

# REPUBLIC OF VANUATU

## PLANTED FOREST ACT NO. 7 OF 2015

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# REPUBLIC OF VANUATU

**Assent:** 04/08/2015  
**Commencement:** 24/05/2018

## PLANTED FOREST ACT NO. 7 OF 2015

An Act to provide for the registration of forestry rights over planted forests and for the harvesting of forest products and for related matters.

Be it enacted by the Parliament and President as follows-

### PART 1 PRELIMINARY

#### 1 Interpretation

In this Act, unless the contrary intention appears:

**custom land** means land owned or occupied, or land in which an interest is held, by one or more persons in accordance with the rules of custom;

**custom owner** means any lineage, family, clan, tribe or other group who are regarded 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;

**Department** means the Department of Forestry;

**Director** means the Director of the Department of Forestry;

**Director General** means the Director General of the Ministry responsible for Forestry;

**forest products** means timber and any other material yielded by a forest;

**forestry right**, in relation to a planted forest on a leased land or custom land means an interest in a leased land or custom land pursuant to which a grantee or custom owners having the benefit of the interest is entitled to enter the land and carry out all or any of the following activities:

- (a) plant, replant, maintain or harvest, a crop of trees or forest products; or

- (b) sell a crop of trees or forest products; or
- (c) construct a building and use such building, works and facilities as may be necessary or convenient to enable the person to plant, replant, maintain, harvest or sell the crop of trees or forest products; or
- (d) claim a carbon sequestration right in respect of trees in a planted forest;

**grantee** means a person, not being a lessee or a custom owner, who is issued with a forestry right under this Act;

**grantor** means a lessee or a custom owner who has entered into an agreement with a grantee to establish a planted forest in his or he leased land or custom land;

**Harvesting Code** means the Planted Forest Harvesting Code issued under section 24;

**Land Leases Act** means Land Leases Act [CAP 163];

**leased land** means a land leased under a registered lease according to the Land Leases Act [CAP 163];

**lessee** means the proprietor of a registered lease under the Land Leases Act;

**officer** means an officer of the Department of Forestry;

**planted forest** means a forest established by planting or seeding in the process of afforestation or reforestation and which consists of introduced or in some cases indigenous species of trees.

## **PART 2    AGREEMENTS AND REGISTRATION OF FORESTRY RIGHT**

### **Division 1    Agreement for forestry right on leased land or custom land**

#### **2    Person may enter into agreement with lessee or custom owners**

- (1) This section applies to a person who is not a lessee or a custom owner who intends to be granted a forestry right.
- (2) A person who wishes to register a forestry right under section 4 must enter into an agreement with:
  - (a) a lessee for a forestry right over a planted forest or proposed planted forest on land or part of a land registered under the proprietor's name under the Land Leases Act; or
  - (b) the custom owner of a custom land for a forestry right over a planted forest or proposed planted forest on a custom land or part of the custom land.
- (3) An agreement entered into under subsection (2) must:
  - (a) be in writing; and
  - (b) signed by the grantor and grantee; and
  - (c) state the nature of the forestry right and the period for which it is to be enjoyed; and
  - (d) state whether the proceeds of the forest products of the planted forest are to be exclusively for the grantee or shared with the grantor and the amount payable.
- (4) A person who enters into an agreement with a lessee or custom owner under this section is taken to have been granted a forestry right over a planted forest or proposed planted forest on a land or part of a land comprised on a lease registered under the proprietor's name or a custom land of the custom owners to which the a forestry right applies.
- (5) The registration of a forestry right granted under this section is completed by filing with the Director the registration form according to paragraph 4(2)(a).

### **3 Forestry right by lessee or custom owner**

- (1) A lessee or a custom owner, may register under section 4, a forestry right over the leased land or custom land, or part of the leased land or custom land in which the planted forest is to be situated.
- (2) The registration of a forestry right is completed by filing with the Director the registration form according to paragraph 4(2)(b).

