescribed shall be payable in advance.

(j) If an application is cancelled or withdrawn no part of any fee shall be refunded and if such application is subsequently re-lodged, a further fee shall be payable.

Table of Amendments (since the Revised Edition 1988)

[Note that this Act was re-numbered in the 1988 Edition, but amending Act 38 of 1989 referred to the earlier section numbers. Where these are different, the earlier section numbers are in brackets following the Act.]

1	*Amended by Acts 24 of 2003, 32 of 2013, 35 of 2014*
2(d)	*Amended by Act 32 of 2013*
2(e)	*Substituted by Act 32 of 2013*
2(f)	*Inserted by Act 32 of 2013*
3	*Repealed by Act 24 of 2003*
4(2)	*Amended by Act 35 of 2014*
4(2)(b)	*Substituted by Act 35 of 2014*
4(2)(b)(ii)	*Amended by Act 10 of 2016*
4(2)(b)(ii)(D)	*Amended by Act 10 of 2016*
4(2)(b)(iii)	*Inserted by Act 10 of 2016*
4(3)-(7)	*Inserted by Act 35 of 2014*
7A	*Inserted by Act 2 of 2017*
8(c)	*Substituted by Act 35 of 2014*
9	*Substituted by Act 32 of 2013*
12(3)	*Inserted by Act 2 of 2017*
17(ca)	*Inserted by Act 32 of 2013*
31A	*Inserted by Act 35 of 2014*
32A-32C	*Inserted by Act 24 of 2003*
32A(1)	*Amended by Act 11 of 2004*
32B(4)	*Substituted by Act 11 of 2004, 5 of 2007*
32C(6)	*Inserted by Act 11 of 2004*
32C(6)	*Substituted by Act 5 of 2007*
32D	*Inserted by Act 11 of 2004*
32D(2)	*Substituted by Act 5 of 2007*
32D(4)	*Inserted by Act 5 of 2007*
32E	*Inserted by Acts 35 of 2014, 2 of 2017*
32E	*Repealed by Act 10 of 2016*
35	*Substituted by Act 32 of 2013*
36	*Substituted by Act 38 of 1989 [35]*
38A, 38B	*Inserted by Act 35 of 2014*
38A(7)	*Amended by Act 10 of 2016*
38B(4)	*Amended by Act 10 of 2016*
39(3)(b)	*Repealed by Act 32 of 2013*
39A	*Inserted by Act 11 of 2004*
41(b)	*Repealed by Act 38 of 1989 [40(b)]*
41A	*Inserted by Act 38 of 1989 [40A]*
43(3)	*Substituted by Act 2 of 2017*
48A	*Inserted by Act 11 of 2004*
48A(2)	*Substituted by Acts 5 of 2007, 2 of 2017*
48A(2)	*Amended by Act 35 of 2014*
48A(3)	*Inserted by Act 35 of 2014*
48A(3)	*Amended by Act 2 of 2017*
48B, 48C	*Inserted by Act 35 of 2014*
48B(2)	*Substituted by Act 2 of 2017*
49A	*Inserted by Act 35 of 2014*
50A	*Inserted by Acts 11 of 2004, 35 of 2014*
50A	*Repealed by Act 5 of 2007*
60A	*Inserted by Act 35 of 2014*
99(4), (5)	*Inserted by Act 2 of 2017*
100A	*Inserted by Act 32 of 2013*
109A	*Inserted by Act 35 of 2014*
Sched, Para 1(a), (b)	*Amended by Act 11 of 2004, 35 of 2006*
Sched, Para 3(b)	*Substituted by Act 30 of 1988*
Sched, Para 1(d), 3(f)	*Amended by Act 38 of 1989*
1, 39, 43, 44, 46	*Reference to Lands Referee changed to Valuer-General, per Act 22 of 2002*
Whole of the Act	*Amended by Act 10 of 2016 Companies Act [CAP 191] replaces with Companies Act No. 25 of 2012*