

REPUBLIC OF VANUATU

BILL FOR THE LAND LEASES (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Land Leases Act [CAP 163] (“the Act”).

The Land Leases Act of 2013, and subsequent amendments of 2014, 2016 and 2017 of the Act have amalgamated the lessees’ and lessors’ interests and rights into the same legal framework which has proven to create a lot of administrative and legal challenges in the last six years.

The main objectives of this Bill are:

1 To restore lessee’s interests and indefeasible rights in a registered lease

The primary intention of the Act is to protect lessees’ interests and rights. However, with the amendments in the Act in 2013, and subsequent amendments of 2014, 2016 and 2017, the lessees’ interests and rights have been infringed upon by lessors’ interests and rights under a registered lease.

Currently all applications to subdivide and change of lease class on existing leases are subject to the processes under the Land Reform Act [CAP 123]. This has greatly affected the lessee’s interests and rights under the Act in terms of time, costs and insecurity of tenure. This Bill will ensure that all subdivision and changes of lease class will no longer be subject to the Land Reform Act [CAP 123] but may be registered in accordance with the Act . The Bill will also restore lessees’ interests and indefeasible rights under the Act.

2 To reduce and avoid litigation costs to the Government

With the amendment of the Act in 2013, and subsequent amendments of 2014, 2016 and 2017, a number of new provisions were introduced that greatly affects the rights and interests of existing lessees whose leases were negotiated and registered prior to these amendments. For example, section 38B of the Act that was inserted by amendments of the Act in 2014, provides that all leases registered prior to 2014 are required to carry out development within a certain period. Failure to do so would result in the leases being forfeited. A recent Case Law precedence in *Wu Kim Ming vs The Republic of Vanuatu* a Constitutional Case No. 17/3610 SC/CNST declares that such provisions are unconstitutional as it would result in the unjust deprivation of property. This Bill repeals this provision from the Act.

3 Cancellation of lease of companies removed from the register of companies

Currently, the Act provides that where the lease registered to a company that has been removed from the register of companies has a mortgage registered as an encumbrance against the lease, the Director cannot cancel that lease. This has resulted in many leases which have not been cancelled over a long period of time even though the lessee is a company that has

been removed from the register of companies a long time ago. This amendment empowers the Director to notify the mortgagee of his or her intention to cancel the lease so that that person may proceed with proceedings to enforce the mortgage agreement.

Minister of Lands and Natural Resource



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(AMENDMENT) ACT NO. OF 2021**

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BILL FOR THE LAND LEASES (AMENDMENT) ACT NO. OF 2021

An Act to amend the Land Leases Act [CAP 163].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Land Leases Act [CAP 163] is amended as set out in the Schedule.

2 Commencement

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

SCHEDULE

AMENDMENTS OF LAND LEASES ACT [CAP 163]

1 Section 1(Definitions of “custom owners”, “National Coordinator” and “recorded interest in land”)

Repeal the definitions.

2 Section 1(Definition of “interest”)

- (a) Delete “recorded interest in land,”
- (b) Delete “and includes custom owners”

3 Section 1 (Definition of “land”)

Delete “and does not include any rights to the foreshore or any waters adjacent to the land”

4 Section 1 (Definition of “lessor”)

Delete “or custom owner group”

5 Paragraph 2(e)

Delete “; and”, substitute “.”

6 Paragraphs 2(f), 4(2)(bb), 17(ca), Subsection 12(3) and Sections 35, 38B, 49A and 100A

Repeal the provisions.

7 Paragraph 4(2)(ba)

- (a) Delete “or custom owners”
- (b) Delete “or the custom owners”

8 Subsection 32E(2A)

Repeal the subsection, substitute

“(2A) In the case where a lease has an existing mortgage or caution registered against the lease, the Director must not cancel a lease under subsection (2) unless he or she provides 30 days written notice to a mortgagee or cautioner of the lease concerned.”