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CHAPTER 276

FORESTRY

Act 26 of 2001

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FORESTRY

An Act to make provision for the protection, development and sustainable management of forests and the regulation of the forestry industry in Vanuatu, and for related purposes.

PART 1 – PRELIMINARY

1. Application of this Act

This Act applies to all forests and all forestry operations in Vanuatu.

2. Overview of Act

- (1) This Act covers the following main topics:
 - (a) planning for the forestry sector;
 - (b) the requirements for carrying out commercial forestry operations on any land;
 - (c) protection of the forest environment;
 - (d) reforestation;
 - (e) export of timber.
- (2) Part 2 of the Act sets out the general principles for forestry administration, and establishes the Forests Board of Vanuatu. The main task of the Forests Board is to supervise the negotiations for timber rights agreements. Its membership and method of operation are set out in Schedule 1.
- (3) Planning for the forestry sector is done in accordance with Part 3. The Forestry Sector Plan prepared after consultation under that Part is the basic framework for the protection, development and sustainable management of all forests in Vanuatu. Forestry operations cannot be approved outside the Plan's requirements.
- (4) The 2 main requirements for any commercial forestry operations are:
 - (a) an agreement under Part 4; and
 - (b) a licence under Part 5.

There are 3 kinds of agreements under Part 4:

- (i) timber rights agreement (Division 2);
- (ii) timber permit (Division 3);
- (iii) forestry lease (Division 4).

There are 4 kinds of licence under Part 5:

- (i) timber licence (Division 2);
- (ii) mobile sawmill licence (Division 3);
- (iii) sandalwood licence (Division 4);
- (iv) special licence (Division 5).

For the purposes of this Act, a properly completed entry in a prescribed purchase register for a sandalwood licence or a special licence is taken to be an agreement under Part 4.

- (5) The main form of agreement under Part 4 is the timber rights agreement, and the Act sets out the steps which must be followed in negotiating such agreements. The Act also sets out (in Part 5) the rules which apply generally to licences, including the Code of Logging Practice.
- (6) Protection of the forest environment is covered by Part 6. It provides for the declaration of Conservation Areas, and lays down some general environmental restrictions on logging and the lighting of fires in forest areas.
- (7) Reforestation requirements for logged areas will be covered mainly in agreements under Part 4 and licences under Part 5. A forest management charge is imposed by Part 7 on all licence holders.
- (8) Part 8 deals with miscellaneous matters, including the export of forest products, record-keeping, forestry offences and repeal of the present Forestry Act.

3. Interpretation

In this Act, unless the contrary intention appears:

“approved negotiator” means a person approved under section 18 to negotiate a timber rights agreement under Part 2;

“Board” means the Forests Board of Vanuatu established by section 6(1);

“Code of Logging Practice” means the Vanuatu Code of Logging Practice contained in the Forestry (Vanuatu Code of Logging Practice) Order No. 26 of 1998 as amended from time to time;

“commercial forestry operations” means:

- (a) the felling of trees in a forest for the purpose of their sale, or the sale of their products; or
- (b) the removal of timber or other forest products from a forest for the purpose of its sale, or the sale of its products; or
- (c) sandalwood operations; or
- (d) any of the following if done in relation to the sale of timber or forest products:
 - (i) the construction of skid tracks or log landings;
 - (ii) skidding, log measurement, loading or hauling of logs;
 - (iii) the planning, surveying, construction or grading of any road or track;
 - (iv) the construction of any stabilisation works or watercourse crossing;
 - (v) the extraction and spreading of any gravel, coral or rock onto any road or track;
 - (vi) mobile sawmilling;

but it does not include the felling of trees or removal of timber or other forest products by custom owners for sale to ni-Vanuatu in accordance with current customary usage;

“Conservation Area” means an area declared to be a Conservation Area under section 50;

“customary land tribunal” means a land tribunal within the meaning of the Customary Land Tribunal Act [Cap. 271];

“Director” means the Director of Forests;

“fell” includes kill a tree by any means;

“forest” means any area of Vanuatu predominantly covered by trees, and includes areas planted with trees except where such trees are for agricultural purposes;

“Forest Investigation Officer” means a Forest Officer authorised by the Director of Forests to perform the functions and exercise the powers of a Forest Investigation Officer under this Act;

“Forest Officer” means an officer of the Department of Forests;

“forest product” means timber and any other material yielded by a forest;

“forestry lease” means a forestry lease granted under Division 4 of Part 4;

“Forestry Sector Plan” means the Forestry Sector Plan prepared under Part 3, as varied from time to time;

“licence” means a licence granted under Part 5;

“licensee” means the holder of a licence granted under Part 5;

“local government council” has the same meaning as in the Decentralization Act [Cap. 230];

“local government region” has the same meaning as in the Decentralization Act [Cap. 230];

“logging” means the felling of trees in the course of a commercial forestry operation;

“Management Committee” means the Management Committee appointed for the purposes of a timber rights agreement under section 25;

“mobile sawmill” means any type of sawmill or any timber-producing machine that is designed to be set up and moved from one location to another, and includes all portable or wokabout-type sawmills and any chainsaw minimills;

“prescribed” means prescribed by the regulations made under this Act;

“protected species” means a species of plant prescribed as a protected species under section 53;

“regulations” means regulations made under this Act and includes the orders mentioned in section 71(2);

“repealed Act” means the Forestry Act [Cap. 147];

“sandalwood harvesting season” means the period during which sandalwood trees can be legally felled for sale that starts on 1 June and ends on 31 of August each year, unless varied under section 47(6);

“sandalwood operations” means the purchasing or trading of sandalwood and the processing and exporting of sandalwood, sandalwood oil or any sandalwood product;

“sandalwood trading season” means the period during which sandalwood can be purchased and collected from sandalwood owners by a person under a sandalwood licence, being the period that starts on the same day as the sandalwood harvesting season, but ends 2 months after the end of that season;

“sawmill” includes a facility that manufactures lumber, veneer, plywood, wood-chips, pulp, paper or newsprint;

“timber” means any tree which has been felled or has fallen, and all wood whether sawn, split, hewn or otherwise fashioned, and includes logs;

“timber permit” means a timber permit issued under Division 3 of Part 4;

“timber rights” means the rights to fell, cut, remove, sell and dispose of growing or dead trees, whether standing or fallen, and any part of such trees, and any other vegetable growth, and includes the right to remove gravel and other roadmaking materials;

“timber rights agreement” means a timber rights agreement approved under Division 2 of Part 4;

“tree” includes a shrub, palm or bush of any kind and of any age, and any sapling, seedling or reshoot;

“watercourse” includes any river or stream indicated on the official topographical maps, and any watercourse designated in a timber rights agreement, timber permit, forestry lease, coupe harvesting plan prepared under the Code of Logging Practice or licence in force under this Act.

PART 2 – ADMINISTRATION

Division 1 – General principles

4. Principles of forestry administration

In performing their functions and powers under this Act, the Minister, the Board and the Director must have regard to the following principles:

- (a) the forests of Vanuatu must be sustainably managed, developed and protected so as to achieve greater social, environmental and economic benefits for current and future generations;
- (b) the diversity of the forests and forest ecosystems of Vanuatu must be protected;
- (c) the rights of custom owners and other ni-Vanuatu with customary interests in forests must be recognised;
- (d) any relevant international obligations undertaken by Vanuatu must be respected.

5. Performance of the Minister's functions and powers

- (1) Where this Act provides for the Minister to perform any function or exercise any power acting on the advice of the Council of Ministers, the Minister must so act only with, and in accordance with, the advice of the Council of Ministers.
- (2) The Minister's functions and powers must be performed and exercised subject to and in accordance with this Act, regulations made under this Act and the Forestry Sector Plan.

Division 2 – Forests Board of Vanuatu

6. Establishment

- (1) The Forests Board of Vanuatu is established.
- (2) The provisions of Schedule 1 apply with respect to the membership and operation of the Board.
- (3) The Board is not subject to direction by the Minister or any other person.

7. Functions

The Board must:

- (a) consider and decide on applications for approval to negotiate made under section 18; and
- (b) arrange for the conduct of negotiations for a timber rights agreement under section 24; and
- (c) consider and decide whether to approve timber rights agreements entered into under section 26; and
- (d) consider and decide on applications for licences referred to it for reconsideration under section 49; and

- (e) advise the Minister on such matters relating to forestry policy and administration as the Minister may from time to time require; and
- (f) perform any other functions conferred on it by this Act.