### **4 Registration of a forestry right on leased land or custom land**

- (1) A person intending to obtain a forestry right is to file with the Director the approved registration form accompanied with the prescribed fee.
- (2) In addition to subsection (1), the following information must be provided by the person intending to register a forestry right:
  - (a) if the applicant is a grantee:
    - (i) the details of the grantee and the grantor; and
    - (ii) the nature of the forestry right to which the application relates and the period for which it is to be enjoyed; and
    - (iii) whether the forestry right is to be enjoyed by the grantee exclusively or in common with the grantor or any other person; and
    - (iv) a description of the location of the leased land or custom land to which the forestry right applies by way of a map or GPS; and
    - (v) whether there is a planted forest already established on a leased land or custom land to which the application relates and the description of such activity; and
    - (vi) a planting plan of a proposed planted forest to be carried out on a leased land or custom land within 6 months from the date of registration of the forestry right.
  - (b) if the applicant is a lessee or custom owner:
    - (i) his or her details; and

- (ii) the nature of the forestry right to which the application relates and the period for which it is to be enjoyed; and
  - (iii) whether the forestry right is to be enjoyed by the applicant exclusively or in common with any other person; and
  - (iv) the details of the successor to the forestry right in the event of the right holder's death; and
  - (v) a description of the location of the leased land or custom land to which the forestry right applies by way of a map or GPS; and
  - (vi) whether there is a planted forest already established on a leased land or custom land to which the application relates and the description of such activity; and
  - (vii) a planting plan of a proposed planted forest to be carried out on a leased land or custom land within 6 months from the date of registration of the forestry right.
- (3) Subparagraph (2)(b)(iv) does not apply to an applicant who is a custom owner.
- (4) An applicant must ensure the validity, veracity and authenticity of a document he or she files with the Director under this section.

## **Division 2 Registration of forestry rights**

### **5 Registration of forestry rights**

- (1) The Director may after considering a registration form filed under paragraph 4(2)(a) or 4(2)(b), register a forestry right or refuse to register a forestry right.
- (2) If the Director registers a forestry right, the registration must be made within 14 days from the date on which the registration form is received by the Director.
- (3) The registration of a forestry right in relation to a leased land is to be treated as an encumbrance in the register of the lease under the Land Leases Act.

- (4) The Director must, after registering a forestry right, issue a Forestry Right Certificate to the applicant as a proof of ownership of the right.

## **6 Director to give reasons for refusal to register a forestry right**

- (1) The Director may refuse to register a forestry right if the applicant has:
  - (a) filled out the registration form incorrectly; or
  - (b) not completed the registration form to the satisfaction of the Director; or
  - (c) not complied with any request from the Director under subsection (3) for additional information.
- (2) If the Director refuses to register a forestry right under subsection (1), he or she must, within 21 days from the date on which the registration form is received, notify the applicant in writing and state the reasons for the refusal and require that the applicant correct or complete the registration form.
- (3) The Director may require an applicant to provide any additional information to enable him or her to make a decision under this Act.
- (4) An applicant who is not satisfied with a decision of the Director for refusing to register a forestry right under this section may appeal to the Director General against the decision of the Director.
- (5) The Director General must consider the requirements of subsection 4(2) and subsection (3) when making his or her decision to confirm or revoke the decision of the Director.

## **7 Registration of forestry right by grantee on custom land under dispute**

- (1) The Director may register a forestry right on a custom land under dispute if he or she is satisfied that a grantee or custom owner has:
  - (a) obtained the forestry right from the custom owners who are parties to a dispute; and
  - (b) already taken steps to establish a planted forest on a custom land or part of the custom land before the dispute occurred.
- (2) 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 holds that another person or persons as the custom owner, a person to whom a forestry right has been issued to under section 5, is still deemed to be the rights holder.

- (3) If a determination under subsection (2) has decided another person or persons as the custom owner, the Director is to amend the register accordingly.
- (4) In this section **dispute** means a dispute on the customary ownership of a custom land under the Custom Land Management Act No. 33 of 2013.

### **Division 3 Transfer and variation of forestry right etc**

#### **8 Transfer of forestry right**

- (1) A rights holder may transfer whole or part of his or her forestry right to any person with or without consideration.
- (2) A transfer made under subsection (1) must:
  - (a) be in the approved form and accompanied with the prescribed fee; and
  - (b) state the portion, if any, of the forestry right that that is to be transferred; and
  - (c) if the rights holder is a grantee, be accompanied with the written consent of the grantor.
- (3) A rights holder must provide a copy of the instrument of transfer to the Director for registration in the registry of forestry rights.
- (4) If the Director is satisfied that the transfer is made according to this section, he or she is to register the transfer in the registry and insert the transferee as the rights holder.
- (5) The Director may refuse to register a transfer if the grantor has not consented to the transfer.

