

## CHAPTER 105

### THE LANDS ACQUISITION ACT

*(14th August, 1978)*

Act 10 of 1977

Act 43 of 1978

Act 4 of 1983

Act 3 of 1985

Act 6 of 1987

S.I. 77 of 1987

Act 6 of 1989

S.I. 6 of 1990

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## PART I. - PRELIMINARY

Short title            1. This Act may be cited as the Lands Acquisition Act.

Interpretation      2.(1) In this Act, unless the context otherwise requires-

S.I.12/4/83            "claimant" means a person who has made a claim for compensation under this Act;

"Court" means the Supreme Court;

"Curator" means the Curator of Vacant Estates;

"interest", in relation to land, means a right, power, privilege, mortgage or a beneficial interest, in, over or in connection with the land;

"land" includes an interest in land and buildings on land;

"mortgage" includes a charge and a privilege and mortgagee and mortgagor shall be construed accordingly;

"mortgagee", in relation to a mortgage, means the person (including the Republic) for the time being entitled to the moneys secured by the mortgage;

"mortgagor", in relation to a mortgage, means the owner for the time being of the land which is subject to the mortgage;

"owner" includes a person having an interest in land;

"the date of acquisition", in relation to land compulsorily acquired under this Act, means the date on which the notice under section 4 in respect of the land is published in the Gazette.

(2) A reference in this Act to the acquisition of land or of an interest in land includes a reference to the extinction of an interest in land by virtue of section 4(2).

## PART II - ACQUISITION OF LAND

Right of	3.(1)	Notwithstanding anything in any other opinion that it is
State to		in the national interest so to do, he may, on behalf of the
acquire		Republic, acquire any land.
land		

3/4/1983      (2) Where the Minister acquires land under subsection (1) he may do so either by agreement with the owner of the land or by compulsory acquisition under section 4.

Compulsory	4.(1)	Notwithstanding that an agreement has been entered into
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acquisition            in respect of the acquisition of the land, the Minister may at any  
4/4/1983            time, in relation to any land, certify that it is in the national  
S.I. 77/1987        interest that the land be acquired compulsorily; and where the  
S.I. 6/1990        Minister so certifies, he shall cause to be published in the Gazette a notice  
declaring that the land is acquired in the national interest.

(2)    Upon the publication, pursuant to subsection (1), of a notice in the Gazette, the land to which the notice applies is, by force of this Act, vested in the Republic free and discharged from all interest (including any public right of way, restrictions, reservations, covenants, obligations, contracts, licences, charges and rates).

(3)    The land, being an interest in land, acquired under this section may be an interest which previously did not exist as such in, over or in, in connection with land.

(4)    Where land acquired under this section results in the acquisition of part only of a building the owner of the land may, by a notice in the prescribed form served on the Minister not later than thirty days after the date of acquisition of the land, require the Minister to acquire such additional land, of which he is the owner as is necessary to secure the acquisition of the whole of that building and, with effect from the date on which that notice is so served, that additional land shall, for the purposes of this Act, be treated as part of the land acquired on the date of acquisition of that land.

(5)    A survey made pursuant to section 36 may be amended by the Director of Surveys, or a further survey may be made pursuant to that section, in order to show the boundaries of the area of land acquired as altered by reason of the operation of subsection (4) in relation to the extent of those boundaries.

Entry into            5.(1) Where the Minister acquires any land on behalf of the  
possession of        public, he may in writing nominate any public officer to take  
land vested        possession of that land on behalf of the Republic.  
in the

Republic            (2) Where any land vests in the Republic under section 4(2)

2/3/1985                    the Minister may, by notice, require all persons in occupation of

2/6/1987                    the land to vacate and deliver vacant possession of the land, on such day as may be specified in the notice, to the public officer nominated under subsection (1).

(3) Notice under subsection (2) shall contain a description of the land vested in the Republic, shall be served on any person in occupation of the land, if such person can reasonably be ascertained, and shall be affixed to a conspicuous part of the land.

(4) Any person on whom a notice under subsection (2) has been served shall, on the date specified in the notice, vacate and deliver vacant possession of the land to the public officer nominated under subsection (1).

(5) Where any land in respect of which a notice has been issued under subsection (2) is not in the occupation of any person or the person in occupation of the land cannot reasonably be ascertained or does not vacate and deliver vacant possession of the land, the public officer nominated under subsection (1) shall on the day specified in the notice enter and take possession of the land on behalf of the Republic and take such steps as may reasonably be necessary to prevent any unlawful entry on or unlawful occupation of the land.

(6) Where any public Officer nominated under subsection (1) apprehends any resistance to taking possession of a land specified in a notice under subsection (2), he may call for and obtain the assistance of any police officer and may use such force as may reasonably be necessary to take possession of the land on behalf of the Republic.

(7) Any person who fails to comply with a notice under subsection (2) or resists or obstructs any public officer nominated under subsection (1) in taking possession of any land described in a notice under subsection (2) shall be guilty of an offence and liable on conviction to imprisonment for two years and to a fine of Rs. 20.000.

(8) The preceding provisions of this section shall be without prejudice to any other method, the Minister may avail of, in taking possession of land vested in the Republic under section 4(2).

Conversion                6.(1) Subject to subsection (2), the interest of every person



of interest            in the land (being an interest to which a notice under section 4  
in land into           applies) is, on the date of the acquisition of the land, converted  
claim for            into a right to compensation under this Act.

compensation

S/4/1983            (2) Where, in accordance with section 4(3), an interest in, over or in  
connection with land is acquired, the interest of every person in that land, is on the date of the  
acquisition, and to the extent to which that interest is affected by the acquisition, converted  
into a right to compensation under this Act.