8. Powers

The Board, in the performance of its functions, has the powers conferred on it by this Act, and such other powers as may be necessary or convenient for the performance of its functions under this Act.

PART 3 – FORESTRY SECTOR PLANNING

9. Preparation of the Forestry Sector Plan

- (1) As soon as practicable after the commencement of this Act, the Director must prepare a Forestry Sector Plan in accordance with the provisions of this Part.
- (2) The purpose of the Forestry Sector Plan is to provide the basis for rational and effective management of the forestry sector, with the aims of:
 - (a) achievement and maintenance of a sustained yield of multiple benefits from the forests of Vanuatu; and
 - (b) effective regulation of forestry operations; and
 - (c) protection of the environment, sacred sites and wildlife; and
 - (d) meeting the basic needs of ni-Vanuatu for essential food, water, fuel, building materials, traditional herbal medicines and recreation from the forests; and
 - (e) effective participation at different levels in decision-making on the management of the forests; and
 - (f) meeting the demand within Vanuatu for timber and other forest products.

10. Contents of the Forestry Sector Plan

- (1) The Forestry Sector Plan must:
 - (a) describe the different categories of forest land found in Vanuatu and recognised in the Plan; and
 - (b) describe the other physical factors, and the social and economic factors, of importance to the development of the forestry sector; and
 - (c) describe the forestry operations which may be conducted within each category of forest land; and
 - (d) specify, in respect of each island, or part of an island:
 - (i) the forest categories present, and the distribution of those categories; and
 - (ii) the other relevant physical, social and economic factors; and
 - (iii) the kind and level of forestry operation suitable to promote the aims set out in section 9(2); and
 - (e) state the order of priority which the Government attaches to each kind of forestry operation, for the purpose, among other things, of the rational and effective allocation of its administrative resources in promoting the aims set out in section 9(2).
- (2) The Forestry Sector Plan must contain such map or maps as are convenient to illustrate its contents.

11. Functions of the Director

- (1) The Director must prepare the Forestry Sector Plan in draft form, and must:
- (a) consult with the Director of the Department of Lands on the contents of the draft Plan as it affects land use planning; and
 - (b) consult with the Head of the Environment Unit on the contents of the draft Plan as it affects protection of the environment; and
 - (c) consult, in such manner as the Director thinks fit, with representatives of the forestry industry; and
 - (d) consult with each local government council on the contents of the draft Plan as it affects forestry in the local government region; and
 - (e) consult with the National Council of Chiefs and the National Council of Women; and
 - (f) cause the draft Plan to be publicised in such a manner as, in the Director's opinion, is likely to bring it to public notice.
- (2) The Director, after having consulted as required under subsection (1), must finalise the Forestry Sector Plan, taking due account of the results of those consultations and of public comment, and submit it to the Minister.

12. Approval of the Forestry Sector Plan

- (1) The Minister, upon receiving the Forestry Sector Plan, must submit it within 28 days to the Council of Ministers for its consideration.
- (2) When it has considered the Forestry Sector Plan, the Council of Ministers must either:
- (a) approve the Plan; or
 - (b) refer the Plan back to the Director, specifying the amendments that it considers necessary.
- (3) If a reference is made under subsection (2)(b), the Director must either:
- (a) amend the Plan so as to give effect to the wishes of the Council of Ministers; or
 - (b) if in the Director's opinion amendment of the Plan is undesirable, report in writing to the Minister to that effect, giving reasons for that opinion.
- (4) The Minister must submit to the Council of Ministers:
- (a) the Forestry Sector Plan as amended under subsection (3)(a); or
 - (b) the report of the Director under subsection (3)(b).
- (5) The Council of Ministers must:
- (a) approve the Plan as amended by the Director; or
 - (b) approve the Plan without amendment; or
 - (c) approve the Plan with such amendment as it considers necessary.

13. Publication of the Forestry Sector Plan

- (1) The Minister must cause a copy of the Forestry Sector Plan approved under section 12 to be laid before Parliament at its next ordinary session after that approval.
- (2) Upon a copy of the Forestry Sector Plan being laid before Parliament, the Director must:
- (a) forward a copy of the Plan to each local government council; and

- (b) cause a notice to be published in the Gazette, advising how interested persons may obtain a copy of the Plan or parts of the Plan; and
- (c) cause to be broadcast by radio or television, and to be published in a newspaper having national distribution, a notice advising how interested persons may obtain a copy of the Plan or parts of the Plan.

14. Variation of the Forestry Sector Plan

- (1) The Forestry Sector Plan may be varied either:
 - (a) at the instance of the Director in accordance with subsection (2); or
 - (b) at the instance of the Minister in accordance with subsection (3); or
 - (c) after a periodic review of the Plan in accordance with subsection (4).
- (2) The Director may, at any time, if the Director thinks fit, propose to the Minister a variation of the Forestry Sector Plan.
- (3) The Minister, acting on the advice of the Council of Ministers, may, at any time, refer to the Director a proposed variation of the Forestry Sector Plan.
- (4) The Director must cause the Forestry Sector Plan to be reviewed periodically and, so far as possible, once in every 5 years.
- (5) Upon a proposed variation of the Forestry Sector Plan under subsections (2), (3) or (4), the provisions of sections 11 to 13 apply to the processing of that proposed variation as if the proposed variation were the Forestry Sector Plan itself.

PART 4 – AGREEMENTS

Division 1 – Agreements generally

15. Requirement for an agreement

- (1) Commercial forestry operations may be conducted only in accordance with an agreement made under this Part.
- (2) The following agreements may be made under this Part:
 - (a) a timber rights agreement (under Division 2);
 - (b) a timber permit (under Division 3);
 - (c) a forestry lease (under Division 4).
- (3) The diagram in Schedule 2 is an aid to following the stages involved in making timber rights agreements and the steps in each stage.

Division 2 – Timber rights agreement

16. Board may call for applications to negotiate

- (1) The Board, if it is asked to do so in writing by persons who it is satisfied, after suitable inquiry, reflect the general wishes of the custom owners, may call for applications from the general public for approval to negotiate with such owners for the acquisition of timber rights in their land under this Part.
- (2) The Board must call for applications by public advertisement in such manner as it considers appropriate.

17. Multiple applicants

Nothing in this Division prevents more than one person from applying for approval, or from being approved, to negotiate for the acquisition of timber rights in the same land.

18. Application for approval to negotiate

- (1) Any person who wishes to acquire the timber rights in land may apply to the Director in the prescribed form for approval to negotiate for the acquisition, supplying all the particulars provided for by that form and paying the prescribed fee.
- (2) The Director, upon receipt of an application made in accordance with subsection (1), must first submit the application to the Board for its consideration.
- (3) The Board must consider the application and refer the application to the Forest Investigation Officer if it is satisfied that:
 - (a) the kind of forestry operation which the applicant proposes to conduct is consistent with the kind and level of forestry operation specified in the Forestry Sector Plan for the island, or part of the island, to which the application relates; and
 - (b) the applicant is a person of good commercial reputation, with a clear capability to conduct the proposed forestry operation in a responsible manner and according to sound forestry practice; and
 - (c) the administrative resources available, or likely to be available, in the area concerned are sufficient to enable the efficient and effective performance of the Board's and the Director's functions, powers and duties under this Act.
- (4) However, if the Board is not satisfied of the matters in paragraphs (a), (b) and (c) of subsection (3), the Board must reject the application stating its reasons for rejection.
- (5) The rejection by the Board of an application to negotiate under this section is final, and is not subject to appeal in any way.
- (6) The Board must give the applicant written notice of the Board's decision within 7 days after making it.

19. Approval to negotiate

- (1) A Forest Investigation Officer, upon an application to negotiate being referred to him or her under section 18, must:
 - (a) consult with the local government council and island Council of Chiefs or area Council of Chiefs for the area concerned; and
 - (b) conduct investigations among the custom owners of the land.
- (2) The Forest Investigation Officer, upon completion of the consultations and investigations, must give the Board a written report on:
 - (a) whether the custom owners are willing to negotiate for the sale of their timber rights; and
 - (b) if so, whether they are willing to negotiate for such sale to the applicant.
- (3) The Board must consider the Forest Investigation Officer's report and approve the application if it is satisfied that the custom owners of the land are willing to negotiate with the applicant. However, if it is not so satisfied it must reject the application, stating its reasons for rejection.
- (4) An approval of an application to negotiate may be given subject to such conditions as the Board sees fit to impose, which, without limiting such conditions, may include conditions as to:

- (a) the period available to the approved negotiator to complete an agreement to acquire timber rights under this Division; and
 - (b) the period available to the approved negotiator to gain any licences, permits or other forms of approval required by or under any law, in order to conduct the kind of forestry operation proposed by the applicant.
- (5) An approval of an application to negotiate must:
- (a) be in the prescribed form; and
 - (b) describe the boundaries of the land to which the approval to negotiate relates; and
 - (c) notify the approved negotiator of:
 - (i) any conditions imposed under subsection (4); and
 - (ii) the procedures which must be followed by the approved negotiator in the conduct of negotiations; and
 - (d) be served by the Director on:
 - (i) the approved negotiator; and
 - (ii) the local government council and island Council of Chiefs or area Council of Chiefs for the area.
- (6) For the avoidance of doubt, an approval of an application to negotiate under this section does not bind the Director or the Government to issue any licence, permit or other form of approval required by or under any law.
- (7) The rejection by the Board of an application to negotiate under this section is final with respect to that application, and is not subject to appeal in any way.
- (8) The Board must give the applicant written notice of the Board's decision within 7 days after making it.