- (5) In the case of the transfer of a forestry right on a leased land, the registration of transfer is taken to be an encumbrance in the register of the lease under the Land Leases Act to which the forestry right applies.
- (6) The Director is to issue a Forestry Right certificate to a transferee as a proof of ownership of the right.

## **9 Variation of forestry right**

- (1) A rights holder may vary his or her forestry right.
- (2) A variation made under subsection (1) must:
  - (a) be in the approved form and may be accompanied with the prescribed fee; and
  - (b) state the nature and extent variation of the forestry right; and
  - (c) if the rights holder is a grantee, he or she must show proof of notifying the grantor of the variation.
- (3) If the rights holder is a grantee, he or she must, prior to varying his or her forestry right under subsection (1), inform the grantor of the variation.
- (4) If the Director is satisfied that subsection (2) has been complied with, he or she is to register the instrument of variation in the register.

## **10 Forestry right deemed as profit for certain purposes**

A registered forestry right over a planted forest on a leased land is taken to be a profit for the purposes of section 70 and paragraph 71(1)(a) of the Land Leases Act.

## **Division 4 Successorship, duration, renewal and cancelation of forestry right**

### **11 Transfer of forestry right on death**

- (1) If a rights holder, who being a custom owner of a custom land to which forestry right relates, dies before his or her forestry right expires, the forestry right passes to his or her successor in accordance with the rules of custom in respect of ownership of a custom land.

- (2) If a rights holder, other than a rights holder who is a custom owner of a custom land to which the forestry right relates, dies before his or her forestry right expires, his or her forestry right reverts to:
  - (a) if the rights holder is a grantee - the grantor unless other arrangements have been made for the inheritance or transfer of the forestry right; or
  - (b) if the rights holder is a lessee – his or her successor as stated in the register.
- (3) If a successor dies before the rights holder, the rights holder is to vary the forestry right according to section 9 and insert a new successor.

## **12 Duration and renewal of forestry right**

- (1) A forestry right ceases:
  - (a) if the rights holder is a grantee - on the expiry of an agreement made under section 2; or
  - (b) if the rights holder is a lessee or custom owner – on the date specified in the register.
- (2) A grantee may enter into agreement with a grantor for the renewal of a forestry right.
- (3) If a forestry right is renewed, the grantee must provide a copy of the agreement of renewal to the Director.
- (4) The Director is to register any forestry right renewed under this section upon receiving a copy of the agreement under subsection (3).
- (5) If a forestry right is not renewed, the Director is to notify the rights holder that his or her forestry right has expired and give the rights holder 21 days to renew the forestry right.
- (6) If a rights holder, after being notified under subsection (5), fails to renew his or her forestry right, the Director is to cancel the registration and inform the person of the cancellation.

### **13 Cancellation of forestry right from the registry**

- (1) A rights holder may prior to the expiry of the forestry right, apply to the Director in the approved form to cancel his or her forestry right from the registry.
- (2) The Director may cancel a forestry right from the registry if the rights holder fails to carry out a reforestation program within the period stated in subsection 21(1).

## **Division 5 Permitted activities and proceeds of forest products**

### **14 Activities permitted on land subject to a forestry right**

A rights holder may carry out any of the following activities on the land in respect of which the forestry right applies:

- (a) plant, harvest and sell trees or forest products; or
- (b) construct access roads on leased land or custom land for purposes of paragraph (a); or
- (c) construct necessary buildings or facilities on custom land or leased land for purposes of paragraph (a); or
- (d) subject to the Harvesting Code, plant and harvest without a license, any other crop in the planted forest.

### **15 Proceeds of forest products**

A rights holder is, in the absence of any other agreement in writing, to be a sole beneficiary of the proceeds of the products of a planted forest.

