



## REPUBLIC OF VANUATU

### LAND ACQUISITION (AMENDMENT) ACT NO. 5 OF 2017

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**Assent:** 16/06/2017  
**Commencement:** 30/06/2017

## LAND ACQUISITION (AMENDMENT) ACT NO. 5 OF 2017

An Act to amend the Land Acquisition Act [CAP 215].

Be it enacted by the President and Parliament as follows-

### **1 Amendment**

The Land Acquisition Act [CAP 215] 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 THE LAND ACQUISITION ACT [CAP 215]

#### **1 Section 1 (“Definition of public purpose”)**

Repeal the definition, substitute

““public purpose” means the utilisation of land necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the utilisation of any property in such manner as to promote the public benefit;”

#### **2 Sections 2 and 3**

Repeal the sections.

#### **3 After subsection 4(2)**

Insert

“(2A) The acquiring officer is to cause the notice referred to under subsection (1) to be broadcasted by radio.

(2B) An objection made under this section may only be made if:

- (a) the objection relates to whether or not the intended acquisition is for a public purpose; or
- (b) the intended acquisition would deprive the custom owner of a substantial portion of the remaining customary land.”

#### **5 Paragraph 5(1)(b)**

Repeal the paragraph, substitute

- “(b) carry out or resume any activity including but not limited to building construction, mining, quarrying, or any other activity that would directly or indirectly depreciate or appreciate the value of the land commencing on the date on which the notice is issued or exhibited.”

**5 Subsection 5(4)**

Repeal the subsection, substitute

- “(4) A person who contravenes this section commits an offence and is liable on conviction:
- (a) if the person is an individual – by a fine not exceeding VT10,000,000; or
  - (b) if the person is a body corporate – by a fine not exceeding VT50,000,000.”

**6 After section 5**

Insert

**“5A. Stop work notice**

- (1) If the acquiring officer upon issuing or exhibiting a notice under section 4 is aware that:
- (a) an activity including but not limited to building construction, mining, quarrying; or
  - (b) any other activity that would directly or indirectly depreciate or appreciate the value of the land,

is being carried out on that particular land which is intended to be acquired under this Act, the officer may issue a stop work notice to the owner of the land.

- (2) A stop work notice is a notice that:
- (a) directs a person to stop any works or activity for a period which must not exceed 12 months; and
  - (b) prohibits the person from doing any act or engaging in any other activity or undertaking that may result in the depreciation or appreciation of the value of the land for a period not exceeding 12 months.

- (3) For the purposes of enforcing and ensuring compliance with a stop work notice, the acquiring officer may:
- (a) enter the land intended to be acquired; and
  - (b) enter private premises situated on the land which is intended to be acquired after notifying the owner of his or her intention to do so; and
  - (c) seize or take possession of any machinery, equipment or other thing found in the land which is intended to be acquired, that the acquiring officer reasonably believes is used in the commission of an offence against this Act; and
  - (d) monitor, take pictures, photographs or make recordings in any form of the land which is intended to be acquired; and
  - (e) order that any activity or undertaking that the acquiring officer reasonably believes may result in the depreciation or appreciation of the value of the land which is intended to be acquired, to cease; and
  - (f) interview any person; and
  - (g) require from any police officer or any other person, any assistance that is relevant to the investigation or monitoring activity; and
  - (h) exercise any other powers conferred to him or her under this Act or any other Act.
- (4) If an enforcement officer takes possession of a machinery or other item or thing from a land which is intended to be acquired, the owner of the machinery or other item or thing may request the Director to make a decision for the return of the machinery or other item or thing.
- (5) The acquiring officer may request the assistance of police officers for the purposes of enforcing and ensuring compliance with a stop work notice.
- (6) A person who contravenes a stop work notice commits an offence punishable on conviction:

- (a) if the person is an individual – by a fine not exceeding VT10,000,000; or
- (b) if the person is a body corporate – by a fine not exceeding VT50,000,000.