20. Further functions of the Forest Investigation Officer

- (1) Upon the approval of an application to negotiate under section 18, the Director must direct a Forest Investigation Officer to conduct:
- (a) such investigations of the land described in the approval to negotiate, and of the forest on such land; and
 - (b) such consultations with the custom owners of such land;
- as are necessary to identify and describe the matters listed in subsection (2).
- (2) The matters are:
- (a) the boundaries of the land, the subject of the proposed negotiations; and
 - (b) the forest resource on such land; and
 - (c) the areas which are required to be excluded from forestry operations for all or any of the following purposes:
 - (i) flora and fauna reserves;
 - (ii) environment protection;
 - (iii) protection of watercourses;
 - (iv) meeting the wishes and needs of the custom owners of such land;
 - (v) protection of any rights of way or other access rights under custom;

- (vi) protection of any sacred sites and other sites of cultural significance; and
 - (d) the indigenous groups recognised by the prevailing custom of the area concerned as owning the land and timber rights the subject of the proposed negotiations.
- (3) For the purposes of identifying and describing the indigenous groups referred to in subsection (2)(d), the Forest Investigation Officer must prepare the genealogies of such groups, and must record, in the case of each such group:
- (a) the name of the group; and
 - (b) the qualifications for (and disqualifications, if any, from) membership of the group; and
 - (c) the title, membership and manner of appointment of the committee or other controlling body of the group; and
 - (d) the manner in which the group makes decisions with respect to the sale of its timber rights, and the manner in which such decisions are evidenced; and
 - (e) the name of the custom in accordance with which the group acts; and
 - (f) the dispute settlement authority for resolving any disputes within the group.
- (4) Upon completion of the investigations and consultations, the Forest Investigation Officer must:
- (a) make a report in writing to the Board on the matters mentioned in subsection (2); and
 - (b) declare in the prescribed form the indigenous groups who are, in his or her opinion, entitled to sell the timber rights in the land the subject of the proposed negotiations.

21. Application fees

- (1) The application fees prescribed under section 18 are payable to the Director for the purpose of defraying any expenses in or in connection with performing the Director's functions and powers under this Division, including:
- (a) expenses of the Board; and
 - (b) expenses of a Forest Investigation Officer; and
 - (c) expenses of engaging an adviser for the indigenous groups; and
 - (d) expenses associated with the conduct of negotiations.
- (2) Where an application to negotiate made in accordance with section 18(1) is rejected by the Board, the Director must refund to the applicant:
- (a) 90 percent of the application fee paid in the case of a rejection under section 18(4); or
 - (b) 75 percent of the application fee paid in the case of a rejection under section 19(3);

but in no other circumstances is the application fee refundable.

22. Publication of a declaration

Upon a declaration of the indigenous groups who are entitled to sell timber rights under section 20(4)(b) being made, the Director must:

- (a) forward a copy of the declaration to the local government council for the area concerned; and

- (b) give notice of the declaration in such manner as the Director considers to be adequate and effective for the purpose of bringing the declaration to the attention of all persons in, and in the vicinity of, the area concerned; and
- (c) in the course of giving notice under paragraph (b), call on any person who objects to the contents of the declaration pursuant to section 23; and
- (d) certify, in the prescribed form, the date upon which the notice is given under paragraph (b).

23. Objection to a declaration

- (1) A person who objects to the contents of a declaration made under section 20(4)(b) may apply to a customary land tribunal.
- (2) An application must be made within 3 months after the notification date stated in the Director's certificate under section 22(d).
- (3) An application must otherwise comply with the requirements of the Customary Land Tribunal Act [Cap. 271].
- (4) The customary land tribunal must allow the application only if it is satisfied that:
 - (a) the application raises a claim to ownership of land or timber rights which would conflict with the contents of the declaration made under section 20(3)(b); and
 - (b) a variation of that declaration is necessary in order to protect the interests of the person or group making the objection.
- (5) If:
 - (a) the customary land tribunal finds that an indigenous group is entitled to sell timber rights under proposed negotiations; and
 - (b) that indigenous group has not been recorded under section 20(3);a Forest Investigation Officer must comply with section 20(3) and (4) in relation to that group.
- (6) The Customary Land Tribunal Act [Cap. 271] applies in relation to a decision made under this section by a customary land tribunal, including the rights of appeal provided for under that Act.

24. Conduct of negotiations

- (1) Upon the expiry of the time for making applications under section 23, or upon the final determination of any application made in accordance with that section, the Board must arrange for a negotiation team to assist the indigenous groups, declared to be entitled to sell the timber rights, in their negotiations in accordance with this section.
- (2) The negotiation team consists of:
 - (a) a Forest Officer, directed by the Director to assist the indigenous groups in the negotiations; and
 - (b) a person who the Director is satisfied is suitably qualified and acceptable to the indigenous groups, engaged by the Director to advise them in the negotiations; and
 - (c) an officer qualified in land use planning, appointed by the Director of the Department of Lands; and
 - (d) the Secretary General of the local government council or an officer of that council nominated by the Secretary General.

- (3) Upon the negotiation team being constituted, the Director must:
 - (a) give to them a copy of the Forest Investigation Officer's report made to the Board under section 20(3)(a), and any comments by the Board on that report; and
 - (b) notify them of the identity of the indigenous groups entitled to sell the timber rights, and the details of those groups as recorded under section 20(2).
- (4) The Director must ensure that the negotiation team:
 - (a) is provided with the material, information and advice necessary to protect and promote the interests of the indigenous groups in the negotiations; and
 - (b) has adequate arrangements made for its travel and accommodation; and
 - (c) is able to conduct such meetings with the indigenous groups, and between the indigenous groups and the approved negotiator, as are necessary for effective negotiations.
- (5) Without limiting the material, information and advice referred to in subsection (4)(a), it must include information and advice on:
 - (a) the quantity and nature of the subject forest resource; and
 - (b) current values of the timber comprised in the subject forest resource; and
 - (c) methods for calculating payments for forest products; and
 - (d) the matters likely to be included in a licence required under this Act for conduct of the proposed forestry operations; and
 - (e) planning for the future use of the land.
- (6) The negotiation team must advise and assist the indigenous groups and act in the negotiations on the instructions of the indigenous groups entitled to sell the timber rights.
- (7) The Board may issue general guidelines for the conduct of negotiations under this Division.

25. Management Committee

- (1) During the conduct of negotiations for the acquisition of timber rights under section 24, the indigenous groups entitled to sell the timber rights must appoint from among their memberships a Management Committee, to perform the functions and exercise the powers provided for by this section.
- (2) Upon the approval of a timber rights agreement under section 27, the functions of the Management Committee are:
 - (a) to monitor performance of the terms and conditions of the agreement; and
 - (b) to receive and keep accurate records of any moneys payable to indigenous groups under the agreement, and apply those moneys in such manner as each group decides; and
 - (c) to make such records available to each indigenous group and the Board on request; and
 - (d) to plan for the use of all land subject to the agreement following the logging of that land, and arrange for the implementation of such land use plans; and
 - (e) to perform such other functions as are conferred on it by this Act.

- (3) The Minister may make regulations providing for the appointment of Management Committees, and for the effective performance of their functions, including with respect to:
- (a) powers and duties; and
 - (b) application of moneys, and how that application is accounted for; and
 - (c) abuse of power, or failure of duty, by members; and
 - (d) land use planning and the implementation of land use plans.

