

REPUBLIC OF VANATU

THE LAND LEASES (AMENDMENT) ACT
No. 32 OF 1985

Arrangement of Sections

1. Amendment.
2. Repeal.
3. Commencement.

REPUBLIC OF VANUATU

THE LAND LEASES (AMENDMENT) ACT
No. 32 OF 1985

An Act to amend the Land Leases Act.

BE IT ENACTED by the President and Parliament as follows:-

AMENDMENT

1. The Land Leases Act No. 4 of 1983 is amended:-

- (a) by omitting the words 'either under the age of eighteen years or' in the definition of 'guardian' in section 1;
- (b) in section 2,
 - (i) by inserting a colon after the word 'kept' and by omitting the words 'in both the English and French languages' in line 2,
 - (ii) by omitting paragraph (e), (the existing paragraph (f) thereby becoming paragraph (e)), and
 - (iii) by inserting the word 'and' at the end of paragraph (d);
- (c) by inserting a semi-colon after the word 'appurtenances' and by omitting the words 'and a reference to the survey plan in respect of the land comprised in the lease' in section 4(2)(a);
- (d) by substituting the word 'postal' for the words 'description and' in section 4(2)(b),
- (e) in section 10,
 - (i) by inserting the word 'LAND' before the word 'SURVEY' in the heading to the section;
 - (ii) by omitting in subsection (1),
 - (a) the words 'and of each part of a parcel the subject of a sublease to be registered' in lines 3 and 4,
 - (b) the words 'or sublease' in line 7,
 - (c) the words 'or the sublessor and sublessee as the case may be' in line 9, and
 - (d) the whole of the proviso;
 - (iii) by inserting the words 'signed by the parties to the instruments' after the word 'which' in line 6 of subsection (1).

- (f) in section 11,
 - (i) by inserting the word 'LAND' before the word 'SURVEY' in the heading and in line 1, and
 - (ii) by inserting the word 'land' before the word 'surveys' in lines 5 and 7;
- (g) by inserting the words 'and navigational aids' after the word 'stations' in paragraph (c) of section 17;
- (h) by inserting the words 'SEARCHES AND' before the word 'CERTIFIED' in the heading of Part 5;
- (i) by adding the following new section after section 19:

'SEARCHES

19A. 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'.
- (j) by inserting the words 'creating or' after the word 'instrument' in line 1 of section 21(2);
- (k) by substituting the word 'lease' for 'sublease' wherever it appears in section 21(3) (three times);
- (l) in section 24,
 - (i) by substituting the words 'three months' for 'six months',
 - (ii) by omitting the words 'the date of commencement of this Act or after' in line 2, and
 - (iii) by omitting the words 'whichever is the later' in line 3;
- (m) In section 25,
 - (i) by deleting the words 'through his wilful default' in subsection (i), and
 - (ii) by substituting a fine of 'VT 500,000' for 'VT 50,000' in subsection (2),
- (n) in section 28,
 - (i) by substituting 'lessor and lessee' for 'sublessor and sublessee' in paragraph (a), and
 - (ii) by omitting the words 'or sublease' wherever they appear in paragraph (c) (twice),
- [(o) by inserting the words 'or such other evidence' after the word 'incorporation' in section 29(5);]

- (p) in section 35, ...
- (i) by substituting the word 'dispose' for the words 'transfer, sublease, mortgage or part with possession'; in lines 2 and 3, and
 - (ii) by inserting the words 'or interest comprised therein' after the word 'thereof' in line 3,
- (q) by substituting the following for section 38:

RENT REVIEW

"38 (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 Referee 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 Referee 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 paragraphs 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 Referee for review.

(2) In reviewing the rent, the Referee 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) leases under which the sole consideration therefor is expressed to be a premium payable at the commencement of the lease;

(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.

(r) in section 39,

(i) by substituting the word 'land' for the word 'premises' wherever it appears in the section (six times),

(ii) by substituting the words 'it was' for 'they were' in the last line of paragraph (b), and

(iii) by substituting in paragraph (e) the word 'is' for the word 'are' in line 1 and the word 'has' for the word 'have' in lines 9 and 10;

(s) in section 40,

(i) by substituting the following for paragraph (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', and

(ii) by substituting the words 'leased land' for the words 'leased premises' wherever they appear in the section (5 times),

(t) by substituting the following for section 42 (1):-

'Subject to the provisions of section 44 and to any provision to the contrary contained 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'.

(u) by inserting the words 'and every other person shown by the register to have an interest' after the word 'lessee' in line 4 of section 44;

(v) by inserting the words 'or other person' after the word 'lessee' in line 1 of section 45(1);

(w) in section 46

(i) by deleting the words 'and the term of any registered lease may from time to time be extended',

(ii) by re-numbering the existing section as subsection (1), and

(iii) by adding the following new subsection:-

"(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."

