

Land (Ownership of Freeholds) Act 1976

No. 76 of 1976.

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Land (Ownership of Freeholds) Act 1976,

Being an Act to implement Section 56(1)(b) (*other rights and privileges of citizens*) of the *Constitution* by—

(a) defining the forms of ownership that are to be regarded as freehold; and

(b) defining the corporations that are to be regarded as citizens,

and to facilitate dealings in certain land to which that paragraph would otherwise apply by making provision for the conversion of certain interests in land to State leases, and for related purposes.

PART I. – PRELIMINARY.

1. PURPOSE OF THIS ACT.

(1) The main purpose of this Act is to implement Section 56(1)(b) (*other rights and privileges of citizens*) of the *Constitution* by defining—

(a) the forms of ownership that are to be regarded as freehold; and

(b) the corporations that are to be regarded as citizens,

for the purposes of that paragraph.

(2) The application by virtue of this Act of the definitions referred to in Subsection (1)(a) and (b) is limited to the purposes of Section 56(1)(b) of the *Constitution*, and this Act does not, for any other purpose, affect the nature or incidents of any interest in land.

2. INTERPRETATION.

In this Act, “**interest**” means an interest in land and includes an estate in land.

PART II. – FREEHOLD OWNERSHIP.

Division 1.

Basic Principles.

3. GENERAL DEFINITION.

Subject to the qualifications and exceptions set out in Division 2 and to Section 4, the forms of ownership of land that are to be regarded as freehold for the purposes of Section 56(1)(b) of the *Constitution* are—

- (a) absolute ownership; and
- (b) ownership in fee simple; and
- (c) equivalent forms of ownership (being the ownership of interests greater than estates for terms of years),

whether technically called “legal” or “equitable”, but not including any form of customary ownership of, or of customary interest in, land.

4. INDIRECT OWNERSHIP.

(1) In this section—

“**freehold land**” means an interest that is a form of freehold ownership within the meaning of Section 3;

“**indirect interest**” means an interest that, in law or in equity, confers or includes in relation to any land, powers or rights that are equivalent to the powers and rights possessed by an owner of freehold land;

“**interest**” includes any right, power or privilege in, over or in connection with land that is conferred by any instrument or transaction, whether or not it would, apart from this definition, amount to an interest in land.

(2) Ownership of any indirect interest in freehold land shall be regarded, for the purposes of Section 56(1)(b) of the *Constitution*, as a form of freehold ownership.

Division 2.

Exceptions.

5. APPLICATION OF DIVISION 2.

Where any provision of this Division declares that a particular interest acquired in a certain manner is not to be regarded as a form of freehold ownership—

- (a) the declaration does not, of itself, affect the nature of the interest, or of any other interest, for the purposes of a subsequent acquisition or other transaction; or
- (b) affect the nature or effect of any subsequent acquisition or other transaction.

6. EXCEPTION OF LIFE ESTATES.

A life estate in an interest shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

7. EXCEPTION OF CERTAIN NON-BENEFICIAL INTERESTS.

So far as they do not include beneficial interests, the following interests shall not be regarded as forms of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*:—

- (a) the interest acquired by the Public Curator under Section 44 of the *Wills, Probate and Administration Act 1951*;
- (b) the interest acquired under a probate or letters of administration by an executor, administrator or trustee;
- (c) the interest acquired by a trustee in insolvency;
- (d) any other interest, whether or not of a kind referred to in Paragraph (a), (b) or (c), that is acquired by operation of law or by order of a court;
- (e) any interest that–
 - (i) is analogous to an interest referred to in Paragraph (a), (b), (c) or (d); or
 - (ii) is acquired in circumstances analogous to the circumstances referred to in any of those paragraphs.