(3) Where any person has, in good faith, made any payment in anticipation of the purchase  
of an interest in any land which is acquired under this Act and the interest was not transferred  
to that person before the date of acquisition, that person shall, for the purpose of this Act, be  
treated as if he had an interest in the land being an interest which is, at the date of acquisition  
of the land, converted into a right to compensation under this Act.

No challenge        7.(1) No person shall challenge the validity or legality of any  
to legality           acquisition of land under this Act on any ground whatsoever and no  
of acquisition       court shall, in any proceedings and on any ground whatsoever, have  
6/4/1983            jurisdiction to pronounce upon the validity or legality of such  
2/6/1987            acquisition.

(2) In this section "court" means the Court of Appeal, the Supreme Court, the magistrate's  
court or any other court established by any Act.

Notice to            8.     Where land is compulsorily acquired under this Part, the  
owner                Minister shall as soon as practicable after the date of the acquisition of the  
land, cause a copy of the notice of acquisition of the land to be served upon the owner of the  
land.

Supreme Court    9.(1) Notwithstanding anything contained in this Act, where

may adjust            land is compulsorily acquired under this Part, the Court may, upon rights            the application of the Republic or any other person intertested, make such orders as it thinks proper for declaring or adjusting rights and liabilities in connection with the land or with transactions in relation to the land or otherwise affected by the acquisition.

(2) Without limiting the generality of the powers conferred by subsection (1), the orders which may be made under that subsection shall include -

- (a) an order for the payment or repayment of moneys;
- (b) an order discharging a person from an obligation to pay moneys;
- (c) where there was a subsisting contract of sale of the land, an order with respect to the rights and liabilities of the parties to the contract;
- (d) where part of land that is subject to a lease is acquired -
  - (i) an order altering the rent payable in respect of that part of the land which is not acquired or apportioning rent between the part acquired and the part not acquired; or
  - (ii) an order cancelling the lease in respect of that part of the land which is not acquired if the Court considers that the remainder of the land is unsuitable for the purpose for which the land was leased;
- (e) where there was a charge or encumbrance over the land-
  - (i) an order releasing a person in whole or in part from a personal covenant or obligation in relation to the charge or encumbrance ; and

(ii) an order apportioning the charge or encumbrance between the land acquired and other land subject to the charge or encumbrance.

(3) Where the Court has made an order under subsection (1) in relation to any land, compensation in relation to that land shall, notwithstanding any other provision of this Act, be determined having regard to the effect of that order.

(4) Where the Republic is not a party to proceedings under this section, the Court may order the Republic to be joined as a party if the Court thinks it desirable to do so either in relation to the making of an order as to costs or otherwise.

### PART III. - COMPENSATION FOR COMPULSORY ACQUISITION

#### Division 1 - Claims for Compensation

Making,                    10. (1) A person who has a right to compensation under section 6  
acceptance                may make a claim for compensation in accordance with a  
and rejection            prescribed form stating the amount of compensation claimed.  
of claims

(2) Compensation is not payable to a person in respect of an interest in land acquired compulsorily under this Act if a claim for compensation in accordance with subsection (1) is not served on the Minister by that person in respect of that interest within 90 days after the date of acquisition.

(3) Where a claim for compensation is made, the Minister shall, except where compensation is not payable by reason of the operation of subsection (2), consider the claim and, if satisfied that the claimant has produced prima facie evidence that he had, the interest claimed by him in the land, the Minister shall accept the claim for determination, but, if not satisfied, the Minister shall reject the claim.

(4) The Minister shall, within 3 months after a claim for compensation is made, notify the claimant whether he accepts the claim for determination or rejects the claim and, if the Minister fails to do so, he shall be deemed to have accepted the claim for determination.

(5) The acceptance of a claim for determination under this section does not entitle the claimant to payment of compensation otherwise than in accordance with Division 6.

Proceedings      11.(1)      Where a claim for compensation has been rejected by the  
where claim      Minister, the claimant may bring an action against the Republic in  
rejected      the Court claiming a declaration that he was, immediately before the date  
of acquisition of the land, entitled to the interest specified in the claim made to the Minister.

(2) The Court, after notice to such persons as it directs, shall hear the action and may declare that the claimant was entitled to the interest specified in his claim to the Minister or to some other interest, or may dismiss the action.

(3) For the purposes of this Act, an order of the Court under this section is binding on the Republic and on all persons who had interests in the land immediately before the date of acquisition of the land, whether or not they were represented before the Court on the hearing of the action.

(4) Where the Court, in pursuance of this section, declares that a claimant had an interest in land, compensation in respect of

the interest shall be determined in accordance with this Act as if the claim had been accepted by the Minister and, if the interest declared by the Court differs from the interest specified in the claim to the Minister, the claim shall be deemed to be amended accordingly, and the claimant may, within thirty days of the date of the declaration by the Court, by notice served on the Minister, amend the amount of compensation claimed by him pursuant to section 10(1).

(5) Where, in relation to a claim for compensation that has been rejected by the Minister -

- (a) the claimant does not, within sixty days after service on him of the notice of rejection of the claim, institute an action under this section in relation to the claim ; or
- (b) the claimant has so instituted an action and the action has been dismissed,

the Republic may pay compensation in respect of the acquisition on the basis that the claimant was not, at the date of acquisition, entitled to the interest the subject of the claim.

(6) Where an action is instituted under this section the Court may, upon the application of the Republic, the claimant or any other person appearing to the Court to have a sufficient interest to justify the application (which application may be made at any time after the issue of the writ in the action, whether before or after the making of any declaration under subsection (2)), order that the action shall be treated as including proceedings duly instituted under section 18 for the determination of the amount of compensation under this Act in respect of the interest (if any) which the Court declares the claimant to have had.

