

REPRINT

FOREST RESOURCES AND TIMBER UTILISATION ACT (CAP. 40)

As in force at: 1 October 2009

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For list of amendments see Endnotes

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO FOREST RESOURCES AND TIMBER UTILISATION AND TO CONTROL AND REGULATE THE TIMBER INDUSTRY AND FOR MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH

FOREST RESOURCES AND TIMBER UTILISATION ACT (CAP. 40)

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FOREST RESOURCES AND TIMBER UTILISATION ACT (Cap. 40)

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PART I PRELIMINARY

1 Short title

This Act may be cited as the *Forest Resources and Timber Utilisation Act*.

2 Interpretation

(1) In this Act except where the context otherwise requires:

“Commissioner of Forest Resources” means the Commissioner of Forest Resources appointed under section 3;

“enforcement officer” means an enforcement officer appointed pursuant to section 3;

“forest offence” means an offence punishable under this Act;

“forest officer” means a forest officer appointed under section 3 and includes the Commissioner of Forest-Resources and an enforcement officer;

“forest produce” means trees, timber, poles, branches, charcoal, wood ashes, palms, bamboos, canes, climbers, creepers, grass, moss, fungus, lichens, plants or parts thereof, leaves, flowers, fruit seeds, roots, fibres, bark, bark extracts, wood extracts, gums, oils, resins, pitch, sap, latex, rubber, tar, wax, honey, products of animals, litter, humus, earth, sand and stone found in or brought from a state forest or forest reserve and such other things as the Minister may by notice declare to be forest produce;

“land-use plan” means a plan for the use of land for agriculture, livestock, reforestation, post-logging development, aquaculture, or for infra-structure for any of the aforesaid things, and includes a

plan for such other use of land as the Minister may, by legal notice, published in the *Gazette*, declare in this behalf;

“livestock” includes asses, bulls, cows, geldings, goats, horses, stallions, mares, mules, oxen, pigs, sheep and steers and the young thereof;

“mill” means a sawmill and includes any mechanically powered plant, machinery or equipment for converting unmilled timber into milled timber, but does not include any plant, machinery or equipment which the Minister may by notice declare not to be a mill for the purpose of this Act;

“milled timber” includes sawn timber, wood particles, wood pulp and veneer, produced in or by a mill;

“state forest” means a state forest declared under section 20;

“Tambu place” means a Tambu place commonly so called and considered holy, sacred or forbidden by Solomon Islanders;

“timber” includes trees, other than protected trees specified in Schedule 1, when they have fallen or been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not;

“timber levy” means a timber levy imposed under section 19;

“tree” includes any root, stump, stem, branch, brushwood, young tree or sapling;

“unmilled timber” means timber that has not been converted into milled timber.

- (2) In this Act, except where the context otherwise requires, the expressions **“customary land”**, **“freehold interest in land”**, **“land register”**, **“leasehold interest in land”**, **“public land”**, **“registration”** and **“Solomon Islander”** shall have the respective meanings ascribed to them in the *Land and Titles Act*.

3 Appointment of officers

There shall be appointed a Commissioner of Forest Resources, and such number of enforcement officers, forest officers, and other

officers as may be necessary for carrying into effect the provisions of this Act.

PART II FELLING OF TREES FOR SALE

4 Felling of trees for sale to be licensed

(1) Any person who fells any tree or removes any timber from any land for the purpose of sale thereof or of the products thereof otherwise than:

- (a) for use within Solomon Islands as firewood or unmilled timber;
- (b) for supplying logs for milling to a mill licensed under section 18, from within the area that mill is by its licence authorised to draw unmilled timber;
- (c) for such other purpose declared by the Minister by notice to be exempt from the provisions of this section; or
- (d) under and in accordance with the terms and conditions of a valid licence issued under section 5,

shall be guilty of an offence and liable to a fine of 20,000 penalty units or to imprisonment for two years or to both such fine and such imprisonment.

- (2) Any person who fells a tree or removes timber from any land shall, until the contrary is proved, be presumed to have felled that tree or removed that timber for the purpose of sale.
- (3) The onus of proving that a tree has been felled or timber has been removed for any of the purposes specified in paragraphs (a) or (b), or under paragraph (c) of subsection (1), shall lie on him who so alleges.

5 Licence to fell trees for milling or sale

(1) Upon an application made to the Commissioner of Forest Resources for the grant of a licence authorising the felling of trees upon and the removal of timber from:

- (a) any public land, land in which the Government holds a freehold

interest in land or leasehold interest in land, land leased by or on behalf of the Government, land in respect of which the Government has a profit to fell and take away trees, and any land contiguous or island adjacent to such land; or

- (b) any land, not being customary land, or land to which paragraph (a) applies; and
- (c) any customary land, when such felling and removal are the subjects of rights granted under an agreement duly approved by the Minister under Part III,

and upon payment of the prescribed fees for the grant of such licence, the Commissioner of Forest Resources may either accept the application or reject it:

Provided that no such application shall be rejected without hearing the applicant, if he so desires, and without communicating to him the reasons of such rejection.