### **PART 3 MORTGAGE AND EFFECT OF REGISTRATION OF A FORESTRY RIGHT**

#### **16 Mortgage of registered forestry right**

- (1) A rights holder may mortgage his or her forestry right to secure the payment of an existing or future debt or other money with any financial institution.
- (2) A financial institution may dispose of the forestry right of a rights holder that is under mortgage in order to recover the amount incurred as a loss if the rights holder is in default of payment of debts or money owed to that financial institution.
- (3) A rights holder who intends to mortgage his or her forestry right must notify the Director in the approved form, of the mortgage.
- (4) The Director is to enter into the register, a forestry right that is subject to a mortgage.
- (5) A rights holder who fails to notify the Director under subsection (3) commits an offence punishable on conviction to a fine not exceeding VT200,000.

#### **17 Forestry right not to confer exclusive possession to a grantee**

- (1) For the purpose of this Act, a forestry right over a planted forest on a leased land or a custom land does not confer on the grantee a right of exclusive possession of that land.
- (2) Subsection (1) does not apply to a lessee or custom owner who is a rights holder over a planted forest on his or her leased land or custom land, respectively.

## **PART 4 ESTABLISHMENT OF REGISTRY AND PLANTED FOREST DATABASE**

### **18 Establishment of registry of forestry rights**

- (1) A registry of forestry rights is established.
- (2) The Director is to keep and maintain the registry of forestry rights over a planted forest on a leased land and a custom land.
- (3) The registry must contain the following information in relation to a leased land or a custom land (whichever applies):
  - (a) full details of the grantor and the grantee or the lessee or custom owner;
  - (b) in the case of a grantee, whether the forestry rights granted are to be enjoyed exclusively by the grantee or in common with the grantor or any other person;
  - (c) whether the ownership of a custom land to which the forestry rights relates is disputed or not in dispute;
  - (d) the location of the leased land or the custom land concerned including a map or GPS showing the location;
  - (e) the duration of the forestry rights.
- (4) The Director is to make available the register to the public for inspection.
- (5) A person who wishes to obtain a copy or extract of any document kept in the registry must pay to the Department, the prescribed fee.

### **19 Harvest reports**

- (1) A rights holder must provide to the Director within 1 month after harvesting a planted forest, a report in the approved form, detailing the harvest.
- (2) A rights holder who fails to provide a report on a harvest commits an offence punishable on conviction to a fine not exceeding VT200,000.

**20 Director to establish planted forest database**

- (1) The Director is to establish and maintain a database of:
  - (a) planted forests; and
  - (b) forest products.
- (2) A database of forest products under paragraph (1)(b) must include the following information:
  - (a) the volume of timber or other forest products harvested; and
  - (b) the volume of timber or other forest products bought or sold; and
  - (c) the quantities of forest products processed or manufactured; and
  - (d) any other information that the Director considers necessary that relates to timber or forest products.
- (3) A person who wishes to access information held in the database is to apply to the Director in the approved form accompanied with the prescribed fee.

## **PART 5    REFORESTATION AND OWNERSHIP OF CARBON**

### **21    Custom owners or grantee to carry out reforestation**

- (1) A rights holder must carry out a reforestation program within 6 months from the date of registering the forestry right under section 5.
- (2) In this section, **reforestation program** means the act of raising and planting tree seeds or young trees in land where forestry right applies.

### **22    Sale and export of forestry products**

- (1) A rights holder may sell his or her forest processed products locally or export the products either processed or in an unprocessed form.
- (2) A person must not export or attempt to export any forest product unless a export permit is issued in respect of that consignment by the Director.
- (3) A permit issued under this section must:
  - (a) be issued and signed by the Director; and
  - (b) have the approved official stamp; and
  - (c) be accompanied by the prescribed fee.
- (4) A person who contravenes subsection (2), commits an offence punishable on conviction by a fine not exceeding VT500,000.
- (5) In this section **unprocessed form** means round log for purposes of export.

### **23    Carbon ownership of a planted forest**

- (1) A rights holder holds the carbon sequestration right of trees in the planted forest in which a forestry right has been granted.
- (2) To avoid doubt, if a rights holder, being the lessee or a custom owner, establishes a planted forest on their custom land, the ownership of carbon sequestered by trees in a planted forest belongs to the lessee or custom owner respectively.



- (3) If the forestry right of a rights holder is governed by an agreement made under section 2, the ownership of carbon sequestered by a planted forest belongs to the person who is responsible for planting the forests or as otherwise stipulated in the agreement.
- (4) In this section:

**carbon sequestration** means the process by which a tree absorbs carbon dioxide from the atmosphere;

**carbon sequestration right** in relation to a leased land or custom land means a right conferred by agreement to the legal, commercial or other benefit (whether present or future) of carbon sequestration by any existing or future tree, from a planted forest.