8. EXCEPTION OF CONVERTED EQUITABLE INTERESTS.

The additional interest acquired by the holder of an equitable interest on its conversion into, or on the acquisition by him of, the equivalent legal interest shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

9. EXCEPTION OF EFFECT OF REGISTRATION.

The additional interest (if any) acquired by the registration or recording of an interest in favour of the person entitled to be registered or recorded shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

10. EXCEPTION OF EFFECT OF RESTORATION OF TITLES.

The interest (if any) acquired by a person by the making of an order under the *New Guinea Land Titles Restoration Act 1951* (adopted), or by the implementation of such an order, shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

11. EXCEPTION OF “RESERVES”.

The interest acquired under Section 50 of the *Land Act 1996* by a trustee or a beneficiary under that section over land reserved from lease or further lease under Section 49 of that Act shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

12. EXCEPTION OF TITLE BY SURVIVORSHIP.

The interest (if any) acquired by a joint tenant on the death of another joint tenant shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

13. EXCEPTION OF RIGHT OF SALE.

A mere right or power of sale or management under a mortgage or charge, or under an order of a court, shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

14. EXCEPTION OF CERTAIN TRANSACTIONS COMMENCED BEFORE INDEPENDENCE DAY.

Where a contract for the acquisition of an interest was entered into before Independence Day, an interest acquired in pursuance of the contract shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*.

PART III. – CITIZEN CORPORATIONS.

15. GENERAL DEFINITION.

The corporations that are to be regarded as citizens for the purposes of Section 56(1)(b) of the *Constitution* are–

- (a) the State; and
- (b) other governmental bodies within the meaning of Section Sch. 1.2(1) of the *Constitution* that are corporations; and
- (c) Local-level Governments and Local-level Government Special Purposes Authorities; and
- (d) incorporated land groups within the meaning of the *Land Groups Incorporation Act 1974*; and
- (e) business groups within the meaning of the *Business Groups Incorporation Act 1974*; and
- (f) any other corporations that are declared by Act to be corporations that are to be regarded as citizens for the purposes of Section 56(1)(b) of the *Constitution*.

PART IV. – CONVERSION OF INTERESTS TO AVOID FRUSTRATIONS.

16. APPLICATION AND INTERPRETATION OF PART IV.

In this Part–

- (a) a reference to a freehold interest shall be read as a reference to any form of ownership that is freehold ownership for the purposes of Section 56(1)(b) of the *Constitution*; and
- (b) a reference to a frustrated right shall be read as a reference to what would have been, but for the operation of that section, a right to acquire freehold ownership; and
- (c) a reference to the holder of a frustrated right shall be read as a reference to the person who, but for the operation of that paragraph, would have had the right to acquire the freehold ownership; and
- (d) “substitute lease” means a lease granted, or to be granted, in accordance with section 22(1).

17. APPLICATION FOR CONVERSION.

(1) Subject to this Part, the owner of any freehold land or the holder of any frustrated right may apply in the prescribed manner to the Minister for the grant to him of a substitute lease in substitution for his freehold interest or frustrated right, as the case may be.

(2) An application under Subsection (1) shall be accompanied by the prescribed evidence as to other persons who have interests in the land the subject of the application.

(3) Subject to this Part, an application under this section shall be dealt with as prescribed.

18. OFFER OF SUBSTITUTE LEASE.

(1) As soon as practicable after the receipt of an application under Section 17, the Minister shall notify the applicant, in writing, whether he proposes to approve or to reject the application.

(2) The approval of an application may be made subject to such reasonable conditions as the Minister thinks proper and specifies in the notification under Subsection (1), and shall not be unreasonably withheld.

(3) The conditions to which an approval may, under Subsection (2), be made subject include conditions as to the adjustment of rights as between persons who have interests in the land the subject of the application.

19. ACCEPTANCE OF OFFER.

(1) Within such period as is specified in the notice or such further period as the Minister allows, the person to whom notice of a proposal to approve an application is given under Section 18 may, by written notice in the prescribed form, accept the proposal.

(2) On receipt of a notice of acceptance under Subsection (1), the Minister shall cause to be published in the National Gazette details of the proposed approval and any conditions to which it is, under Section 18(2), to be subject.

20. OBJECTIONS.

(1) A person who is aggrieved by—

- (a) a proposal to grant or refuse an application under Section 17; or
- (b) the conditions to which such a proposal is, under Section 18(2), to be subject,

may, within the prescribed time and in the prescribed manner, make an objection to the proposal to the National Court.

