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# CHAPTER 36

# EXPROPRIATION FOR PUBLIC UTILITY

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**ARRANGEMENT OF SECTIONS**

**PART 1 – GENERAL PROVISIONS**
1. Order of Court
2. Procedure
3. Taking possession
4. Public works

**PART 2 – PRELIMINARY ADMINISTRATIVE MEASURES**
5. Plans
6. Notification to persons interested
7. Alteration of plan
8. Declaration of acquisition

**PART 3 – ACQUISITION OF REGISTERED IMMOVABLE PROPERTY**
9. Documents to be sent to Court
10. Publication of Court order
11. Decree to be registered
12. Properties of minors, etc.

**PART 4 – THE EXPROPRIATION OF IMMOVABLES NOT SUBJECT TO THE SYSTEM OF REGISTRATION OR SUBJECT TO THIS SYSTEM BUT NOT REGISTERED**
13. Procedure where property is unregistered
14. Caveat
15. Expropriation proceedings before Court
16. Decree
17. Rights of compensation

**PART 5 – COMPENSATION FOR EXPROPRIATION**
18. Communication of offers
19. Acceptance of offers
20. Refusal of offers
21. Assessing compensation

**PART 6 – PROCEDURE TO BE FOLLOWED BY THE ASSESSMENT COMMISSION**
22. Hearing evidence
23. Procedure at hearings
24. Rules for fixing compensation
25. Execution of decision
26. Appeal

**PART 7 – OTHER PROVISIONS**
27. Deposit of compensation

# EXPROPRIATION FOR PUBLIC UTILITY

**To provide for the expropriation of immovable property for the purposes of public utility.**

## PART 1 – GENERAL PROVISIONS

### 1. Order of court

Expropriation of immovable property for the purposes of public utility shall be effected by order of the Supreme Court.

### 2. Procedure

The Supreme Court may only make an order of expropriation when the procedure laid down by this Act has been complied with.

### 3. Taking possession

Before possession may be taken of immovable property which has been expropriated, fair compensation shall be paid:

Provided that in the case of emergency such possession may be taken after an amount determined by the Supreme Court has been deposited as security for compensation.

### 4. Public works

Expropriation may be ordered only after the Minister responsible for public works has by Order made regulations –

(a) declaring the transaction to be of public utility;

(b) authorising such works; and

(c) defining the areas affected by the works and the immovable property which is to be acquired wholly or in part.

## PART 2 – PRELIMINARY ADMINISTRATIVE MEASURES

### 5. Plans

(1) The Public Works Department assisted by the Survey Department shall prepare a plan showing the different areas affected by the works and the parts to be acquired.

(2) The technical staff appointed for this work shall have the right to enter on private property in order to prepare such plan.

(3) Any person who shall obstruct or attempt to obstruct this work shall be guilty of an offence and shall be liable on conviction to a fine of VT 100,000 or to imprisonment for a term not exceeding 5 years or to both.

### 6. Notification to persons interested

(1) Copies of the plan with all relevant documents shall be forwarded without delay to the District Commissioner in whose district is situated the properties to be acquired together with the names of all persons having a reasonable claim to rights in the said properties (such persons shall hereafter be referred to as “the persons interested”).

(2) On receipt of the copies of the plans aforesaid the District Commissioner shall give written notice to the persons interested of the intention to acquire the said lands.

(3) Such notice shall either be served personally on the persons interested or left at their usual place of abode or business, and in case any such person shall be absent from Vanuatu such notice shall be left with the occupier of the said lands, or the agent of the persons interested:

Provided that if such person be a corporation, company or firm, such notice shall be left at the principal office in Vanuatu of such corporation, company or firm or shall be served upon some officer or agent of such corporation, company or firm.

(4) Copies shall remain 8 clear days at the offices of the District Commissioner. During this period the persons interested, and any other person who may have an interest, may state their observations to them.

(5) After the expiration of 8 clear days the District Commissioner shall return to the Minister responsible for public works the plan with the record of such observations, at the same time adding his own observations.

**7. Alteration of plan**

If after considering these observations the Minister responsible for public works decides to alter the design of the works, a new plan shall be prepared and forwarded to the District Commissioner, and the procedure laid down in section 6 shall again be followed.

