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REPUBLIC OF VANUATU

BILL FOR THE

LAND LEASES (AMENDMENT) ACT NO. 2 OF 1995

Explanatory Note

The purpose of this Bill is to amend the Land Leases Act [CAP. 163] to provide for the registration of freehold estates created under the Freehold Titles Act No. 13 of 1994 and to cause consequential amendments.

MARCH, 1995

PAUL BARTHELEMY TELUKLUK
Minister of Natural
Resources

REPUBLIC OF VANUATU

LAND LEASES (AMENDMENT) ACT NO. 2 OF 1995

Arrangement of Sections

1. Amendment of the long title to Chapter 163.
2. Amendment of section 1.
3. Amendment of section 2.
4. Amendment of section 4.
5. Amendment of section 8.
6. Insertion of new section 12A.
7. Amendment of section 13.
8. Amendment of section 14.
9. Amendment of section 17.
10. Amendment of section 22.
11. Amendment of section 30.
12. Amendment of section 51.
13. Amendment of section 52.
14. Amendment of section 54.
15. Amendment of section 56.
16. Amendment of section 57.
17. Amendment of section 59.
18. Amendment of section 60.
19. Insertion of new section 62A.
20. Amendment of section 66.
21. Amendment of section 67.
22. Amendment of section 68.
23. Amendment of section 69.
24. Amendment of section 71.
25. Amendment of section 72.
26. Amendment of section 76.
27. Amendment of section 91.
28. Amendment of section 107.
29. Amendment of Schedule.
30. Commencement.

REPUBLIC OF VANUATU

LAND LEASES (AMENDMENT) ACT NO. 2 OF 1995

An Act to amend the Land Leases Act [CAP. 163].

BE IT ENACTED by the President and Parliament as follows:-

AMENDMENT OF THE LONG TITLE OF CHAPTER 163

1. The Land Leases Act [CAP. 163] in this Act referred to as the "principal Act" is amended in the long title by deleting the words "leases of" and substituting the words "interests in".

AMENDMENT OF SECTION 1

2. Section 1 of the principal Act is amended -

- (a) by deleting the definition of "Act";
- (b) in the definition of "disposition" by deleting the words "registered lease" and substituting the words "freehold estate or registered lease";
- (c) in the definition of "easement" deleting the words "registered lease" and substituting the words "freehold estate or registered lease" wherever they occur;
- (d) in the definition of "encumbrance" by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
- (e) by inserting after the definition of "file" the following definition -

"freehold estate" means a freehold estate created under the Freehold Titles Act No. 13 of 1994;"
- (f) in the definition of "interest" by deleting the words "a lease" and substituting the words "a freehold estate, lease";

- (g) by deleting the definition of "Land Leases Register" and substituting the following definition -

"land register" means the land register established under section 4;"
- (h) in the definition of "licence" -
 - (i) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
 - (ii) by deleting the words "that lease" and substituting the words "that freehold estate or lease";
- (i) in the definition of "mortgage" by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
- (j) in the definition of "profit" by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
- (k) in the definition of "proprietor" by deleting the words "a registered lease" in paragraphs (a) and (b) and substituting the words "a freehold estate or a registered lease";
- (l) in the definition of "the register" -
 - (i) by deleting the words "Land Leases Register" and substituting the words "land register";
 - (ii) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
- (m) in the definition of "to register" by deleting the words "Land Leases Register" and substituting the words "land register".

AMENDMENT OF SECTION 2

3. Section 2 of the principal Act is amended -

- (a) in paragraph (a) by deleting the words "Land Leases Register" and substituting the words "land register".
- (b) by the addition of a new paragraph (f) as follows -

"(f) an index, in alphabetical order, of the names of the proprietors of registered freehold estates showing the numbers of the titles in which they are interested."

AMENDMENT OF SECTION 4

4. Section 4 of the principal Act is amended -

(a) by deleting the head note and substituting the following head note -

"THE LAND REGISTER";

(b) by repealing subsection (1) and substituting the following subsection -

"(1) The land register shall comprise a register maintained in both the English and French languages -

(a) in respect of each freehold estate created under the Freehold Titles Act No. 13 of 1994;

(b) in respect of each lease required to be registered by this Act.";

(c) in paragraphs (a) and (c) of subsection (2) by deleting the words "the lease" and substituting the words "the freehold estate or lease".

AMENDMENT OF SECTION 8

5. Section 8 of the principal Act is amended in paragraphs (c) and (e) by deleting the words "this Act" and substituting the words "this Act or the Freehold Titles Act No. 13 of 1994".