## **PART 6 PLANTED FOREST HARVESTING CODE**

### **24 Minister to issue a Planted Forest Harvesting Code**

- (1) The Minister, acting on the advice of the Director, is to issue a Planted Forest Harvesting Code.
- (2) Any harvesting operation in a planted forest on a leased land or custom land is subject to the provisions of the Code.

### **25 Matters to be regulated by the Code**

- (1) The Code may, for the purposes of protecting the environment, regulate the carrying out of harvesting operations in a planted forest.
- (2) Without limiting subsection (1), the Code may regulate the following matters:
  - (a) a harvesting plan;
  - (b) works ancillary to a harvesting operation;
  - (c) soil erosion and sediment control;
  - (d) native animals and plants;
  - (e) post- harvest bush fire hazard reduction burning;
  - (f) indigenous relics and cultural or historic sites;
  - (g) the protection of unique or special animals or plants.
- (3) The Code may apply generally to a planted forest or to a specified class of planted forest.
- (4) The Code may prescribe penalties not exceeding VT500,000 for offences against the Code.
- (5) If there is any conflict between a provision of the Code and a provision of this Act, the provisions of this Act prevail.

## **26 Compliance with the Code**

- (1) A rights holder must ensure that operations, including harvesting operations, on a planted forest are carried out in accordance with the Code.
- (2) If the Director believes on reasonable grounds that operations on a planted forest is not carried out according to the Code, the Director is to notify the rights holder requiring him or her to take appropriate measures to rectify the contravention.
- (3) A rights holder who fails to comply with a notice issued by the Director under subsection (2), commits an offence punishable on conviction to a fine not exceeding:
  - (a) in the case of an individual VT200,000; or
  - (b) in the case of a company VT500,000.

## **PART 7 MISCELLANEOUS**

### **27 Powers of officers**

- (1) An officer may, for the purposes of enforcing this Act and the Code:
  - (a) at any reasonable time of the day, enter and inspect a planted forest; and
  - (b) require a rights holder to provide such information as the officer reasonably requires within 14 days after receiving a written notice requiring that information under subsection (2).
- (2) The information that can be required by an officer under paragraph (1)(b) must:
  - (a) relate to matters that are reasonably connected with the administration of this Act or the Code; or
  - (b) be information that is required for the purposes of determining whether this Act or the Code is being complied with.
- (3) To avoid doubt, commercially sensitive information cannot be required by an officer under subsection (2).
- (4) A rights holder who:
  - (a) fails to provide the information required under subsection (2); or
  - (b) fails to provide the information required within the required time without a reasonable excuse under subsection (1); or
  - (c) provides information that is false or misleading in a material respect,commits an offence punishable on conviction to a fine not exceeding VT200,000.

### **28 Assessments and valuation of a planted forest subject to forestry right**

- (1) A rights holder who wishes to have his or her planted forest assessed or valued is to apply to the Director in the approved form accompanied with the prescribed fee.

- (2) The Director may request the assistance of the Principal Valuation Officer appointed under the Valuation of Land Act [CAP 288], when carrying out the valuation of a registered planted forest.

## **29 Regulations**

- (1) The Minister may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be provided for the carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make Regulations for any of the following matters:
  - (a) prescribe the fees and charges in respect of any application made or service provided under this Act;
  - (b) set standards for the clearing of land for planting a planted forest.

## **30 Transitional provisions**

- (1) On the commencement of this Act, a person who is granted a forestry right in respect of an accredited timber plantation under the Forestry Rights Registration and Timber Harvest Guarantee Act [CAP 265], is taken to have been granted forestry rights in respect of his or her timber plantation under this Act.
- (2) To avoid doubt, on the commencement of this Act, a timber plantation referred to under subsection (1) is to be known as a planted forest.

## **31 Inconsistency with other Acts**

If there is any inconsistency between this Act and the Forestry Act [CAP 276] in respect to forestry rights, this Act applies.

## **32 Repeal**

The Forestry Rights Registration and Timber Harvest Guarantee Act [CAP 265] is repealed.

## **33 Commencement**

This Act comes into force on the day on which it is published in the Gazette.