**8. Declaration of acquisition**

If the original plan of the works or the plan as modified by virtue of section 7 is adopted, the Minister responsible for public works by Order shall declare that the areas defined by the plan shall be acquired.

## PART 3 – ACQUISITION OF REGISTERED IMMOVABLE PROPERTY

**9. Documents to be sent to Court**

All documents showing that the formalities laid down in Parts 1 and 2 of this Act have been complied with, together with an extract from the land title relating to the parcel of land to be expropriated, certified correct by the Director of the department responsible for land, shall be forwarded by the Attorney General to the Supreme Court and that Court shall order the expropriation of the immovable property included in the order made under section 8 of this Act.

**10. Publication of Court order**

The publication and registration of the order shall be made when the judgment has been pronounced by the Supreme Court according to the normal rules of that Court.

**11. Decree to be registered**

(1) Within 2 weeks of the registration of the order aforesaid the owners shall be bound to effect registration of any rights or charges burdening the property which have come into existence after the initial registration of the property and have not yet been registered. Such rights or charges shall have priority in the order of the time of their creation. Any right or charge not disclosed during this period shall be taken to be finally extinguished and shall not in any circumstances give rise to the payment of compensation:

Provided that nothing that is herein contained shall affect the right of the holder of such rights or charges who has been injured to sue for damages in the Court having jurisdiction.

(2) Notwithstanding the provisions of subsection (1) any holder of a right or charge may without reference to the owner and within the same period of 2 weeks apply to the Director of the department responsible for land for the registration thereof.

**12. Properties of minors, etc.**

(1) If properties of minors, persons under judicial disability, absent owners or persons incapable of acting are included in the plans drawn up under sections 5 or 7, the guardian, temporary nominee or other legal representative shall obtain authority to dispose of such property according to the procedure laid down by law. If any property belongs to absentees who are not legally represented, authority to transfer will be granted to an administrator ad hoc.

(2) In the cases coming under this section the compensation for expropriation shall invariably be determined by the Court having jurisdiction.

## PART 4 – THE EXPROPRIATION OF IMMOVABLES NOT SUBJECT TO THE SYSTEM OF REGISTRATION OR SUBJECT TO THIS SYSTEM BUT NOT REGISTERED

**13. Procedure where property is unregistered**

(1) The documents showing that the procedure laid down in Parts 1 and 2 has been complied with shall be transmitted by the Attorney General to the Supreme Court.

(2) When immovable property that is not subject to the system of registration, is in question, the Court shall have full power to determine the name of the persons or communities which, in the eyes of local custom, have rights in the said immovable property and to guarantee these rights. It shall then declare the expropriation of the buildings or land included in the order made under section 8.

The publication and the registration of the judgment shall be carried out according to the normal rules of the Supreme Court.

(3) When immovable property, subject to the system of registration, but not yet registered is in question, the Court shall cause to be established by the Director of the department responsible for land a statement of the said immovable property. This statement shall include all the particulars of the application for registration with any amendments and objections that may have been declared.

(4) Publication will be made of this statement for a period of 1 year. If however, the original application for registration has been duly published and the period of publication has expired, the period of publication of the statement referred to in subsection (3) shall be reduced to 3 months. If the period of publication of the application for registration has not expired the said period of 3 months shall be added to the period of 1 year.

(5) If the application for registration has not been published the Court after examination of the documents shall grant to the claimant an extension not exceeding 3 months in order to prepare the publication of this application. In such case the publication of the statement referred to in subsection (3) shall commence at the same time as that of the application for registration and shall expire on the same date.

(6) In all cases a decision of the Court shall determine the dates of the publication periods.

**14. Caveat**

Any person who considers his rights infringed by the expropriation proceedings may file a caveat at the Supreme Court Registry.

**15. Expropriation proceedings before Court**

At the expiration of the period of publication laid down in section 13 the expropriation documents shall automatically be laid before the Court by the Registrar.

**16. Decree**
The Supreme Court may in its Order of Expropriation make a declaration on the validity of the rights claimed by the different parties in connection with the property expropriated. Wherever appropriate the procedure laid down in section 12 may be applied.