(7) the provisions of section 18 (other than subsections (1) and (2)) apply to and in relation to proceedings consequent upon the making of an order under subsection (6).

#### DIVISION 2. - Principles upon which Compensation is to be assessed

Matters to be considered in determining compensation. 12. In the determination of the amount of compensation payable in respect of land compulsorily acquired under this Act effect shall be given to the principles set out in the Second Schedule.

#### DIVISION 3. - Determination of Compensation by agreement

Agreement to amount of compensation for acquisition. 13.(1) The Minister may, on behalf of the Republic, enter into an agreement with the owner of land as to the amount of compensation to which the owner will be entitled if the land is compulsorily acquired under this Act within a time specified in the agreement.

(2) If the land is compulsorily acquired under this Act within the time specified in the agreement and while the owner who made the agreement is still the owner of the land, the

compensation payable to the owner in respect of the acquisition shall be deemed to have been determined by agreement at the amount specified in the agreement.

(3) Where a claim for compensation is accepted for determination under section 10, the amount of compensation to be paid may be determined by agreement between the Minister and the claimant.

Compensation      14. Compensation under this Division may take the form of land  
in form of          given in exchange for the land acquired.  
land

#### DIVISION 4. - Determination of Compensation by arbitration

Determination      15.(1) The Minister and a claimant may, instead of determining  
of claim            by agreement the amount of compensation to be paid in respect  
by                    of the compulsory acquisition of land, agree to submit the  
arbitration.        determination of that amount to arbitration in accordance with this section.

(2) Where an agreement for arbitration is made, the rules made under section 16 apply to and in relation to the arbitration.

(3) An award upon an arbitration is binding on the parties to the agreement for arbitration.

Rules for            16. The Minister, after consultation with the Chief Justice,  
arbitration          may make rules with respect to arbitration pursuant to an agreement under  
section 15, the appointment of arbitrators and the practice and procedure to be followed in the  
conduct of the arbitration.

Revocation            17.(1)    If, at any time after an agreement for arbitration is made  
of agreement        in relation to a claim by a person in respect of an interest in  
to arbitrate        land and before the award is made upon the arbitration in pursuance of that  
agreement, another person makes a claim for compensation in relation to that interest or  
another interest in that land or the Minister learns of another person who may be entitled to  
make such a claim, the Minister may revoke the agreement.

(2)        Where the Minister revokes an agreement under subsection (1), the Republic is  
liable to pay the reasonable costs of and incidental to the agreement and, if the arbitration  
has commenced, of and incidental to the arbitration.

#### Division 5 - Determination of Compensation by the Supreme Court

Proceedings        18.(1) Where, in the case of a claim for compensation which has  
for determi-        been accepted by the Minister -  
nation of

compensation        (a)    a period of three months has elapsed since the claim was made,  
but the compensation has not been determined by agreement ; or

(b)    before that period has elapsed, the Minister has made an offer in writing to the claimant  
of an amount as compensation but the claimant has not accepted that amount or any other  
amount offered by the Minister,

the claimant may, unless an agreement for the determination of the compensation by  
arbitration is in force, institute proceedings against the Republic in the Court for  
determination of the amount of compensation under this Act in respect of the interest the  
subject of the claim.

(2) The writ of summons shall state the amount of compensation the claimant claims and  
the interest in respect of which it is claimed.

(3) Where proceedings under this section have been instituted in relation to an interest in  
land, the Court may, on the application of the Republic, by order direct any other person who

has claimed compensation arising out of the acquisition of that interest or of another interest in that land acquired at the same time, or who appears or claims to have had, immediately before the date of acquisition, an interest in that land that has been acquired at the same time, to join as a plaintiff in the proceedings within a time specified in the order.

(4) If a person so directed fails to join as a plaintiff within the time specified in the order, he is absolutely debarred from thereafter instituting an action against the Republic for the determination or recovery of compensation arising out of the acquisition of the interest that was the original subject of the proceedings or of any other interest in the same land that was acquired at the same time.

(5) The determination of the Court in proceedings under this section is binding on the parties to the proceedings.

Determination      19.(1) Where, in the case of a claim for compensation which has  
of compensa-      been accepted by the Minister, the Minister has made an offer in  
tion on the      writing to the claimant of an amount of compensation in respect of  
application      an interest claimed by claimant in the land and -  
of the

Republic              (a) the compensation has not, within sixty days after the making of  
the offer, been determined by agreement, by arbitration or by the Court; and

(b) proceedings in which the claimant is a plaintiff for determination of compensation under section 18, or proceedings in an arbitration in respect of the claim, are not pending,

the Republic may apply to the Court for a determination of the amount of compensation under this Act in respect of the interest the subject of the claim.

(2) The determination of the Court in proceedings under this section is binding on the parties to the proceedings.



Rules by                    20.(1)     The Chief Justice may make rules for the purposes of  
Chief Justice            section 18 and 19 with respect to the practice and procedure of the Court in  
relation to proceedings under those sections.

(2) The Court shall not, except with the consent of the parties, in proceedings, pursuant to section 18 or 19, direct a reference to arbitration.

(3) Where, with the consent of the parties, the Court directs a reference to arbitration, the rules made under section 16 shall apply with respect to the arbitration, subject to the rules made under subsection (1) and to any directions of the Court given in relation to an arbitration in any particular case.

(4) Where, with the consent of the parties, the Court directs a reference to arbitration, the award upon the arbitration is binding on the parties to the arbitration and shall not be subject to any review by the Court.