26. Timber rights agreement

- (1) An agreement for the acquisition of timber rights under this Part must:
- (a) be in the prescribed form, and contain all the particulars provided for by that form; and
 - (b) be executed, on behalf of the indigenous group entitled to sell the timber rights under the agreement, by all the members of the committee or other controlling body of the group, as recorded by the Forest Investigation Officer under section 20(3)(c); and
 - (c) include an endorsement by the Forest Investigation Officer that the decision to enter into the agreement was taken for each group in the manner recorded for the group under section 20(3)(d); and
 - (d) be certified by a Forestry Officer as provided for in the prescribed form.
- (2) An agreement for the acquisition of timber rights under this Part has no effect unless it has been approved by the Board in accordance with this section.
- (3) As soon as practicable after the execution of an agreement for the acquisition of timber rights, the approved negotiator must cause the original agreement together with a copy to be presented to the Director for further processing under section 27.
- (4) The maximum period for a timber rights agreement is 10 years. However, the holder of the timber rights agreement may apply for a renewal of the agreement on or before it expires.
- (5) The application for renewal of a timber rights agreement must be in the prescribed form and comply with the prescribed requirements.

27. Approval of timber rights agreement

- (1) The Board must approve a timber rights agreement if it is satisfied that:
- (a) the provisions of this Division have been followed; and
 - (b) the guidelines, if any, issued under section 24(7) have been complied with or substantially complied with; and
 - (c) the proposed forestry operations under the agreement are consistent with the Forestry Sector Plan; and
 - (d) adequate provision has been made in the agreement for:
 - (i) flora and fauna reserves; and
 - (ii) environment protection; and
 - (iii) protection of watercourses; and
 - (iv) meeting the needs of the custom owners of the land and timber rights; and
 - (v) protection of rights of way or other access rights under custom; and

- (vi) protection of sacred sites and other sites of cultural significance; and
 - (e) the administrative resources available, or likely to be available, in the area concerned are sufficient to enable the efficient and effective performance of the Director's powers and duties under this Act.
- (2) However, if the Board is not satisfied of the matters in paragraphs (a) to (e) of subsection (1), the Board must refuse approval to the agreement, stating the reasons for the refusal.
- (3) An approved agreement must be certified by the Director in the prescribed form and:
- (a) the original agreement must be returned by the Director to the approved negotiator; and
 - (b) a copy of the certified agreement must be sent by the Director to:
 - (i) the local government council and island Council of Chiefs or area Council of Chiefs for the area to which the agreement relates; and
 - (ii) the committee or other controlling body of each indigenous group which signed the agreement.
- (4) A refusal of approval to an agreement under subsection (2) does not prevent the parties to the agreement from amending it, in which case the amended agreement must be resubmitted in accordance with section 26(3), and further processed in accordance with this section as if the amended agreement were an original agreement.
- (5) The provisions for approval of an agreement under this section also apply to a variation of an agreement.
- (6) The Board's refusal of approval to an agreement is final, and is not subject to appeal in any way.
- (7) The Board must give the approved negotiator written notice of the Board's decision within 7 days after making it.

28. Minimum log royalties

The Minister may by order in writing determine minimum log royalties to be paid for different species or grades of logs harvested in all or selected parts of Vanuatu.

Division 3 – Timber permit

29. Issue of a timber permit

- (1) If, in the Director's opinion:
- (a) the custom owners of land are willing to sell timber rights in the land; and
 - (b) the volume or value of the timber concerned is not sufficient to justify the effort and expense of negotiating a timber rights agreement under Division 2;
- the Director may, on behalf of the custom owners of the land and timber rights, issue a timber permit under this Division.
- (2) An application for a timber permit must be made to the Director in the prescribed form together with the prescribed fee and a map of the location of the permit area that is of a standard satisfactory to the Director.
- (3) A timber permit is to be issued:
- (a) in the prescribed form for such a period, not exceeding one year; and
 - (b) upon such terms, conditions and restrictions as may be prescribed; and

- (c) subject to payment of royalties determined under section 28 to the owners of the timber rights; and
 - (d) subject to the payment of the forest management charge, any timber licence fees and any other fees or charges due to the Government.
- (4) The Director may by notice in writing to the holder of a timber permit cancel the timber permit if the Director is satisfied that:
- (a) the holder of the permit has failed to comply with a term, condition or restriction of the permit; or
 - (b) there are other reasonable grounds for cancelling the permit.
- (5) The issue of a timber permit is not to be taken in any proceedings as the legal recognition by the Director of any customary rights in the land and timber concerned.
- (6) The Minister may, by order, prescribe the volume (not exceeding 200 cubic metres) and value of timber for the purposes of subsection (1)(b).

Division 4 – Forestry lease

30. Grant of a forestry lease

- (1) A forestry lease may be granted by the custom owners of land in accordance with this section.
- (2) A forestry lease must be in the prescribed form, and must contain such terms, conditions, provisions, restrictions and covenants as may be prescribed.
- (3) The purpose of a forestry lease is to establish, maintain and harvest timber from a crop of trees.
- (4) The period of a forestry lease, including any renewals, must not exceed 75 years in total.
- (5) A forestry lease must be entered into in accordance with the Land Reform Act [Cap. 123], and is registrable in accordance with the Land Leases Act [Cap. 163].

PART 5 – LICENCES

Division 1 – Licences generally

31. Requirement for a licence

- (1) Commercial forestry operations may be conducted only in accordance with a licence granted under this Part.
- (2) The following licences may be granted under this Part:
 - (a) a timber licence (under Division 2);
 - (b) a mobile sawmill licence (under Division 3);
 - (c) a sandalwood licence (under Division 4);
 - (d) a special licence (under Division 5).
- (3) This Division applies to a licence granted under the repealed Act.

32. Effect of licence

- (1) A licence authorises the licensee, the licensee's employees, and any person nominated in the licence as an agent or sub-contractor of the licensee, to conduct the particular forestry operations stated in the licence in accordance with the terms, conditions and restrictions of the licence.

- (2) A provision of a licence authorising forestry operations which are inconsistent with:
- (a) any of the provisions of the Forestry Sector Plan; or
 - (b) the terms, conditions or restrictions of a timber rights agreement, timber permit or forestry lease applying to the land the subject of the licence;
- is, to the extent of the inconsistency, void and of no effect.
- (3) A forestry operation engaged in by a nominated agent or sub-contractor of a licensee referred to in subsection (1) is, for the purposes of this Act, taken to be a forestry operation engaged in by the licensee.
- (4) Any failure, by a nominated agent or sub-contractor of a licensee referred to in subsection (1), to comply with this Act or the regulations, or a term, condition or restriction of the licence, is for the purposes of this Act taken to be a failure to comply by the licensee.

33. Conditions of licence

- (1) A licence is subject to:
- (a) the provisions of the Code of Logging Practice; and
 - (b) the restrictions on forestry operations contained in Division 2 of Part 6;
- which provisions and restrictions are implied conditions of the licence except to the extent, if any, that they are expressly varied or waived in the licence.
- (2) Subject to subsection (4), it is a condition of each licence that the annual volume of timber allowed to be harvested under the licence must not exceed the annual sustainable yield set out in the Forestry Sector Plan, or, until that Plan is approved, the National Forest Policy, for the relevant island or such areas as are prescribed.
- (3) Subject to subsection (4), if:
- (a) there are existing licences on an island or in such area as is prescribed; and
 - (b) a new licence is proposed to be granted on that island or in that area;
- the total of the annual volume of timber allowed under the proposed new licence and the existing licences cannot exceed the annual sustainable yield set out in the Forestry Sector Plan, or, until that Plan is approved, the National Forest Policy for that island or that area.
- (4) The Director may waive the rule in subsection (2) or (3) if the Director is satisfied that:
- (a) it is in the national interest for land to be cleared for agriculture or other development; or
 - (b) only dead trees or trees damaged by natural disasters are to be cut down; or
 - (c) there are other special circumstances arising from or caused by a natural disaster.

34. Transfer of licence

- (1) A licence is not transferable, and any purported transfer or contract or agreement for the transfer of a licence is void and of no effect.
- (2) The purpose of this section being to prevent the transfer of a licence granted under this Part, that purpose must not be defeated by:
- (a) a power of attorney authorising another person to act on the licensee's behalf with respect to the licence; or

- (b) an agency or sub-contracting agreement engaging another person to act on the licensee's behalf with respect to the licence; or
- (c) in the case of a licensee which is a partnership or a private company, a transfer of rights or shares in that body;

and any such instrument or transfer, or any similar or analogous instrument or transfer, is deemed to be a purported transfer of the licence under subsection (1).