**17. Rights of compensation**
The Order of Expropriation shall have the effect of extinguishing ownership with respect of the real or apparent owner as determined by the Court under section 16. All real rights other than the rights of ownership disclosed during the publication period and admitted by the Court shall be cancelled and transformed into a personal right to compensation. The expropriation judgment shall determine the order in which the holders of rights and charges shall be classified in allotting compensation for the expropriation.

## PART 5 – COMPENSATION FOR EXPROPRIATION

**18. Communication of offers**
The Minister responsible for public works shall communicate to the owners, and to all persons claiming in accordance with section 11 or designated by the Order of Expropriation, the sums which they offer as compensation for acquisition and if appropriate those sums which they intend to counterclaim if the proposed works will increase the value of the rest of the property by more than 15 per cent. These offers shall be communicated to the holders of rights or charges by the District Commissioners of their districts in the manner and period laid down in sections 6(4) and 6(5).

**19. Acceptance of offers**
The owners and other claimants shall state their acceptance or disclose their claims. If they accept the offer of the Minister responsible for public works the property shall be transferred at the price thus agreed.

**20. Refusal of offers**
If the offers of the Minister responsible for public works are not accepted within the prescribed period by any claimants, such claimants shall be summoned to appear before the Assessment Commission.

**21. Assessing compensation**
(1) The Assessment Commission shall be composed of the Director of the Land Records Department as chairman, the Treasurer, the Director of the Public Works Department and two persons appointed by the Minister responsible for public works who may be selected from outside the areas where the expropriated properties are situated, as members.

(2) It shall be the duty of the Commission to assess the value of the immovable property expropriated and to determine the share of the compensation thus established to be allotted to each claimant.

(3) The Commission shall make its decisions by majority vote. In case of an equal number of votes the decision of the chairman shall prevail.

## PART 6 – PROCEDURE TO BE FOLLOWED BY THE ASSESSMENT COMMISSION

**22. Hearing evidence**
Besides the claimants of which it is notified by the Minister responsible for public works, the Assessment Commission may summon and hear any person able to give information on the value of the immovable property expropriated, engage in any enquiry, appoint experts, and in general take all measures necessary for its full information.

### 23. Procedure at hearings

The hearings shall be under the direction of the chairman of the Commission who shall rule on all questions arising, and fix the dates and places of the meetings. One of the members of the Commission shall draw up a record of the proceedings and of the final decision of the Commission.

### 24. Rules for fixing compensation

In determining the compensation for expropriation the Commission shall follow the following rules –

(a) The Commission shall be judge of the genuineness of all documents and of the effect of all deeds.

(b) Separate amounts of compensation shall be allotted to parties who claim on different titles.

(c) The compensation shall consist of a sum of money.

(d) The compensation shall cover the entire damage caused provided the latter is real and certain.

(e) Buildings, plantations, improvements and transactions of a speculative character shall not give rise to any additional compensation if, by reason of the time when they were made or other circumstances which it has full power to decide, the Commission is convinced that they were made in order to obtain higher compensation.

(f) If the Minister responsible for public works considers that the proposed works will increase the value of the rest of the property by more than 15 per cent, this additional value shall be calculated by the Commission and, if necessary, deducted from the amount of compensation.

(g) The compensation shall in no case be less than the amount offered by the Minister responsible for public works, nor greater than the amount claimed by the parties.

### 25. Execution of decision

The decision of the Commission shall be signed by all its members. The chairman shall order its execution and shall declare the Government to be legally in possession of the expropriated property subject to payment or deposit by the Government of the amount of the compensation.

### 26. Appeal

The decisions of the Commission shall be subject to appeal before the Supreme Court.

## PART 7 – OTHER PROVISIONS

### 27. Deposit of compensation

If in the course of the registration procedure it is shown that a registered property has undergone changes in its composition which have not been registered at the Land Records Office, and if the new owners given notice under section 11 cannot effect the registration within the period allowed by the said section, and if the reasons for this failure are held to be valid by the court having jurisdiction, the Supreme Court shall fix the total amount of the compensation and shall order it be deposited in the Treasury until the various claimants can effect the registration of their titles at the Land Records Office.

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***Table of Amendments (since the Revised Edition 1988)***

*9, 11(2, 13(3)) Title of Director updated per Act 24 of 2003*