Payment of                21.     Nothing in this Part, or in a determination of the Court,  
compensation            or an award upon an arbitration, under this Part, entitles a person  
determined                to receive payment of compensation otherwise than in accordance with  
Division 6.

#### Division 6 - Payment of Compensation

Form of                    22.(1) Compensation under this Part may be either paid in cash or  
compensation            in the form of a bond.

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(2) The President, after consultation with the Minister, and having taken into account the national interest and all the relevant circumstances of the case, including any hardship which may occur as a result of his decision, will determine in every case whether payment of compensation will be in the form of a bond or of payment in cash or partly by bond and partly by cash, and where more than one person is entitled to compensation in respect of any

acquisition, it shall be lawful to determine that compensation shall not be paid in the same form to each person.

(3) The Minister shall prescribe the terms upon which bonds are to be issued, but, notwithstanding the terms of issue, a bond may be redeemed at any time if, in the opinion of the President, the national interest so requires.

Payment of            23.(1)    When the amount of compensation to which a person is  
compensation        entitled under section 6 has been determined, that amount shall be paid to  
that person when he has -

(a) made out, to the satisfaction of the Land Registrar, a title, as at the date of the acquisition, to the interest in respect of which the compensation is payable;

(b) produced or surrendered all deeds and documents relating to, or evidencing, that title which the Land Registrar reasonably requires to be produced or surrendered, as the case may be; and

(c) executed such documents as the Land Registrar reasonably requires.

(2) Subsection 1(a) does not apply where the Court has, under section 11 or 25 declared or determined that the claimant had, immediately before the date of acquisition of the land, the interest in respect of which the compensation payable.

Deposit of            24.(1)    If, at the expiration of three months after the  
compensation        determination of the amount of any compensation, the person entitled to the  
compensation has not, by reason of some default or delay on his part, received payment of the  
compensation, the Minister may deposit the amount of compensation in the Treasury.

(2) If, before the amount of compensation is deposited in the Treasury, the Minister has notice of any rates, taxes or assessments charged upon the land and due at the date of

acquisition, he may deduct the amount of those rates, taxes or assessments out of the amount of compensation, and deposit the balance in the Treasury.

(3) An amount of compensation deposited in the Treasury under this section may be paid to a person who complies with the requirements of section 23.

Order that            25     Notwithstanding the provisions of sections 23 and 24 where  
claimant is            a person claims to be entitled to an amount of compensation  
entitled to            determined in respect of any land by agreement, by arbitration or  
compensation        by the Court (including an amount which has been deposited in the  
Treasury), the Court may, upon the application of that person and upon proof, to the  
satisfaction of the Court, of his title, immediately before the date of acquisition, to the interest  
in land in respect of which the compensation was payable, declare that that person is entitled  
to the compensation, and may order the payment of the compensation to that person, subject  
to such conditions as it thinks fit.

Limit of              26.     Where the interest being acquired is not the full  
compensation        unencumbered ownership of the land, the amount of compensation  
for interest           payable shall not exceed the amount which would have been payable  
in land                in the case of an acquisition of the full unencumbered ownership of  
8/4/1983              the land.

#### PART IV. - MORTGAGES OVER LAND COMPULSORILY ACQUIRED

Rights of            27.(1) Where any land compulsorily acquired under this Act was,  
mortgagee on        at the date of acquisition subject to a mortgage, the mortgagee may  
acquisition          either -

of land

(a) claim compensation under Division 1 of Part III; or

(b) by notice to the Minister, waive his rights to compensation.

(2) If the mortgagee makes a claim for compensation, he shall set forth in his claim -

(a) the amount of principal due under the mortgage at the date of acquisition of the land; and

(b) the amount of interest, costs and charges due under the mortgage at that date.

(3) The Minister may, by notice in writing served on a person who is or may be a mortgagee, require that person, at his option -

(a) to make a claim under this Act for compensation as mortgagee ; or

(b) to waive his rights to compensation.

(4) If a person fails to make a claim for compensation in accordance with this Act within thirty days after the service of the notice, he shall be deemed to have waived his rights to comeprnsation as mortgagee.

(5)Where a mortgagee claims compensation under this Act the acquisition of the land shall, to the extent to which the compensation payable to the mortgage debt, and interest, costs mortgagee under section 31(1) is sufficient to satisfy the mortgage debt, and interest, costs and charges due to the mortgagee, as at the date of acquisition, be deemed to have had the effect of extinguishing the liability of the mortgagor under the mortgage as from the date of acquisition.

(6) A mortgagee who waives his rights to compensation is absolutely debarred from claiming or recovering as mortgagee any compensation or other amount from the Republic.

(7) Waiver of his rights to compensation by a mortgagee, or failure by a mortgagee to claim compensation, does not affect his rights and remedies against the mortgagor or in respect of land included in the mortgage other than the land acquired.

Interest,	28.	Where an amount has been paid to or recovered by a
etc., paid		mortgagee under a mortgage in respect of a liability which, upon
by mortgagor		the making of a claim by a mortgagee is deemed to have been
after date of		discharged as from the date of acquisition by virtue of section
acquisition	27(5) -	

(a) the mortgagee is liable to repay that amount to the person who paid it ; and

(b) the Republic may deduct from the compensation payable to the mortgagee and pay to the person who paid that amount so much of the amount as has not been so repaid, and a payment so made by the Republic shall be deemed to have been made in discharge of the obligation of the mortgagee under paragraph (a).