INSERTION OF NEW SECTION 12A

6. After section 12 of the principal Act insert the following new section -

"COMBINATIONS AND SUBDIVISIONS RELATING TO FREEHOLD ESTATES

12A. (1) Where the freehold estates in respect of contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Director, on application by the proprietor, may combine those parcels by closing the registers relating to such freehold estates and opening a new register or registers in respect of the freehold estate or estates in the parcels resulting from the combinations.

- (2) Upon the application of the proprietor of a freehold estate for the division of the land comprised in his freehold estate into two or more parcels, the Director shall effect the division by closing the register relating to such freehold estate and opening new registers in respect of the freehold estates in the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that nothing shall be done under this section which would be inconsistent with this Act or any other written law, and no land which is subject to a lease shall be subdivided unless the lease is also subdivided."

AMENDMENT OF SECTION 13

7. Section 13 of the principal Act is amended -
- (a) in subsection (1) by deleting the words "registered leases" and substituting the words "freehold estates or registered leases";
 - (b) in subsection (1) by deleting the words "each lease" and substituting the words "each freehold estate or lease";
 - (c) in subsection (2) by deleting the words "the leases" and substituting the words "the freehold estates or leases".

AMENDMENT OF SECTION 14

8. Section 14 of the principal Act is amended -
- (a) by numbering the existing provision as subsection (1); and
 - (b) by adding the following subsection -
 - "(2) Subject to the provision of the Freehold Titles Act No. 13 of 1994, the registration of a person as the proprietor of a freehold estate shall vest in that person the freehold estate in the land comprised in that estate together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied and express obligations, liabilities and incidents of that freehold estate."

AMENDMENT OF SECTION 17

9. Section 17 of the principal Act is amended by deleting the word "lease" wherever it occurs and substituting the words "freehold estate or lease".

AMENDMENT OF SECTION 22

10. Section 22 of the principal Act is amended -

(a) in subsection (1) -

(i) in the first line by deleting the words "No registered lease" and substituting the words "No freehold estate or registered lease";

(ii) by deleting the words "a registered lease" wherever occurring and substituting the words "a freehold estate or a registered lease";

(iii) in the last line by deleting the words "the lease" and substituting the words "the freehold estate or lease";

(b) in subsection (2) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease".

AMENDMENT OF SECTION 30

11. Section 30 of the principal Act is amended in subsection (1) by deleting the words "registered interest" and substituting the words "registered interest except a freehold estate".

AMENDMENT OF SECTION 51

12. Section 51 of the principal Act is amended by deleting the words "his registered lease" and substituting the words "his freehold estate or registered lease".

AMENDMENT OF SECTION 52

13. Section 52 of the principal Act is amended -

(a) in subsections (1), (2) and (3) by deleting the words "a registered lease" occurring in those subsections and substituting the words "a freehold estate or a registered lease";

(b) in subsection (1) by deleting the words "that lease" and substituting the words "that freehold estate or lease".

(c) in subsection (2) by deleting the words "such lease" and substituting the words "such freehold estate or lease".

AMENDMENT OF SECTION 54

14. Section 54 of the principal Act is amended in subsection (2)

- (a) by deleting the words "of a lease" and substituting the words "of a freehold estate or lease";
- (b) by deleting the words "the lease" and substituting the words "the freehold estate or lease".

AMENDMENT OF SECTION 56

15. Section 56 of the principal Act is amended -

- (a) in subsections (1) and (3) by deleting the words "the lease" appearing in those subsections and substituting the words "the freehold estate or lease";
- (b) in paragraph (c) of subsection (1) by deleting the words "the leased land" and substituting the words "the land comprised in the freehold estate or lease".

AMENDMENT OF SECTION 57

16. Section 57 of the principal Act is amended -

- (a) by deleting the words "the leased land" and substituting the words "the land comprised in the freehold estate or lease";
- (b) by deleting the words "the lease" and substituting the words "the freehold estate or lease".

AMENDMENT OF SECTION 59

17. Section 59 of the principal Act is amended in subsection (2)

- (a) in paragraph (a) by deleting the words "the mortgaged lease" and substituting the words "the mortgaged freehold estate or lease";
- (b) by deleting the words "the lease" where they appear in paragraphs (b) and (c) and substituting the following words "the freehold estate or lease";
- (c) in paragraph (c) by deleting the words "any person" and substituting the words "any person who, in respect of the freehold estate must be an indigenous citizen,".