(x) in section 48 (1)

(i) by deleting the words 'or else the word "surrendered" shall be endorsed on the lease or on the duplicate or triplicate thereof' in paragraph (a),

(ii) by deleting the words 'or endorsement' in paragraph (b), and

(iii) by deleting the words 'or endorsed lease' in paragraph (d);

- (y) in section 53,
 - (i) by renumbering the existing section as subsection (1), and
 - (ii) by adding the following new subsection:

'(2) Notwithstanding the provisions of section 26, 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'.
- (z) by substituting the following for section 55 (1)(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 out such consent shall not be unreasonably withheld',
- (aa) by substituting the following for section 56:-

'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 77, has been produced to the Director';
- (bb) by inserting the words 'Except as provided in section 45,' at the beginning of line 1 of section 56(1) before the words 'A mortgage';
- (cc) by substituting the word 'AGREEMENTS' for 'COVENANTS' in the heading to section 70;
- (dd) by omitting the words 'in the case of a corporation not required by law to have a common seal,' in section 76(2)(b)(ii);
- (ee) in section 80,
 - (i) by omitting the words 'INFANTS AND' from the heading,
 - (ii) by omitting the words 'is under the age of eighteen years or' from subsection (1), and

(iii) by substituting the following for subsection (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'.

(ff) in section 81,

- (i) by substituting the words 'an index' for the words 'a register' and 'the register', respectively in subsections (1) and (2),
- (ii) by omitting the words 'in the file of powers of attorney' in subsection (2),
- (iii) by substituting the word 'recorded' for the word 'registered' in subsection (4), and
- (iv) by omitting the words 'and thereupon the revocation shall be entered in the register of powers of attorney and noted on the power and the notice shall be filed in the file of powers of attorney' in subsections (4) and (5);

(gg) in section 82,

- (i) by substituting the word 'recorded' for 'registered' in line 1, and 'received' for 'registered' in line 2 of subsection (1), and
- (ii) by substituting the word 'recorded' for 'registered' in subsection (2);

(hh) in section 92(1),

- (i) by substituting the following for paragraph (a):
'claims any interest in land under an unregistered instrument or otherwise';
- (ii) by omitting paragraph (c) and relettering the subsequent paragraphs accordingly;

- (iii) by omitting the words 'and may at any time withdraw the caution' at the end thereof;
- (ii) by substituting the word 'legal representative' for 'attorney' in sections 93(1), and 95(1)(b);
- (jj) by adding the following new subsection as subsection (1) of section 96 and renumbering the existing subsections accordingly:
- '(1) The cautioner or his legal representative, may at any time apply to withdraw the caution';
- (kk) by adding the following sentence at the end of section 106:-
- 'A person under the age of eighteen years shall not be registered as the proprietor of a lease or of any interest therein';
- (ll) by deleting the words 'ad valorem' from section 109 (1);
- (mm) in the Schedule,
- (i) by omitting the words 'ad valorem' wherever they appear;
- (ii) by substituting the following for paragraph 1:-
- 'Amount of fees
- | | |
|---------------------------------------|-----|
| a. creation and transfer of leases | 5% |
| b. creation and transfer of mortgages | 1% |
| c. combination and subdivision | 5%' |
- (iii) by substituting the following for paragraph 3(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. 100,000 shall be payable in respect of the said unascertainable rent in addition to any other fee payable'.
- (iv) by substituting the words 'shall be assessed on the maximum sum up to which advances may be made as evidenced by a certificate from the mortgagee' for the words 'shall be assessed on the sum advanced as at the date of presentation for registration as evidenced by a certificate from the mortgagee' in paragraph (e);
- (v) by adding the following new paragraph after paragraph (i):
- '(j) If an application is cancelled or withdrawn no part of any fee shall be refunded and if such application is subsequently relogged, a further fee shall be payable'.

(nn) by making consequential amendments to the arrangement of sections.

REPEAL

2. Part 7 of the Land Reform Regulation, 1980 (sections 14, 15 and 16) is repealed.

COMMENCEMENT

3. This Act shall come into force on the date of publication in the Gazette.

REPUBLIC OF VANUATU

BILL FOR
THE LAND LEASES (AMENDMENT) ACT No. 32 OF 1985

Explanatory Note

Having been brought into force on 1st March 1984, the Land Leases Act No. 4 of 1983 has been put to the test for more than a full year. Whilst it has proved itself to be a very satisfactory piece of legislation, the need for some minor amendments has become apparent.

The purpose of this Bill is to introduce the required amendments. These are explained below.

Section 1

Persons under the age of eighteen years have a privileged position in law in respect of contracts in that they can declare them void. Also it is not possible for a minor to make a will. In the circumstances it is not considered appropriate that such persons should be registered proprietors of leases even with a guardian's consent.

Section 2

The Attorney General has ruled that only the register must be maintained in both the French and English languages. This requirement is covered by section 4(1) of the Act.

Other documents are kept in either French or English.

Paragraph (e) is deleted as powers of attorney are recorded in index form. A register of the same, additional to the index, is not necessary.