Court may	29.(1)	Where any land compulsorily acquired under this Act was,
order stay of		at the date of acquisition, subject to a mortgage, and proceedings
proceedings		by the mortgagee in relation to the mortgage were pending at the
under		date of acquisition or are commenced or proposed to be

mortgage commenced after that date and before compensation has been paid in full to the mortgagor in respect of the acquisition, the Court may, upon the application of the mortgagor and subject to such conditions as it thinks fit, order a stay of those proceedings or enjoin the mortgagee against commencing or continuing those proceedings and make such other orders as it thinks necessary.

(2) In this section, "proceedings" means any action to enforce the rights of the mortgagee under the mortgage, whether or not the proceedings are in court, including action with a view to taking possession of or selling land or foreclosing.

Separate rights of mortgagee and mortgagor to determination of compensation

30. Subject to sections 18 and 19, the rights of a mortgagor claiming compensation are not affected by a determination of the compensation payable to a mortgagee, and the rights of mortgagee, claiming compensation are not affected by a determination of the compensation payable to the mortgagor or another mortgagee, unless he was a party to the agreement or proceedings by which the compensation was determined.

Compensation to mortgagee.

31.(1) The compensation payable to a mortgagee is an amount equal to the sum of -

(a) the principal secured by the mortgage at the date of acquisition ; and

(b) any interest, costs or charges due to the mortgagee under the mortgage at that date, but not exceeding the compensation payable to the mortgagor in respect of the land.

(2) For the purposes of subsection (1), the compensation payable to the mortgagor shall be deemed to be -

(a) if there was only one mortgage over the land, the compensation that would have been payable to the mortgagor if there had been no mortgage over the land ; or

(b) if there were more mortgages than one over the land, the compensation that would have been payable to the mortgagor if there had been no mortgage over the land, less the amount,

or the sum of the amounts, of principal, interest, costs and charges due at the date of acquisition to a mortgagee or mortgagees in respect of a mortgage or mortgages having priority over the mortgage in respect of which the compensation is to be determined.

Execution of discharge      32.    Upon payment or tender of the compensation to the mortgagee, he shall, if so required by the mortgagor and at the expense of the mortgagor, execute a discharge of the mortgage debt to the extent to which the mortgage debt is discharged by virtue of section 27(5).

Rights of mortgagor where mortgagee does not claim compensation      33.    Where a mortgagee does not claim compensation, the mortgagor is entitled to the same compensation as if the mortgage did not exist.

Reservation of certain rights of mortgagee      34.    Where land which is subject to a mortgage is compulsorily acquired under this Act and the whole or a part of the mortgage debt is not discharged by virtue of this Act, the mortgagee retains, in respect of the whole or that part of the mortgage debt, as the case may be, his rights and remedies against the mortgagor (other than his rights and remedies in relation to the land acquired) and in relation to any other land which is subject to the mortgage.

#### PART V. - MISCELLANEOUS

Power      35.(1)    A person authorised by the Minister to act under this

to examine                      section may, for the purpose of ascertaining whether land is

lands                              suitable for a public purpose, or of surveying or obtaining information in relation to land which he considers suitable for such a purpose, on giving twenty-four hours notice to the occupier (if any) of the land -

(a) enter upon the land, or upon adjoining land, with such persons, vehicles and things as he thinks fit ; and

(b) make surveys, take levels, sink pits, examine the soil and do any other things in relation to the land.

(2) If a person hinders or obstructs a person authorised under this section to enter on land in the exercise of any of his powers under this section he is guilty of an offence and liable on conviction to a fine not exceeding five hundred rupees or to imprisonment for a term not exceeding six months, or both.

Survey signed              36.    A survey purporting to be signed by the Director of  
by Director                Surveys showing the boundaries of an area of land which has been  
of Surveys is              or is to be compulsorily acquired shall be received as conclusive  
conclusive                evidence of the boundaries of that area.  
evidence

S.I. 77 of  
1987  
S.I. 6 of 1990.

Terms and                37.    Where a person was in possession of land compulsorily  
conditions                acquired under this Act immediately before the date of acquisition  
under which              of the land, the Minister may enter into an agreement with that  
person may                person under which that person is permitted to remain in possession



remain in                      of the land on such terms and conditions as are specified in the  
possession of                agreement.  
acquired land

Interest on                38.(1)     Where any land is compulsorily acquired under this Act,  
compensation            the Minister may determine that compensation payable in respect  
2/6/1987                of that land shall bear interest at such rate as he may fix.

(2) Where the Minister makes a determination under subsection (1) interest is payable on the amount of compensation from the date of acquisition of the land -

(a) subject to paragraph (b) or (c), to the date on which payment is made to the claimant ;

(b) where the amount of compensation is deposited in the treasury in accordance with section 24, to the date on which the amount is so deposited ;

(c) where the amount of compensation determined by a Court or upon an arbitration does not exceed an amount of compensation offered by the Minister, to the date on which the offer of the Minister was received by the claimant.

(3) Except where the Minister makes a determination under subsection (1), an amount of compensation payable in respect of the compulsory acquisition of any land under this Act shall not bear interest.

Withdrawal                39.(1)     The Minister may, at any time before payment of  
from                      compensation under Part III in respect of the compulsory  
acquisition                acquisition of land, by notice in the Gazette, withdraw from

2/6/1987            the acquisition of the land on the publication of that notice under section 4(1) applying to the land shall be void and of no effect, and any liability to pay compensation in respect of the acquisition (except as provided in subsection (2)) shall cease.

(2) Where the owner of an interest in land (being a person entitled to compensation under section 6), suffers any loss by reason of the withdrawal from the acquisition of the land, the Republic is liable to pay him such compensation as is determined by agreement between the owner and the Minister or, in the absence of agreement, by action by the owner against the Republic in a court of competent jurisdiction.