- (3) Subsection (2)(b) does not apply to a person nominated in a licence as an agent or sub-contractor of the licensee.
- (4) Subsection (2)(c) does not apply to a transfer of rights or shares in a partnership or a company if:
 - (a) the transfer is declared in advance to the Director in a statutory declaration and the Director is satisfied that the declaration contains accurate details of the change in partnership rights or shareholdings under the transfer; and
 - (b) the Board is satisfied that the transfer does not amount to a significant change in the personality of the partnership or company; and
 - (c) the Management Committee appointed for monitoring the agreement concerned under section 25 has approved the transfer in writing.

35. Surrender of licence

- (1) A licensee may, with the written consent of the Director, surrender the licence in whole or in part.
- (2) The Director's consent to the surrender of a licence may be subject to any conditions which the Director may see fit to impose, in which case the surrender of the licence does not become effective until the Director is satisfied that the imposed conditions have been met.

36. Variation of licence

- (1) On application in writing by the licensee, the Director may, by an appropriate endorsement on the licence, vary the terms and conditions of a licence, but not so as:
 - (a) to cause the forestry operations, the subject of the licence, to be inconsistent with the contents of the Forestry Sector Plan, as it relates to the island, or part of the island, to which the licence applies; or
 - (b) to authorise any forestry operation over land which is not authorised under a timber rights agreement, timber permit or forestry lease applying to the land.
- (2) A licensee who wishes to nominate a person as the licensee's agent or sub-contractor in addition to, or in substitution for, a person nominated in the licence, must apply under subsection (1) for a variation of the licence.
- (3) The Director may vary the terms and conditions of a licence so as to remove any inconsistency with the Forestry Sector Plan.
- (4) For the avoidance of doubt, a licensee is not entitled to any compensation upon a variation of the licence under subsection (3).
- (5) Subject to subsection (1), the Director may vary a licence so as to increase or reduce the area to which the licence applies.
- (6) The Director must give written notice of a licence variation to the licensee.

37. Suspension and cancellation of licence

- (1) If, in the Director's opinion, there are reasonable grounds to believe that:
 - (a) a term, condition or restriction of a licence is not being complied with; or

- (b) a provision of this Act or the regulations relating to a licence is not being complied with; or
- (c) the licensee is engaging in a commercial forestry operation not authorised by the licence;

the Director must serve a notice of non-compliance on the licensee in accordance with subsection (2). If, however, in the Director's opinion the circumstances are sufficiently serious to warrant doing so, the Director may proceed immediately to suspend the licence under subsection (3), without the service of a notice of non-compliance.

- (2) A notice of non-compliance must specify:
 - (a) the term, condition or restriction of the licence, or the provision of this Act or the regulations, which has not been complied with; and
 - (b) any compensation or penalty payable under the licence for that non-compliance; and
 - (c) the period within which such non-compliance must be made good, considering the nature of the non-compliance, and any such compensation or penalties to be paid.
- (3) If the licensee, within the period stated in a notice of non-compliance, fails to make good to the satisfaction of the Director the non-compliance and to pay any compensation or penalty specified in the notice, the Director may:
 - (a) suspend the licence by notice in writing to the licensee; and
 - (b) serve on the licensee a notice in the prescribed form, calling on the licensee to show cause, within the period stated in the notice, why the licence should not be cancelled on the ground or grounds specified in the notice.
- (4) If, in the Director's opinion:
 - (a) there is a serious dispute between the custom owners of land the subject of a licence; and
 - (b) the conduct of commercial forestry operations under the licence is likely to worsen the dispute;

the Director may, by written notice to the licensee, suspend the licensee's operations in the disputed area, for a period not exceeding 3 months specified in the notice. If the dispute is not resolved within 3 months, the Director may, by written notice to the licensee, extend the suspension for a further period not exceeding 3 months. To avoid doubt, this subsection applies whether or not a licensee has complied with a notice of non-compliance.

- (5) Upon the suspension of a licence under subsection (3)(a), all commercial forestry operations under the licence must immediately cease, and must not be resumed until such time, if any, as the Director certifies that the suspension is lifted.
- (6) If the licensee, within the period stated in the notice under subsection (3), fails to explain to the satisfaction of the Director why the licence should not be cancelled, the Director may cancel the licence by serving a notice of cancellation on the licensee.
- (7) If a licensee purports to transfer a licence contrary to the provisions of section 34, the Director may by notice in writing to the licensee cancel the licence and all commercial forestry operations under the licence must cease with immediate effect.
- (8) For the avoidance of doubt:

- (a) a licence granted under this Act is accepted by the licensee on the condition that, in the circumstances mentioned in this section, the Director is entitled to suspend and cancel the licence in accordance with the procedures of this section; and
- (b) a licensee is not entitled to any compensation upon suspension or cancellation of the licence.

38. Appeal against cancellation of licence

- (1) A licensee may appeal to the Magistrates' Court against the cancellation of a licence under section 37 (6) or (7).
- (2) An appeal must be made within 28 days after service of the notice of cancellation on the licensee, or within such further time as the Magistrates' Court for any special reason allows.
- (3) The cancellation of a licence under section 37(6) has no effect until the final determination of the appeal, but the licence remains suspended under section 37(3) pending the final determination of the appeal.
- (4) The cancellation of a licence under section 37(7) remains in force pending the final determination of the appeal.
- (5) In this section, a reference to the final determination of the appeal is a reference to the Magistrates' Court deciding the appeal, and either:
 - (a) if no further appeal is made to the Supreme Court, the period allowed under the relevant rules of court for making an appeal has expired; or
 - (b) if a further appeal is made to the Supreme Court, the Supreme Court has decided the appeal.

39. Termination of licence

- (1) A licence is immediately terminated upon an act of bankruptcy by the licensee or, in the case of a licensee which is a body corporate, upon the appointment by a court of an official receiver or liquidator in respect of the licensee.
- (2) In any proceeding for the bankruptcy or winding up of a person who has been granted a licence under this Act, the licence does not form part of that person's property.
- (3) A court which convicts a person who is a licensee under this Act of an offence under subsections (2), (5) or (10) of section 69 may, upon an application to the court by the Director, in addition order that the licence be terminated.
- (4) If a licensee, after 3 months from the date of grant of the licence, has failed to enter into a bond as required by section 41(1), the licence is immediately terminated.

40. Copies of licences

A copy of each of the following:

- (a) a licence granted under this Part;
- (b) a variation of a licence under section 36;
- (c) a notice of non-compliance under section 37(2);
- (d) a notice to show cause under section 37(3);
- (e) a notice of cancellation of a licence under section 37(6); and
- (f) a notice of termination of a licence under section 39(5);

must be forwarded by the Director to the local government council for the area to which the licence concerned relates and, where the licence relates to forestry operations under a

timber rights agreement, to the Management Committee appointed for monitoring that agreement.

41. Bonds

- (1) Subject to subsection (6), it is a condition of every licence that the licensee must:
 - (a) enter into a bond in accordance with this section, within 3 months after the date of grant of the licence; and
 - (b) maintain such bond until a written notice of cancellation of the bond is received from the Director.
- (2) A bond provides security for:
 - (a) the licensee's compliance with the terms, conditions and restrictions of the licence; and
 - (b) payment to the government of all taxes, duties, levies, charges, fees and penalties payable by the licensee under any law; and
 - (c) payment by the licensee of any rental, royalties, penalties or compensation to which indigenous groups are entitled under a timber rights agreement, timber permit or forestry lease entered into by the licensee.
- (3) The bond must take the form of a bank guarantee or equivalent instrument in the prescribed form that is acceptable to a bank that is the holder of a licence within the meaning of the Financial Institutions Act [Cap. 254].
- (4) The amount of a bond must be fixed by the Director in accordance with the prescribed scale.
- (5) The Director must give written notice to the licensee, upon the grant of a licence, of the amount of the bond fixed under subsection (4).
- (6) The Director may exempt a licensee from the requirement for a bond if, in the Director's opinion:
 - (a) the licensee has a proven record of compliance with the requirements of a licence and making the payments due; or
 - (b) the scale of the commercial forestry operations authorised by the licence is not sufficient to justify the effort and expense of securing a bond.

