

Land Leases (Amendment) Act 2014

REPUBLIC OF VANUATU

LAND LEASES (AMENDMENT) ACT

Act No. 35 Of 2014

Arrangement of Sections

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REPUBLIC OF VANUATU

Assent: 19/12/2014

Commencement: 27/02/2015

LAND LEASES (AMENDMENT) ACT

Act No. 35 Of 2014

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 THE LEASES [CAP 163]

1 Section 1 – Definition of corporation

After “elsewhere”, insert “and includes but is not limited to any of the following:

(a) a company under the [Companies Act](#) [CAP 191];

(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];”

2 Section 1

Insert in its correct alphabetical position:

“**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;”

3 Subsection 4(2)

Delete “into three sections as follows”, substitute “in the following manner”

4 Paragraph 4(2)(b)

Repeal the paragraph, substitute

“(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 – 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; 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”

5 At the end of section 4

Add

“(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.”

6 Paragraph 8(c)

Repeal the paragraph, substitute

“(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;”

7 After section 31

Insert

“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.”

8 After section 32D

Insert

“32E Effect of striking off of corporations

(1) This section applies to a corporation that is a registered lessee and that has been struck off the register by the registrar of companies under the [Companies Act](#) [CAP 191].

(2) Any lease that has been registered to a corporation that has been struck off the register becomes the property of the lessor on the day on which the notice of striking off under subsection 335(3) of the [Companies Act](#) [CAP 191] is published in the Gazette and the Director is to amend the register accordingly.

(3) If the Court declares the dissolution of a corporation as void under section 333 of the [Companies Act](#) [CAP 191], any registered lease that has been reverted to the lessor under subsection (2), remains a property of the lessor and cannot be reclaimed by the corporation.”

9 After section 38

Insert

“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 unforeseen 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 43 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 43 to 46 apply in relation to a forfeiture under this section.”

10 Subsection 48A(2)

Delete “, not more than”

11 At the end of section 48A

Add

“(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, unless the lessor and lessee have entered into other arrangements.”

12 After section 48A

Insert

“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 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.

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.”

13 After section 49

Insert

“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.”

14 After section 50A

Insert

“50B 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.”

15 After section 60

Insert

“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.”

16 After section 109

Insert

“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.”