AMENDMENT OF SECTION 60

18. Section 60 of the principal Act is amended -

(a) by repealing subsection (1) and substituting the following subsection -

"(1) A proprietor -

(a) in respect of his lease or mortgage may, subject to this Act, transfer his registered lease or mortgage to any person;

(b) in respect of his freehold estate or mortgage may, subject to this Act and the Freehold Titles Act No. 13 of 1994, transfer his freehold estate to any indigenous citizen,

with or without consideration, by an instrument in the prescribed form.";

(b) by deleting the words "the lease" wherever appearing in subsection (2) and substituting the words "the freehold estate or lease";

(c) in subsection (3) by inserting the words "of a lease" after "A Transfer".

INSERTION OF SECTION 62A

19. After section 62 of the principal Act insert the following new section -

"MATTERS IMPLIED IN TRANSFER RELATING TO FREEHOLD ESTATES

62A. (1) On the transfer of a freehold estate, there shall be implied -

(a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that the obligations incident to the freehold estate have been performed up to the date of the transfer; and

(b) on the part of the transferee, an agreement with the transferor that so long as the freehold estate subsists the transferee and the persons deriving title under him will perform the obligations incident to the estate, and will keep the transferor and the persons deriving title under him indemnified against all consequences and liabilities arising out of the non-performance of any of the obligations.

- (2) On the transfer of a freehold estate subject to a mortgage, there shall be implied -
- (a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that nothing has been done or omitted up to the date of the transfer (including the payment of any moneys payable under the mortgage) which would render the mortgage liable to be enforced; and
 - (b) on the part of the transferee, an undertaking with the transferor that so long as the mortgage subsists the transferee and the persons deriving title under him shall keep the transferor indemnified against all consequences and liabilities of or arising out of the non-payment of the said moneys or the non-performance of any of the said obligations."

AMENDMENT OF SECTION 66

20. Section 66 of the principal Act is amended -

- (a) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
- (b) by deleting the words "the lease" and substituting the words "the freehold estate or lease".

AMENDMENT OF SECTION 67

21. Section 67 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";
 - (ii) by deleting the words "his lease to the lessee of other land" and substituting the words "his freehold estate or lease to the lessee or proprietor of other land";
- (b) by repealing subsection (2) and substituting the following subsection -

"(2) Any proprietor transferring a freehold estate or granting a registered lease may in the transfer or lease grant an easement for the benefit of the land transferred or leased over the land comprised in any freehold estate or registered lease retained by him or reserve such an easement for the benefit of such retained land.";

(c) in subsection (4) by deleting the word "lease" wherever appearing and substituting the words "freehold estate or lease".

AMENDMENT OF SECTION 68

22. Section 68 of the principal Act is amended by deleting the word "lease" wherever it occurs and substituting the words "freehold estate or lease";

AMENDMENT OF SECTION 69

23. Section 69 of the principal Act is amended -

(a) in subsection (1) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";

(b) in paragraph (b) of subsection (2) by deleting the words "registered lease" and substituting the words "freehold estate or registered lease";

(c) in paragraphs (a) and (b) of subsection (3) by deleting the words "the lease" where occurring and substituting the words "the freehold estate or lease";

(d) in paragraph (b) of subsection (3) by deleting the words "registered lease" and substituting the words "freehold estate or registered lease";

(e) in subsection (4) -

(i) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease";

(ii) by deleting the words "such a lease" and substituting the words "a lease";

AMENDMENT OF SECTION 71

24. Section 71 of the principal Act is amended in subsection (1) by deleting the words "a registered lease" and substituting the words "a freehold estate or a registered lease".

AMENDMENT OF SECTION 72

25. Section 72 of the principal Act is amended in subsection (2) by deleting the words "a registered lease" and substituting the words "a freehold estate or registered lease".

AMENDMENT OF SECTION 76

26. Section 76 of the principal Act is amended in subsection (2) by deleting the words "a lease" and substituting the words "a freehold estate or lease".

AMENDMENT OF SECTION 91

27. Section 91 of the principal Act is amended in subsection (2) by deleting the words "A registered lease" and substituting the words "A freehold estate or registered lease".

AMENDMENT OF SECTION 107

28. Section 107 of the principal Act is amended by deleting the words "a lease" and substituting the words "a freehold estate or lease".

AMENDMENT OF SCHEDULE

29. The Schedule to the principal Act is amended in paragraph 1 by inserting after subparagraph (a) the following subparagraph -

"(aa) creation or transfer of a freehold estate 2%".

COMMENCEMENT

30. This Act shall come into force on the date of its publication in the Gazette.