42. Enforcement and cancellation of bonds

- (1) If a licensee fails to make payment of a sum secured by a bond, the Director may enforce the bond against the issuing bank or other person in accordance with the procedure set out in subsections (2) and (3).
- (2) The Director must give notice of intention to enforce a bond by a written notice to the licensee:
 - (a) stating the amount and nature of the sum in respect of which the bond is to be enforced; and
 - (b) inviting the licensee within 30 days to pay the amount outstanding or make representations to the Director as to why the bond should not be enforced.
- (3) If, after the end of the period specified in the notice given under subsection (2), any of the amounts outstanding remain unpaid, the Director may enforce the bond and pay the proceeds to the party entitled.
- (4) After the expiry, cancellation or termination of a licence to which a bond relates, the Director must, if satisfied that there are no sums secured by the bond which remain

outstanding, cancel the bond and give written notice of the cancellation to the issuing bank or other person.

43. Code of Logging Practice

- (1) The Code of Logging Practice applies to all commercial forestry operations in Vanuatu and such operations are to be conducted in accordance with the Code.
- (2) The Code of Logging Practice must contain practices and standards for logging and forest management, including but not limited to any of the following matters:
 - (a) protection of the environment and promotion of forest development consistent with the principles of sustainable management;
 - (b) planning of commercial forestry operations;
 - (c) the processes involved in harvesting and removing timber, or the construction of roads and other works in association with the harvesting and removal of timber;
 - (d) selection of silvicultural regimes;
 - (e) supervision of commercial forestry operations, and the licensing of forest operators;
 - (f) log measurement and branding;
 - (g) protection of non-timber forest values;
 - (h) training, health and safety of forest operators.
- (3) The Code of Logging Practice may contain provisions for the enforcement of its requirements, which may include penalties not exceeding VT 1 million for a breach of the Code.
- (4) The Director may propose amendments to the Code of Logging Practice to the Minister.
- (5) Before proposing an amendment to the Code of Logging Practice, the Director must consult, in such manner as the Director thinks fit, with such persons, Government agencies and bodies who, in the Director's opinion, have a significant interest in the contents of the Code.
- (6) Failure to comply with subsection (5) does not invalidate an amendment to the Code of Logging Practice.
- (7) The Minister may amend the Code of Logging Practice by regulation giving effect to a proposal made by the Director under this section.

Division 2 – Timber licence

44. Grant of timber licence

- (1) The approved negotiator, upon an application to negotiate being approved under section 19(3), must apply to the Director in the prescribed form for a licence under this section to conduct forestry operations on the land the subject of the approved negotiations.
- (2) The Director must not grant a timber licence to the approved negotiator until he or she has entered into a timber rights agreement approved under section 27.
- (3) Upon an application in the prescribed form by a person who has acquired timber rights under the repealed Act, the Director may grant the applicant a timber licence.
- (4) A timber licence must be in the prescribed form, and must contain such terms, conditions and restrictions as may be prescribed.

- (5) It is a condition of a timber licence that the licensee cannot obtain in any one year more than 30% of the timber volume that is allowed to be harvested under the licence by using timber permits.
- (6) A timber licence must contain such requirements for the operation of a sawmill as may be prescribed.
- (7) Without limiting subsection (6), the prescribed conditions may include:
 - (a) the maximum volume of timber that may be harvested under the timber licence and any sawmill operating under that licence considering the sustainable yield of the resource;
 - (b) the location of the mill; and
 - (c) the time period for its operation.
- (8) The period of a timber licence must not exceed 10 years. However, the licensee may apply for a renewal of its licence on or before its expiry.
- (9) The application for renewal is to be in the same form as the application for the grant of a licence and is to be dealt with under this Act as if it were an application for the grant of a licence.

45. Conversion to evergreen timber licence

- (1) A person who has held a timber licence for a continuous period of 5 years may apply to the Director to convert the licence to an evergreen timber licence.
- (2) The Minister may, by regulation, provide for the period, terms, conditions and restrictions of evergreen timber licences, and may make further provision for the application for, and grant of, evergreen timber licences.

Division 3 – Mobile sawmill licence

46. Grant of mobile sawmill licence

- (1) Upon an application in the prescribed form, the Director may grant the applicant a licence to operate a mobile sawmill of such a kind and in such areas as are specified in the licence.
- (2) A mobile sawmill licence must be in the prescribed form, and must contain such terms, conditions and restrictions as may be prescribed.
- (3) The period of a mobile sawmill licence must not exceed 5 years. However, the licensee may apply for a renewal of its licence on or before its expiry.
- (4) The application for renewal is to be in the same form as the application for the grant of a licence and is to be dealt with under this Act as if it were an application for the grant of a licence.
- (5) The maximum annual volume of logs which may be cut under a mobile sawmill licence is 500 cubic metres.
- (6) The Minister may by order:
 - (a) provide for the registration of mobile sawmills; or
 - (b) ban or restrict the importation or sale of mobile sawmills, to or within Vanuatu or any part of Vanuatu; or
 - (c) limit the number of mobile sawmill licences which may be granted to operate in Vanuatu or any part of Vanuatu.
- (7) A mobile sawmill may be operated as part of a commercial forestry operation only in accordance with a mobile sawmill licence.

Division 4 – Sandalwood licence

47. Grant of sandalwood licence

- (1) Upon an application in the prescribed form, the Director may grant the applicant a sandalwood licence to carry out sandalwood operations.
- (2) A sandalwood licence must be in the prescribed form, and must contain such terms, conditions and restrictions as may be prescribed.
- (3) The period of a sandalwood licence must not exceed 10 years. However, the licensee may apply for a renewal of its licence on or before its expiry.
- (4) The application for renewal is to be in the same form as the application for the grant of a licence and is to be dealt with under this Act as if it were an application for the grant of a licence.
- (5) A sandalwood licence must not be granted for a period in excess of 5 years except on conditions which require the licensee to:
 - (a) develop sandalwood processing facilities; and
 - (b) assist with the replanting of sandalwood.
- (6) On the advice of the Director-General, the Minister may by order:
 - (a) vary the sandalwood harvesting season; or
 - (b) specify the maximum quantity of sandalwood that can be harvested in any year; or
 - (c) establish minimum prices for various grades of sandalwood; or
 - (d) prohibit, restrict or regulate the felling of sandalwood; or
 - (e) prohibit, restrict or regulate the export of sandalwood.
- (7) Without limiting this section, the Director may call for tenders to purchase sandalwood for the whole or any part of Vanuatu in accordance with the prescribed requirements.

Division 5 – Special licence

48. Grant of special licence

- (1) Where the Director believes that it is necessary or desirable to authorise forestry operations on any land, and the grant of a licence under any other Division of this Part is not practicable or desirable, the Director may grant a special licence under this section.
- (2) Without limiting subsection (1), the circumstances in which a special licence may be granted include the following:
 - (a) to prevent the imminent waste of forest products (for example, after a cyclone or fire);
 - (b) to provide for the clearing of land for agricultural or other development;
 - (c) to authorise the harvesting of timber planted under a forestry lease;
 - (d) to authorise the harvesting of non-timber forest products;
 - (e) to remove the hazard created by a group of trees during the cyclone season.
- (3) A special licence under this section must be granted:
 - (a) in the prescribed form and for such a period, not exceeding one year; and
 - (b) upon such terms, conditions and restrictions as may be prescribed; and

- (c) subject to the payment of such fees, charges and bonds as may be prescribed, and such royalties to the custom owners of the timber rights determined under section 28.
- (4) The provisions of section 41 apply to any bond prescribed under subsection (3)(c).

Division 6 – Review

49. Reconsideration of an application

- (1) An applicant whose application for a licence or renewal of a licence under this Part has been rejected may apply in writing to the Board for a reconsideration of the application, stating the reasons for such reconsideration.
- (2) The Board must reconsider any application for a licence referred to it under subsection (1).
- (3) The Board's decision upon a reconsidered application is final, and is not subject to appeal in any way.
- (4) The Director must give effect to the Board's decision made under this section and must give the applicant written notice of the Board's decision within 7 days after it is made.

PART 6 – ENVIRONMENT PROTECTION

Division 1 – Conservation Areas

50. Declaration of Conservation Area

- (1) If, in the Minister's opinion, an area of forest has particular scientific, cultural or social significance or other special value for the present community or for future generations, the Minister may, on the request in writing by the custom owners of the land, declare the forest to be a Conservation Area for the purposes of this Act.
- (2) Before making a declaration, the Minister must:
 - (a) conduct such consultations with the relevant local government council and island Council of Chiefs or area Council of Chiefs for the area the subject of the declaration; and
 - (b) take such steps for gaining comments from interested members of the public, as the Minister considers are appropriate.
- (3) A declaration must be in the prescribed form, and must contain such map or maps as are convenient to indicate the area of forest the subject of the declaration.
- (4) As soon as possible after making a declaration, the Director must:
 - (a) forward a copy of the declaration to the relevant local government council and island Council of Chiefs or area Council of Chiefs for the area the subject of the declaration; and
 - (b) cause a notice of the declaration to be published in the Gazette, advising how interested persons may obtain a copy of the declaration.