Section 4

As the title number allocated by the Director of Land Surveys to the land parcel is the same as the one allocated to the lease, no separate reference to the survey plan is made on the lease register.

The word "description", meaning a person's occupation, is not necessary on a lease register. The word "postal" is in that it enables the Director to correspond with the proprietor of the lease if necessary.

Section 10

The word "survey" has several meanings and as the Act specifically relates to land, it is proper that it should clearly state "land survey".

The reference to sublease in this section is superfluous as survey plans are only prepared for land parcels and by legal definition the word lease includes sublease.

Certified copies of plans attached to documents must also be signed by the signatories to those documents.

The proviso paragraph in section 10(1) is meaningless as none of the old plans supporting previous registrations are satisfactory in all respects.

Section 11

Again the term "survey" must specify land survey.

Section 17

Rights to navigational aids must also be protected and not be hindered by the terms and conditions of any lease.

Part 5

The Act makes no provision for the register to be searched. This is an essential facility for which a fee is charged under the Land Lease (General) Rules Order No. 3 of 1984.

The new section 19A remedies the omission.

Section 21

The word "creating" is added to section 21(2) to bring it into line with section 21(1).

It is more appropriate to use the word "lease" rather than "sublease" as by legal definition lease includes a sublease.

Section 24

As the Act has now been in force over six months, the words to be deleted are of no further use. The period of six months allowed for registration is seen to be excessive and is accordingly reduced to three.

Section 25

Leases must be registered and the Director must have power to compel this. The present penalty is insufficient and is accordingly substantially increased to provide an effective deterrent against registration evasion.

The words deleted are not necessary.

Section 28

Again by legal definition the word "lease" includes "sublease".

Section 29

Evidence other than that of incorporation may be relevant to such an application. This especially applies to French companies.

Section 35

The word "dispose" effectively replaces all the words to be deleted.

Dealings in any interests contained within the lease must also have the lessor's consent.

Section 38

By virtue of having variable rents, a number of leases already registered are not subject to review after five years. Because the method by which their original rents were assessed is not now considered satisfactory, the opportunity for either party to apply for a review is desirable. The proposed amendment provides this opportunity.

Section 39

By legal definition "land" includes "premises" therefore it is more appropriate to use that word as land can also be damaged by earthquakes and hurricanes etc.

Section 40

The intention of the Act is to ensure that the lessor's consent be required before any disposition of the lease or interest therein takes place. The amendment to section 40(h) ensures that this also includes easements, profits and restricted agreements which are not covered by the original wording.

Substituting "leased land" for "lease premises" is in line with the amendment at section 39.

Section 42

The amendment excludes the reference to bankruptcy and liquidation which are inappropriate to this section.

Section 44

If a lease is in breach and the leasee stands to face forfeiture, the notice to which he is entitled must also be copied to any mortgagee and other persons with registered interests. Section 55(3) allows provisions to be included in mortgages to enable the mortgagee to remedy the breach where it relates to non-payment of rent.

The mortgagee must therefore be notified if forfeiture is intended.

Section 45

The amendment embraces all persons upon whom notice is served. i.e. it brings the section into line with section 44.

Section 46

It is considered more appropriate that where the duration of a lease is extended, a new lease agreement should be entered into.

The new sub-section ensures that variations of rent are entered on the register.

Section 48

As the original lease is lodged at the Land Records Office at the time of registration, it is not available for the parties to endorse. Under the amendment, leases are surrendered by the parties executing a prescribed form and lodging it with the Director.

Section 53

The amendment makes provision for mortgagees to vary priorities between mortgages. This is by written agreement between mortgagees.

Section 55

The reasons for the amendment are similar to those given for the amendment of section 40. By substituting the word "disposition" all dealings including easements, profits and restricted agreements, require the previous written consent of the mortgagee.

Section 56

This automatically follows the amendment of section 55. Any dealings relating to the lease require the prior written consent of the mortgagee.

Section 58

The Lands Referee has power under section 45(2) to make an order vesting the leased land, after forfeiture, in the mortgagee. This is in conflict with section 58(1) which states that a mortgage shall be enforced upon application to the Court and not otherwise.

The proposed amendment makes provision for both.

Section 70

The word "COVENANTS" in the original heading was included in error. It is not used at all in the text of the Act. The word "AGREEMENTS" is correct.

Section 76

The amendment is necessary to cover the situation when documents for a corporation are executed by its attorney.

Section 80

Deleting the word "infant" and the term "under the age of eighteen years" complies with the amendment at section 1.

The amendment substituting subsection (2) is introduced because where there is any question of mental infirmity it is considered that there should be a Court order identifying the guardian.

There was not previous provision to state that fees were not refundable on the withdrawal of an application, nor that a re-application also attracted fees. The new paragraph 3(j) provides this.

Repeal

Part 7 of the Land Reform Regulation which refers to the Land Records Office, is no longer required.

October, 1985

D KALPOKAS
Minister for Lands, Energy
And Rural Water Supply.