**5B. Storing and disposal of matters seized under section 5A**

- (1) Any machinery, equipment, or other thing seized under paragraph 5A(3)(c):
  - (a) is to be kept at a place, and in a manner, in accordance with a direction given by the Director; and
  - (b) may be retained until such time as the Director is satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a stop work notice.
- (2) If:
  - (a) it is agreed by the owner of the machinery, equipment, or other thing, that they are in breach of a stop work notice; or
  - (b) the owner has not satisfied the Director under subsection (2) within 6 months from the date of seizure,

the machinery, equipment, or other thing may be disposed of in a manner directed by the Director.

**5C. Forfeiture of seized substances and goods and duties to dispose**

- (1) If a person is convicted of an offence under subsection 5A(6), the Court may order that any machinery, equipment, or other thing in relation to which the offence was committed, be forfeited to the State.
- (2) Any machinery, equipment, or other thing forfeited under subsection (1) is to be disposed of in a manner determined by the Director.”

**7 Subsection 9(1)**

Delete “or the Valuer-General under this Act shall take into consideration”, substitute “must only take into consideration the following matters”

**8 Paragraph 9(1)(b)**

Repeal the paragraph.

**9 Paragraphs 9(1)(c),(d),(e),(f),(g) and (h)**

Re-letter the paragraphs as “(b),(c),(d),(e),(f) and (g)”

**10 Subsection 9(1C)**

Repeal the subsection, substitute

“(1C) To avoid doubt for the purposes of subsection (1), the acquiring officer must not take into consideration any other matter which is not set out in paragraphs (1)(a) to (g), when determining the amount of compensation to be awarded.”

**11 After section 10**

Insert

**“11. Agreement to determination**

- (1) This section applies if the custom owner or person interested in the land or easement which is to be acquired under this Act, agree with the determination of the acquiring officer made under section 9.
- (2) If the custom owner or person interested in the land come up with an agreement according to subsection (1), the acquiring officer must as soon as practicable notify the custom owner or owners of the land or any other person interested in the land, under section 13 and arrange for the payment of compensation under section 14.
- (3) Sections 12, 12A, 12B, 12C, 12D, and 12E does not apply if the custom owner or owners of the land or any other person interested in the land come up with an agreement according to subsection (1).”

**12 Section 12**

Repeal the section, substitute

**“12. Appeals**

- (1) A custom owner or owners of any land or any other person interested in the land who is not satisfied with the determination of the acquiring officer under section 9, may within 30 days after the date on which the determination is made, appeal to the Valuer-General against the determination.
- (2) An appeal made under this section must be based only on matters relevant to paragraphs 9(1)(a) to (h) by which the applicant is not satisfied with.
- (3) If a determination is made under section 9 and no appeal is made under this section, the decision of the acquiring officer is final.

**12A. Procedure**

- (1) The Valuer-General may make rules, not inconsistent with this Act, to regulate the proceedings of the appeal.
- (2) Appeals before the Valuer-General is to commence by the lodging of an application in the prescribed form, together with the prescribed fee with the office of the Valuer-General.
- (3) The Valuer-General must within 14 days of receiving an application under subsection (2) notify the applicant and the acquiring officer on the date, time and place on which the hearing is to take place.
- (4) The Valuer-General may also in the notice issued under subsection (3) require;
  - (a) any person whose evidence is, in the opinion of the Valuer-General likely to be material to the subject matter of the appeal, to attend and give evidence; or
  - (b) any person to produce at the hearing, for examination by the Valuer-General any document or book of accounts in the possession of that person that the Valuer-General thinks contains such information as may be necessary to determine the amount of compensation to be paid.



**12B. Hearing**

- (1) At a hearing of an appeal before the Valuer-General, the appellant and the acquiring officer may call evidence and may be given the opportunity to be heard either in person or by a person authorised to act on their behalf.
- (2) If the appellant or the acquiring officer or both, fail to appear before the Valuer-General at the time and place appointed, the Valuer-General may proceed to determine the appeal.
- (3) Despite subsections (1) and (2), the Valuer-General may, if he or she thinks fit and if both parties consent, sight an appeal without an oral hearing.
- (4) The examination of any witness at any inquiry under this section is to be made on oath or affirmation administered by the Valuer-General.
- (5) The Valuer-General is not bound by the rules of evidence.