51. Prohibition of commercial forestry operations in a Conservation Area

While a declaration of a Conservation Area remains in force, commercial forestry operations must not be conducted in the forest the subject of the declaration.

52. Cancellation of declaration

- (1) A declaration of a forest as a Conservation Area may be cancelled by the Minister on the request in writing by the custom owners of the land the subject of the declaration.
- (2) Upon the cancellation of a declaration, the Director must:
 - (a) advise the local government council and the island Council of Chiefs or area Council of Chiefs for the area the subject of the declaration in writing that the declaration has been cancelled; and
 - (b) cause a notice of the cancellation of the declaration to be published in the Gazette.

Division 2 – Restrictions on forestry operations

53. Protected species

- (1) The Minister may prescribe species of plants as protected species for the purposes of this Act.
- (2) A protected species must not be felled or removed in the course of conducting commercial forestry operations, unless such felling or removal is expressly authorised by a licence granted under this Act.

54. Mandatory restrictions on commercial forestry operations

Commercial forestry operations must not be conducted:

- (a) within the excluded buffer zone areas around watercourses as set out in the Code of Logging Practice; and
- (b) within 100 metres distance from sea level (being the mean high water mark, as that term is conventionally understood); and
- (c) on land having a slope in excess of 30 degrees, or less if so prescribed by the Code of Logging Practice for particular circumstances (e.g. highly erodable soils); and
- (d) in a protected rainfall catchment area declared under any other law;

except to the extent, if any, that it is expressly authorised by a licence granted under this Act.

Division 3 – Protection from fire

55. Restricted area

- (1) If the Director considers that an area of forest is endangered by hazardous fire conditions, the Director may declare the area to be a restricted area for the period specified in the declaration.
- (2) As soon as practicable after making a declaration, the Director must:
 - (a) cause it to be published in the Gazette; and
 - (b) bring it to the notice of the public in the manner the Director considers to be most effective.

56. Burning permit

- (1) A Forest Officer may issue a burning permit to a person authorising that person to ignite and maintain an open fire in a restricted area declared under section 55 on such conditions as may be specified in the burning permit.
- (2) A person who ignites or maintains an open fire in a restricted area is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000 or imprisonment for not more than 1 month, or both.
- (3) Subsection (2) does not apply if the fire:

- (a) complies with a burning permit; or
 - (b) is used only for cooking or warmth.
- (4) A person who ignites or maintains an open fire in or near a forest and who:
- (a) leaves the fire unattended; or
 - (b) fails to extinguish the fire before leaving it;
- is guilty of an offence punishable on conviction by a fine not exceeding VT 50,000 or imprisonment for not more than 1 month, or both.

PART 7 – REFORESTATION

57. Establishment of the Forestry Project Fund

- (1) The Forestry Project Fund is established for the purpose of reforestation and to assist with funding the full range of activities of the Department responsible for forestry.
- (2) The Forestry Project Fund is to operate for an initial period of 5 years from the date of its establishment, but it may be extended by the Council of Ministers following a review under subsection (4).
- (3) The Director must, in consultation with the Director of Finance, set up auditing, administrative and financial procedures for the operation of the Forestry Project Fund.
- (4) The Director must review the operation of the Forestry Project Fund towards the end of its initial 5-year period, and recommend to the Minister:
 - (a) whether the Forestry Project Fund should be extended, and, if so, for what period; and
 - (b) what improvements should be made to the operation of the Forestry Project Fund.
- (5) The Minister must submit the Director's recommendations to the Council of Ministers for its decision.

58. Payments into the Forestry Project Fund

There is to be paid into the Forestry Project Fund:

- (a) the forest management charge under this Part; and
- (b) any application or licence fees received under this Act; and
- (c) any grants made by or to the Government for the purposes of reforestation.

59. Payments out of the Forestry Project Fund

- (1) The Forestry Project Fund is to be used to make payments for all or any of the following:
 - (a) establishment and maintenance of nurseries;
 - (b) provision of planting material;
 - (c) planting, care and maintenance of trees;
 - (d) provision of forestry information, training and advice;
 - (e) refunds or rebates of forest management charges under section 60(2);
 - (f) afforestation and reforestation works;

- (g) the administration of timber licences, the control of commercial forestry operations, and the collection and monitoring of information on forest resources and their utilisation;
 - (h) the conduct of forest research, forestry extension and forest conservation;
 - (i) the control and monitoring of sandalwood operations;
 - (j) the acquisition of any capital asset required to carry out the above activities;
 - (k) international cooperation in forestry.
- (2) The Forestry Project Fund is not to be used for any other purpose.
- (3) Payments out of the Forestry Project Fund must be consistent with the Forestry Sector Plan.
- (4) The Director is responsible for making payments out of the Forestry Project Fund.
- (5) The Minister, upon receiving written advice from the Director, may make payments from the Forestry Project Fund to a local government council or community group for any of the activities set out in subsection (1).

60. Forest management charge

- (1) The holder of a licence under Part 5 must pay a forest management charge, being:
- (a) in the case of a sandalwood licence, the sandalwood management charge imposed under the Forestry (Management and Control of Sandalwood Trade and Exports) Order No. 3 of 1997; and
 - (b) in all other cases, an amount equal to half of the royalty paid to the custom owners of the timber rights.
- (2) The Minister may, upon the written application of a licensee and on the recommendation of the Director, by order reduce the licensee's forest management charge by an amount not exceeding one half of that charge to reflect the degree to which the licensee has complied with the requirements for reforestation.
- (3) The Minister may by order increase or decrease the amount referred to in subsection (1)(a) or (1)(b).

PART 8 – MISCELLANEOUS

61. Export of forest products

- (1) Subject to subsections (2) and (4), the export of logs and flitches from Vanuatu is prohibited.
- (2) The Minister may by order in writing approve the export of logs or flitches if:
- (a) the Minister is, on the advice of the Board, satisfied that a special case exists for such export; and
 - (b) the Council of Ministers has given its prior approval to the order for export.
- (3) In deciding whether special circumstances exist under subsection (2)(a) regard must be had to the following:
- (a) whether a demonstrably higher benefit will be gained for the custom owners of the timber rights by authorising export of the timber; and
 - (b) whether the timber has been harvested from a crop of trees established under a forestry lease or other lease for forestry purposes.

- (4) An order authorising the export of logs or flitches must not be made if suitable facilities exist in Vanuatu to process the logs or flitches.
- (5) The Minister may, by order, prohibit or restrict the export of:
 - (a) any class or type of timber or other forest products; or
 - (b) timber or other forest products in any condition.
- (6) An order made under subsection (5) may prescribe requirements for an export permit.
- (7) In this section, “logs” and “flitches” mean any timber which has not been processed into plywood, veneer or planks or the finished products made therefrom, with the exception of:
 - (a) timber from the species *Cocos nucifera*; and
 - (b) timber from the species *Santalum austro-caledonicum*.

62. Inspection

The Director, a Forest Officer or a person authorised in writing by the Director may, in the interests of the prevention and investigation of a breach of any provisions of this Act:

- (a) enter and inspect any land; and
- (b) enter any vessel, property or building (other than a private dwelling), and inspect any plant, machinery or equipment, and any records of any description on that vessel or property or in that building; and
- (c) inspect any timber or other forest products, wherever it may be located; and
- (d) require any person to execute a statutory declaration relating to matters within that person's knowledge and control; and
- (e) enter and inspect any area where commercial forestry operations take place.

63. Boundaries

- (1) If in this Act provision is made for a boundary to be identified or described in any instrument, it is sufficient for the purposes of this Act for:
 - (a) the boundary to be identified on a map or sketch certified by the Director for the purposes of this section; and
 - (b) a reference to that certified map or sketch to be made in the instrument.
- (2) Boundaries need not be surveyed for the purposes of this Act, except where, and to the extent that, the Director regards a survey as necessary to avoid substantial doubt or dispute over the boundary.

64. Service of notices

- (1) If, under this Act, a notice is required to be served or given, it is sufficient service if a copy of the notice is:
 - (a) in the case of an individual, served personally or by registered post to his or her postal address in Vanuatu last known to the Director; and
 - (b) in the case of a body corporate, served by registered post to its postal address in Vanuatu last known to the Director; and
 - (c) in the case of a local government council, served personally on, or by registered post to, the Secretary General of the government council; and
 - (d) in the case of custom owners of land under a timber rights agreement, served personally on at least two members of the Management Committee appointed for the purposes of that agreement.