Payment to            40.    All payments and deposits made on behalf of the Republic  
be a good            by virtue of this Act are good and valid discharges to the  
discharge            Republic, and the Republic is not bound to see to the application of the  
money paid or deposited.

Acquisition           41.    Nothing in this Act shall be construed as preventing the  
by other            Republic from acquiring land by agreement otherwise than in  
means.            accordance with this Act.

Civil Code            42.    Where land is compulsorily acquired under this Act the  
of Seychelles        provisions of Article 545 of the Civil Code of Seychelles shall be  
Cap. 33            deemed to have been complied with for all purposes.

Cases in            43.(1) Subject to subsection (3), where -  
which the  
Curator is

owner of land            (a) there is no known owner of any land ;

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(b) the owner of any land is an interdicted person or is a person to whom the Curator has been appointed ;

(c) the owner of any land is not present in Seychelles or is on the outlying islands ;

(d) there is doubt as to the identity of the owner of any land; or

(e) any land is subject to substitution or to any restriction as to its transfer or transmission,

the Curator shall be deemed to be owner of that land for the purposes of this Act.

(2)Where, pursuant to subsection (1), the Curator is owner only of an interest in any land, the interest in the land of any other owner (not being an owner to whom that subsection applies) is not affected.

(3)The Curator ceases to be owner of any land -

(a) in any case where he is owner by reason of subsection (1) (b) ceases to be subject to the disability concerned; or, if the person referred to in subsection (1) (b).

(b) in the case where he is owner by reason of subsection (1) (c), if the person referred to in subsection (1) (c) is present in Seychelles, or is no longer on the outlying islands and is present in Seychelles,

and the person referred to in subsection (1) (b) or, as the case may be, subsection (1) (c) notifies the Curator in writing that he wishes to exercise the rights of an owner for the purposes of this Act, giving in the notification an address in Seychelles (not being an address on any part of the outlying islands) at which any notice or other document required or permitted by this Act to be served on or given to any owner of land may be served on or given to him.

(4)The Curator shall forthwith inform the Minister when he ceases, pursuant to subsection (3), to be an owner of any land.

(5)Any matter or thing done by or in relation to the Curator an an owner of any land is not affected if the Curator ceases, pursuant to subsection (3), to be the owner of the land, and the matter or thing has the same force and effect as if done by or in relation to the person becoming owner of the land on that cessation.

(6)In this section, "outlying islands" means the islands or groups of islands listed in the First Schedule.

(7)The Minister may, by order, amend the First Schedule.

Powers of            44.(1)    A person possessed of or entitled to land, or having the  
limited                management of land on behalf of a person under a legal disability,  
owners               particularly -

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Cap. 55                (a) the Curator in any case under the Curatelle Act ;

(b) a guardian, a sub-guardian or a curator ;

(c) a corporation which has no power or limited power only to dispose of land ;

(d) a fiduciary or an executor ;

(e) a person for the time being entitled to the receipt of the rents and profits of land in possession ; or

(f) a lessee,

may, by force of this Act, and notwithstanding anything to the contrary in any enactment, deed, will, memorandum or articles of association or instrument -

(i) lease, sell, transfer or convey to the Republic the land or interest in the land ;

(ii) if the land is compulsorily acquired by the Republic under this Act -

(A) subject to this Act, make or join with another person in making a claim for compensation ; and

(B) accept or not accept an offer of compensation by the Minister ; and

(C) take any action authorised by this Act to be taken by a claimant to determine a disputed claim for compensation ; and

(iii) enter into an agreement incidental to the exercise of a power conferred by this section.

Service of                    45.(1)A claim, notice or other document required or permitted by  
notices etc.,                this Act to be served on or given to -

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(a) the Minister, shall be served at or sent by registered post to such address as may be prescribed ;

(b) the owner of land, shall -

(i) in the case of the Curator, be served at or sent by registered post to the office of the Curator ;

(ii) in the case of a corporation, be served at or sent by registered post to the registered office, or principal place of business, in Seychelles, of the corporation ;

(iii) in the case of a person exercising pursuant to section 43(3) the rights of an owner for the purposes of this Act, be served on or given by delivering it to that person by registered post at the address given by that person, pursuant to that section ; or

(iv) in the case of any other person, be served or given by delivering it to that person personally or by sending it to that person personally or by sending it to that person by registered post at the address last known to the Minister or to a delegate of the Minister.

(2)Where a claim, notice or other document is sent by registered post, pursuant to subsection (1), service shall be deemed to have been effected or given, unless the contrary is proved, at the time at which the claim, notice or document would be delivered in the ordinary course of post.

Ranking of            46.(1)    Where more than one person is entitled to compensation in  
compensation        respect of different interests in the land or on different grounds  
10/4/1983            under this Act payments of compensation shall rank in the following order -

(a) in any case where there is a mortgage over the property, the mortgagee ; and where there is more than one mortgage, preference shall be given to the mortgagee who, but for this Act, would rank first ;

(b) where any person is entitled to compensation by virtue of section 6(3) of this Act, that person and ;

but nothing in this section shall require the payment of compensation which in aggregate exceeds the amount of compensation payable to the owner had the persons referred to in paragraphs (a) and (b) not been entitled to compensation.