**12C. Decisions of the Value-General**

- (1) The decision of the Valuer-General is to be given to the appellant and the acquiring officer in writing along with a statement of the Valuer-General's reasons for the decision.
- (2) The Valuer-General may dismiss an appeal if:
  - (a) the appeal is not based on matters relevant to paragraphs 9(1)(a) to (h); or
  - (b) the Valuer-General is satisfied that the appeal is frivolous or vexatious.
- (3) If the Valuer-General dismisses an appeal, he or she must give written notice of his or her decision to the applicant and the acquiring officer.
- (4) If the Valuer-General allows the appeal, he or she must:
  - (a) assess the compensation and make a determination; and

- (b) give written notice of his or her decision to the applicant and the acquiring officer.
- (5) Any custom owner or owners of any land or any other person interested in the land who is not satisfied with the decision of the Valuer-General under this section, may within 28 days after the date on which the decision of the Valuer-General is made, appeal to the Supreme Court.

**12D. Power to award costs**

The Valuer-General may order a party to pay to the other party such costs and expenses as it considers reasonable, and may apportion any such costs between the parties or any of them in such manner as he or she thinks fit.

**12E. Offences in relation to an appeal**

A person who, with intent to deceive, makes a false or misleading statement or a material omission in any information given to the Valuer-General, commits an offence punishable on conviction to a fine not exceeding VT2,000,000.”

**13 Section 13**

Delete “thirty”, substitute “14”

**14 Section 14**

Repeal the section, substitute

**“14. Payment of compensation**

A compensation payment determined under section 9 is to be made to the custom owner of the land or any other person interested in the land:

- (a) if no appeal is made to the Valuer-General under section 12 – as soon as practicable after the appeal period under subsection 12(1) and the notification period under section 13 expires; or
- (b) if an appeal is made to the Valuer-General under section 12 and no subsequent appeal is made to the Supreme Court under subsection 12(5) – as soon as practicable after the appeal period under subsection 12(5) and the notification period under section 13 expires; or

- (c) if an appeal is made to the Supreme Court under subsection 12(5) – as directed by the Supreme Court; or
- (d) if pursuant to a custom owners agreement under section 11 – as soon as practicable after the notification period under section 13 expires.”

**15 After section 14**

Insert

**“14A. Payment of compensation to Custom Owners Trust Account**

If any sum which is due as compensation for the acquiring of a land or easement under this Act is due but the customary ownership of the land is in dispute, the payment for compensation is to be paid to the Custom Owners Trust Account.

**14B. Custom owners Trust Account**

- (1) The Custom Owners Trust Account is established.
- (2) There is to be paid into the Account, any sum of which is due as compensation for the acquiring of a land or easement under this Act which is not able to be paid as the customary ownership of the land is in dispute.
- (3) The Custom Owners Trust Account is to be operated and maintained by the Director General of the Ministry of Finance and Economic Management.
- (4) Funds may be withdrawn from the Account and paid to the custom owner of the land that have been determined as custom owners under the Custom Land Management Act No. 33 of 2013.”

**16 At the end of section 16**

Add

- “(3) An order made under this section must be entered in the Land Leases Register by the Director.”

**17 After section 19**

Insert

**“19A. Service of notices and other documents**

- (1) Any notice, document or payment which is required to be made to any person under this Act may be served:
  - (a) personally; or
  - (b) by leaving it at the person’s residential or work address; or
  - (c) by sending it to the person’s legal counsel:
    - (i) by prepaid post; or
    - (ii) by email; or
    - (iii) by fax ; or
  - (d) by sending it to the person’s postal address.
- (2) For the purposes of paragraph (1)(a) a notice, document or payment is served personally on a person:
  - (a) by giving it to the person; or
  - (b) if the person does not accept the notice, document or payment:
    - (i) by putting it down in the person’s presence and telling the person what it is; or
    - (ii) by serving it on a chief or a pastor of the church who lives in the area where it is believed the person named in the notice, document or payment, is living.
- (3) If a person named in the notice, document or payment is deceased, service of the notice, document or payment may be made to the legal representatives of the deceased’s estate.”