- (2) A certificate in the prescribed form issued by the Director is sufficient evidence of service in accordance with subsection (1).
- (3) A licensee must notify the Director in writing of his, her or its current postal address in Vanuatu.

65. Indemnity

An individual is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the exercise or performance, or the purported exercise or performance, of a power or duty conferred on him or her by this Act.

66. Fees

The Minister may, by order, prescribe the fees payable for any application or licence, or any act or thing which a person or authority is required to do under this Act.

67. Recovery of moneys

Money due to the Government under this Act may be recovered as a debt in any court of competent jurisdiction.

68. Records and reports

- (1) A licensee must keep accurate records, and must submit to the Director, in the manner and at the times required by the Director, reports of:
 - (a) the volumes of timber and other forest products harvested; and
 - (b) the volumes of timber and other forest products bought or sold, the name and address of the vendor or purchaser, and the prices paid; and
 - (c) the quantities of products manufactured in a sawmill and the prices obtained for them; and
 - (d) any other statistics or information related to the logging operation conducted by the licensee, or the production or sale of timber and other forest products in, or shipment of timber and other forest products from, Vanuatu.
- (2) The Director must include in an annual report prepared under section 20 of the Public Service Act [Cap. 246]:
 - (a) a report on the conduct of all commercial forestry operations during the preceding year, indicating in particular the volume and value of timber and other forest products extracted from forests under commercial forestry operations; and
 - (b) a report on reforestation during the preceding year, indicating the total area and species planted; and
 - (c) a report on the current status of the Forestry Sector Plan, in particular its preparation or variation and its implementation.
- (3) A licence granted under this Act is a matter of public record, and any person, on application to the Director in the prescribed form and upon payment of the prescribed fee, may receive a copy of the licence the subject of the application.

69. Collection of plant or animal specimens

- (1) A person must not collect animal or plant specimens (whether dead or alive) from an area for export or commercial purposes unless the person has obtained the prior written approval of the Director or such other person as is prescribed.
- (2) Subsection (1) does not apply to the custom owners of the area concerned.
- (3) The person must apply for approval in the prescribed form.

70. Offences

- (1) Any person who negotiates for the acquisition of timber rights without being an approved negotiator with respect to those timber rights is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.
- (2) Any person who conducts a commercial forestry operation without a licence granted under Part 5 is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.
- (3) Any person who conducts logging in a Conservation Area in contravention of section 51 is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.
- (4) Any person who fells or removes a tree of a protected species in contravention of section 53(2) is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.
- (5) Any person who conducts logging in contravention of the mandatory restrictions on logging in section 54(1) is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.
- (6) In addition to any penalty imposed for an offence under subsection (2), (3), (4), (5) or (6), a person convicted under one of those subsections:
 - (a) must pay to the Director the value as determined by the court by which the person was convicted of any tree in respect of which the offence was committed, and of any damage done in the course of the offence to any land; and
 - (b) is liable to confiscation of any forest products the subject of the offence, and of any vehicle, machinery, tools or other equipment used in connection with the offence.
- (7) The Director, on receipt of a payment under subsection (6)(a), must pay the amount to the custom owners of the timber rights, provided that if the custom owners of the land concerned have themselves committed the offence in question, the Director must instead pay the amount into the Forestry Project Fund.
- (8) Any person who, in any way, directly or indirectly, hinders or obstructs a person in the exercise of powers or the performance of duties vested in him or her by this Act is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.
- (9) Any person who knowingly or negligently makes a false or misleading statement in respect of any matter he or she is required to declare or report under this Act, or any licence granted under this Act, is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.
- (10) Any person who exports forest products in contravention of section 61(1) is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.
- (11) Any person who exports or causes to be exported from Vanuatu any forest products or plant material, other than timber, without the written approval of the Director of Forests is guilty of an offence punishable on conviction by a fine not exceeding VT 1,000,000 or imprisonment for not more than 12 months, or both.
- (12) If a person to whom section 69(1) applies collects animal or plant specimens (whether dead or alive) from an area without the prior written approval required under that

section, the person is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.

- (13) A person who improperly influences, hinders or obstructs a member of the Board in the performance of his or her duties or the exercise of his or her powers is guilty of an offence punishable on conviction by a fine not exceeding VT 500,000 or imprisonment for not more than 6 months, or both.
- (14) The Director, with the written approval of the Public Prosecutor, may authorise a Forestry Officer in writing to prosecute offences under this Act.

71. Regulations

- (1) The Minister may, by order, make regulations, not inconsistent with this Act, prescribing all matters that by this Act are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation made under subsection (1) may prescribe all or any of the following:
 - (a) standards for timber grading;
 - (b) a code of practice for timber preservation;
 - (c) the establishment, functions and powers of advisory or research bodies, and their efficient and effective operation;
 - (d) the management of Conservation Areas;
 - (e) penalties not exceeding VT 100,000 for breaches of any regulations.

72. Repeal, savings and amendments

- (1) The Forestry Act [Cap. 147] is repealed.
- (2) Despite such repeal, the following Orders are continued in force as if they had been made under this Act:
 - (a) Forestry (Management and Control of Sandalwood Trade and Exports) Order No. 3 of 1997;
 - (b) Forestry (Vanuatu Code of Logging Practice) Order No. 26 of 1998;
 - (c) Forestry (Control of Mobile Sawmills) Order No. 9 of 1996;
 - (d) Forestry (Restriction on the Felling of Sandalwood) Order No. 84 of 1999;
 - (e) Forestry (Setting of minimum price for Sandalwood) Order No. 85 of 1999.
- (3) A licence, permit, guarantee or other instrument made, issued or granted by or under the repealed Act that was in force immediately before the commencement of this Act, continues in force as if it had been made, issued or granted under this Act so far as it is not inconsistent with any provision of this Act.
- (4) This Act does not in any way limit the Forestry Rights Registration and Timber Harvest Guarantee Act [Cap. 265] and if there is any inconsistency between the 2 Acts, this Act prevails.

SCHEDULE 1

(Section 6)

FORESTS BOARD OF VANUATU

1. Membership

(1) The Board consists of:

- (a) the Director, who is the Chairperson; and
- (b) the Director of the Department of Lands, or a senior officer of that Department nominated by the Director of Lands; and
- (c) the Head of the Environment Unit, or a senior officer of that Unit nominated by the Head.

(2) In addition to the Board's membership as set out in subclause (1), when the Board considers:

- (a) an application for approval to negotiate under section 18; or
- (b) arrangements for the conduct of negotiations for a timber rights agreement under section 24; or
- (c) approval of a timber rights agreement under section 27;

the Board must co-opt to its membership for the purposes of that consideration the Secretary General of the local government council for the local government region to which that application or timber rights agreement relates.

(3) The co-opted member has the same voting rights as the other members.

2. Meetings of the Board

(1) The Chairperson presides at all meetings of the Board and, subject to this Act, determines the manner for conduct of its business.

(2) The Chairperson must arrange for meetings of the Board to be held at such times and such places in Vanuatu as are suitable and practicable for the effective performance of its functions and exercise of its powers under this Act.

(3) For the conduct of business at a meeting of the Board:

- (a) a quorum is constituted by:
 - (i) the Chairman; and
 - (ii) one of the other two members under clause 1(1); and
 - (iii) in the circumstances referred to in clause 1(2), the Secretary General of the local government council concerned; and
- (b) the members present must use their best endeavours to reach decisions by consensus, but, if consensus is not achieved, then:
 - (i) decisions must be reached by the majority of the votes of the members present; and
 - (ii) in the event of an equality of votes, the Chairperson has a casting vote.

(4) A member of the Board must not sit on a matter in which he or she is directly or indirectly interested, whether it is a financial or personal interest.

(5) The Chairperson must ensure that:

- (a) all relevant information and matters are before the Board; and
- (b) appropriate secretarial services are available to the Board; and
- (c) the necessary travel and other arrangements are made;

to enable the Board to perform its functions under this Act.

(6) Only such meetings of the Board are to be held in public as the Chairperson so decides.

3. Allowances, etc.

For the avoidance of doubt, members of the Board are performing a service on behalf of the Government, and accordingly are entitled to receive no more than their normal remuneration and the approved allowances of public officers.

SCHEDULE 2

**STEPS IN NEGOTIATING AND APPROVING A
TIMBER RIGHTS AGREEMENT (TRA)**