(2) On an objection under Subsection (1), the National Court may, by order, direct the Minister—

- (a) to approve the application or to grant a substitute lease; or
- (b) to refuse the application; or
- (c) to make the grant of the application subject to such further or other conditions as it thinks proper for adjusting the rights and liabilities of all persons interested in the land.

21. WITHDRAWAL OF THE PROPOSAL OR ACCEPTANCE.

If on an objection under Section 20 the National Court makes an order of a kind referred to in Section 20(2)(c), then, within the prescribed time—

- (a) the Minister may withdraw his proposal; or
- (b) the applicant may withdraw his acceptance of the proposal,

and the application ceases to have effect.

22. GRANT OF SUBSTITUTE LEASE.

(1) Where a proposal is accepted under Section 19 then, subject to any order made under Section 20(2)(b) and to any action taken under Section 21, the Minister shall, by notice in the National Gazette, grant a lease from the State in accordance with the proposal under Section 18 as varied, if necessary, in accordance with any order under Section 20(2)(c).

(2) A substitute lease shall be granted as soon as practicable after—

(a) the end of the period prescribed under Section 20(1) for the making of objections; or

(b) if an objection is made under Section 20—

(i) the objection is determined; and

(ii) in a case to which Section 21 applies—the end of the period prescribed under that section for the withdrawal of a proposal or an application,

whichever first happens.

23. CONDITIONS OF SUBSTITUTE LEASE.

(1) In this section, a reference to an Act to which this section applies is a reference to an Act made after this Act that—

(a) provides for the conversion of freehold land to land held in some other way; or

(b) makes provision in respect of State leases generally, or for State leases of a class provided for by the *Land Act 1996*.

(2) Until varied by or under an Act to which this section applies, the term of a substitute lease is 99 years.

(3) Subject to any Act to which this section applies, rent is not payable on a substitute lease.

(4) The reservations, covenants and improvement and other conditions of a substitute lease are as determined by or under an Act to which this section applies.

24. EFFECT OF SUBSTITUTE LEASE.

(1) A substitute lease commences on the date of publication of the relevant notice under Section 22.

(2) On the commencement of the substitute lease—

(a) the absolute ownership of the land vests in the State; and

(b) the substitute lease shall, subject to this Act, be deemed to be a State lease granted under the *Land Act 1996* and the provisions of that Act that apply generally to State leases apply accordingly; and

(c) all other rights, titles, interests in, over or in connection with the land take effect, as far as they are capable of so taking effect in relation to the substitute lease.

(3) This Part is not intended to affect the operation of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, and for the purposes of Section 53(2) of the

Constitution the State shall be deemed to be the expropriating authority in relation to any interest (other than a frustrated right) that is adversely affected by the operation of this Part.

25. APPLICATION OF LANDS ACQUISITION (DEVELOPMENT PURPOSES) ACT.

The grant of a substitute lease is not an acquisition of land from the State within the meaning of Section 3(2) of the *Lands Acquisition (Development Purposes) Act*.

26. ANCILLARY TRANSACTIONS.

(1) No transactions that are necessary or convenient to comply with any conditions of an approval of a kind referred to in Section 18(3) are liable to stamp duty or any similar duty.

(2) In the case of a transaction referred to in Subsection (1), the grant of the substitute lease is conclusive as to—

- (a) the power of any person to enter into the transaction; and
- (b) the granting of any consent or approval required under any other law.

PART V. – MISCELLANEOUS.

27. EVASION OF SECTION 56 OF THE CONSTITUTION.

The National Court has all jurisdiction and powers necessary to allow it to make whatever orders appear to it to be desirable to prevent or to nullify an attempted evasion of Section 56(1)(b) of the *Constitution*.

28. REGULATIONS.

(1) In this section, “**the Lands Registration Act**” means the *Land Registration Act 1981*.

(2) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, notwithstanding anything in the Lands Registration Act, in respect of the manner of registration under that Act of anything that is necessary or convenient to give effect to this Act.

Office of Legislative Counsel, PNG