Compensation        47.    For avoidance of doubt, the amount of compensation payable

to mortgagee      to a mortgagee under section 31 shall be deducted from the amount  
to be deducted      of compensation which would have been payable to the mortgagor  
from compensa-      if the mortgage did not exist.  
tion payable  
to mortgagor  
2/6/1989

Registration      48.(1)      Where land is acquired under this Act, the Minister shall  
of interest      cause a copy of the notice of the acquisition of the land to be  
2/6/1987      given to the Land Registrar who shall register the acquisition by  
Cap. 107      the Republic under the Land Registration Act, and where the Republic has  
acquired ownership of the land the Land Registrar shall, notwithstanding section 11 of that  
Act, register the Republic as absolute proprietor.

(2) Where the Minister withdraws under section 39 from the acquisition of any land, the  
Minister shall cause notice of that fact to be given to the Land Registrar who shall, and is  
hereby empowered to, cancel the registration made pursuant to subsection (1) in respect of  
that acquisition.

Registra-      49.      Where land is acquired under this Act, being land which  
tion where      forms part, but not all, of a parcel of land which is registered  
only part      under the Land Registration Act, the Land Registrar on being  
of land      notified that the land has been so acquired and where he is  
acquired      satisfied that the land acquired has been surveyed in accordance  
9/4/1983      with the Land Survey Act shall -

Cap. 107

Cap. 109      (a) close the register in respect of the parcel so registered ; and

(b) open a new register in respect of -

(i) the land acquired, showing the Republic to be the absolute owner of the land free of all encumbrances ; and

(ii) the remainder of the parcel, showing all entries recorded in respect of the parcel at the close of the original register referred to in paragraph (a).

Domaine                      50.              The powers under this Act shall not be exercised in  
public not                      relation to land within the boundaries of the domaine public as  
affected                      defined under the Delineation and Classification of the Domaine  
Cap. 60                      Public Act.

Regulations              51.              The Minister may make regulations prescribing all matters  
which by this Act are required or permitted to be prescribed, or  
which are necessary or convenient to be prescribed for carrying out  
or giving effect to this Act.

## FIRST SCHEDULE

(Section 43)

## OUTLYING ISLANDS

Alphonse Group



Amirantes Group (including Desroches)

Assumption Island

Bird Island

Cosmoledos Group

Coetivy

Flat Island (Ile Plate)

Providence Island

Astove Island

Denis Island

Farquhar Group

St. Pierre Island

Aldabra

## SECOND SCHEDULE

Dec 43 of 1978

(Section 13)

Act 6 of 1987

## ASSESSMENT OF COMPENSATION

### PART I. - PRINCIPLES

Interpreta-

tion.

1. Notwithstanding any definition in Section 2 of this Act or

any other law, the following terms shall for the purposes of assessing compensation payable under this Act have the meanings hereunder assigned to them :-

"land" means the surface area of the land and any natural features, crops, tress or growth thereon and any quarry, mineral or other rights attaching thereto or thereunder, being compulsorily acquired under this Act;

Cap. 237 "buildings" means any building as defined in Section 2 of the Town and Country Planning Act and any equipment fittings and fixtures therein being compulsorily acquired under this Act.

Basis of 2. Compensation shall be determined separately in respect of  
compensation land and buildings as follows :-

(a) Compensation in respect of land shall be assessed by reference to the return derived therefrom in the manner prescribed in Par II of this Schedule.

(b) Compensation in respect of buildings shall be assessed by reference to their current use value in the manner prescribed in Part III of this Schedule.

## PART II - ASSESSMENT OF VALUE OF LAND BY RETURNS THEREFROM

Assessment 3. Subject to the provisions of paragraph 4 the return on  
of Return on land valued for compensation under this Part shall be assessed at

the land. the average annual income accruing from the use, exploitation or letting of the land during the three years prior to the date of acquisition excluding any income which was attributed to the use, exploitation or letting of any buildings and after deducting all current expenses including depreciation if any necessarily incurred to secure such income. No tax on income, nor any interest or charges payable on any loans shall be deducted as expenses for this purpose.

Fluctuations 4.(1) If it shown conclusively that :-  
in Return.

(a) the income from the land as assessed under paragraph 3 has been exceptionally and temporarily reduced during the three year period by incapacity of the owner being a working proprietor, by fire, flooding, drought, land movement, disease of crops or stock, force majeure, or any other factor beyond the owners's reasonable control and not due to lack of investment, neglect of good husbandry or management, then an equitable adjustment may be made to the return as assessed under paragraph 3;

Capital etc,	(b) expenditure of a capital, long term or
expenditure	exceptional nature has been incurred in good
not reflected	faith on the improvement of tilth, drainage,

in the return. productivity or condition of the land or on any long term crops or timber thereon and that the benefits of such expenditure have not yet been reasonably reflected in the return assessed under paragraph 3 then, at the option of the Minister EITHER the said return may be increased by an equitable amount agreed upon by him with the owner or by arbitration OR the amount of compensation calculated on the said return under paragraph 5 may be increased by the amount of such expenditure less any depreciation, consumption or wastage thereon shown or deemed to have occurred since that expenditure was incurred.

(2) No expenditure which ought to have been declared to the income tax or any other government authority shall be admitted under sub-paragraph (1) (b) unless and to the extent that it is shown to have been duly declared to the said authorities and not to have been effectively deducted from any taxable income.

Calculation	5.(1) The amount of compensation payable under this Part shall
of compensa-	be calculated by multiplying the annual return assessed under
tion based on	paragraph 3 by one hundred and dividing the result by the highest
Return from	annual percentage rate of interest payable on time deposits of 6
the land.	months or more with licensed bankers in Seychelles.

(2) The rate of interest referred to in the preceding sub-paragraph shall be determined by the Central Bank of Seychelles. A certificate signed by or on behalf of the chief executive of the said Bank, to the effect that the rate of interest specified therein has been determined to be that applicable for the purposes of sub-paragraph (1) preceding shall be conclusive evidence thereof and shall not be called in question in any Court.

### PART III. - ASSESSMENT OF CURRENT USE VALUE OF BUILDINGS

Current use.        6.(1) The current use value of buildings valued for compensation under this Part shall be the amount which the buildings might be expected to realise at the date of acquisition if sold between a willing buyer and a willing seller on the open market but with right and permission only for continuation or exercise of the same actual current and lawful use, but without any permission, right, expectation or prospect of changing the said use or receiving any further planning, building or other permission or right not actually enjoyed or granted and still valid (unexpired) at the date of acquisition.

Cap. 134.            (2) The amount of compensation shall be assessed on the

Cap. 226.            assumption that a willing purchaser would have been responsible for

Cap. 107.            the payment of all fees and duties under the Mortgage and Registration Act, the Stamp Duty Act and the Land Registration Act.

(3) Where any interest in the land acquired is extinguished by virtue of section 4(4), in assessing the compensation payable in respect of that interest regard shall be had to any diminution in the value of the interest of the claimant (if any), in other land by reason of the interest in land acquired being extinguished.

### PART IV. - GENERAL AND SAVING PROVISIONS

Use contrary        7.        Where the return on the land or the current use value of

to law.                the buildings is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or which is contrary to law or detrimental to the health of the occupants of the land or premises or to the public health, or which is of an immoral nature, the amount of that increase shall not be taken into account.

Bona fide.           8.        Where any land or building is, and but for the compulsory

reinstatement       acquisition would continue to be devoted to a purpose the nature of which does not give rise to any significant income or current use value respectively then if the Minister is satisfied that the owner intends bona fide reinstatement in the same use elsewhere compensation may be assessed on the reasonable cost of such reinstatement.

Acquisition 9. If it is conclusively shown that -  
diminishes  
or increases (a) the acquisition or severing of any land or  
income derived buildings being acquired or the use to which it  
from adjacent is to be put injuriously affects or diminishes  
land. the income derived from any land or the current use value of any  
building which is adjacent thereto and owned by the same person, or vice versa that it  
increases the said income or value; or

(b) in the case of acquisition of business premises that there is a loss of goodwill,

then an equitable adjustment (increase or decrease) may be made to the compensation assessed under Part II or Part III of this Schedule.

Fees paid to 10. In addition to the compensation assessed under this  
legal practi- Schedule a claimant may recover any fees shown to have been  
tioner, reasonably incurred and paid to a legal practitioner, surveyor or  
surveyor or Valuer in respect of his claim for compensation. In the event of  
valuer may be any dispute as to what fees are reasonable the same shall be  
recovered. determined by the Attorney-General.

Matters not 11. The following matters shall not be taken into  
to be taken consideration in assessing compensation, namely -  
into consider-  
ation on (a) the acquisition being compulsory or the degree of  
assessing urgency or necessity which has led to the

compensation.                      acquisition;

(b) any disinclination of the owner to part with the land or building;

(c) any damage sustained by the owner which, if caused by a private person, would not render the private person, liable to an action;

(d) any increase in the value of the land or building being acquired which is likely to accrue from the purpose for which the same will be used;

(e) the special suitability or adaptability of the land or building for use for the public purpose for which it is acquired; or

(f) any planning consent obtained, outlay on or improvement of the land made, commenced or effected, after the publication of the notice under section 4 (1) in respect of the land with the intention of enhancing the compensation payable.

Tenant for a              12.(1)      If any land or building compulsorily acquired is in the  
year or from              possession of a person having no greater interest therein than as

year to year.              tenant for a year or from year to year, and if that person is required to give up possession of any land so occupied by him before the expiration of his term or interest in the land, he shall be entitled to compensation equal to the damages to which he would

Cap. 33.                      be entitled as an evicted lessee under Article 1745 of the Civil Code, or, in the case of agricultural land, to the indemnity to which he would be entitled under Article 1746 of that Code.

(2) If a part of any land or building is acquired, such person shall also be entitled to compensation for the damage done to him in his tenancy by severing the land held by him or otherwise injuriously affecting it.

Applicability              13.      Where for the purposes of determining any compensation

of informa-                    under this Act it is necessary to know any particulars of income or  
tion.                            expenditure or any other matter which the owner or lessee is or was  
required by any law to record or to declare or to deposit with  
the Registrar, income tax or any other government authorities, then :-

(a) the owner or lessee shall on written request by the Minister produce and disclose all such information accounts, record, particulars or matters as may be so required; and

(b) the Minister shall not be required to take into account when assessing or offering compensation any sum by way of income or expenditure which is more favourable to the person being compensated than that which he or his representative has so recorded, declared or disclosed.

Development            14.    Where any land or building compulsorily acquired under  
pursuant to            this Act has been developed pursuant to any written agreement or  
written agree-           scheme entered into with the Government and approved by the  
ment with               President, and that agreement or scheme provides for any different  
Government.           method of computing compensation from that provided in this Schedule,  
then the provisions of the said agreement or scheme shall prevail.

Ex-gratia                15.    If the Minister is satisfied that owing to circumstances  
award.                    not foreseen in the Act or Schedule or to other exceptional factors in any  
particular case of compulsory acquisition and compensation -

(a) unwarranted hardship has resulted for the owner, being a bona fide local resident, which is not attributable to any neglect or want of investment, good management or development; or that

(b) the compensation payable does not adequately reflect the investment and development effort of the owner which, in the opinion of the Minister, had been undertaken in good faith and in the interest of national economic development,

he may in his discretion and with the approval of the President make an ex-gratia award of additional compensation in that case.