- (2) Where the Commissioner of Forest Resources accepts the application, he may grant to the applicant such licence on such terms and conditions as he may specify therein:

Provided that no such licence shall be granted unless the Commissioner of Forest Resources is satisfied:

- (a) that the applicant, who is a foreign investor complies with the provisions of the law relating to foreign investment and applicable to him;
- (b) that the applicant has obtained the approved agreement referred to in Part III, when such felling and removal are the subjects of rights granted under that agreement, from any customary land;
- (c) that the applicant has agreed:
 - (i) to comply with such logging methods, and post-logging land-use plans;
 - (ii) to provide such logging plans specifying such infra-

structure facilities;

(iii) to undertake such reafforestation plans with respect to the growth of such forest plants, and such modes of their maintenance; and

(iv) to take such measures for the conservation of catchment areas of rivers and prevention of soil erosion and preservation of environment, Tambu places and sites of historical importance,

as may be specified by the Commissioner of Forest Resources; and

(d) that the applicant will begin the operations with respect to felling of trees and removal of timber therefrom within such time as may be specified by the Commissioner of Forest Resources.

- (3) The Commissioner of Forest Resources may, subject to any general or special directions that may be given by the Minister, at any time alter or amend a licence issued under subsection (2) to include or exclude any land contiguous or island adjacent to any public land or land leased by or on behalf of the Government or land in respect of which the Government has a profit to fell and take away trees comprised in the licence.

PART III APPROVED TIMBER AGREEMENTS AFFECTING CUSTOMARY LAND

6 Interpretation

In this Part, unless the context otherwise requires:

“appropriate Government” means the respective Provincial Executive in the province;

“approved agreement” means an agreement approved under the provisions of this Part;

“Commissioner” means the Commissioner of Forest Resources;

“timber rights” include a right to:

- (a) inspect, survey, enumerate, mark and map any area or trees;
- (b) cut, trim, lop, top and crop any tree;
- (c) plant and cultivate any seed, seedling or tree;
- (d) take any measure whatsoever for the healthy growth and protection of any tree;
- (e) have access to and extract (whether with or without any agents, servants, workmen, animals, vehicles and machines or all or any of them) any timber or trees;
- (f) take any timber into possession or ownership;
- (g) for the purpose of any of the things specified in paragraphs (a) to (f), construct and maintain:
 - (i) any works (including railways, tramways, harbours, port areas, wharves, jetties, bridges, dams, pipelines, aerodromes, yards and camps);
 - (ii) any buildings and structures (including warehouses, sheds, mills, kilns, offices, houses and fences); and
 - (iii) any cables, power supplies, lines or other means for the distribution of power, cranes, weightbridges, saw benches or other things;
- (h) for any of the aforesaid purposes:
 - (i) subject to any provisions of the relevant legislation relating to water, to take and use water; and
 - (ii) to quarry, extract, move and use any stone, earth or other road-making or building material.

7 Application to Commissioner for consent to negotiate

- (1) Any person who wishes to carry on business in Solomon Islands as a timber exporter or sawmiller, and desires to acquire timber rights on customary land shall make application to the Commissioner in the prescribed form and manner and obtain his consent to negotiate with

the appropriate Government, and the owners of such customary land.

- (2) When the Commissioner gives his consent to an application made under subsection (1), the Commissioner shall forward a copy thereof to the appropriate Government.

8 Duties of area council in respect of applications forwarded under this Part

- (1) Upon receipt of the application forwarded to it under section 7, the appropriate Government shall fix a place within the area the customary land is situated and a date not being earlier than two months, nor later than three months, from the date of receipt of the copy of the application for a meeting to be held with the customary landowners and the applicant to determine matters specified in subsection (3)
- (2) Notice of the meeting referred to in subsection (1) shall be given within one month of the receipt of the application in a manner the appropriate Government considers most effective, to persons who reside within such area and appear to have an interest in the land, trees or timber in question.
- (3) At the time and place referred to in subsection (1), the appropriate Government shall discuss and determine with the customary landowners and the applicant matters relating to:
 - (a) whether or not the landowners are willing to negotiate for the disposal of their timber rights to the applicant;
 - (b) whether the persons proposing to grant the timber rights in question are the persons, and represent all the persons, lawfully entitled to grant such rights, and if not who such persons are;
 - (c) the nature and extent of the timber rights, if any, to be granted to the applicant;
 - (d) the sharing of the profits in the venture with the landowners; and

- (e) the participation of the appropriate Government in the venture of the applicant.
- (4) Any agreement reached pursuant to discussions held under subsection (3) shall be reduced to writing and be forwarded to the Commissioner with particular reference to:
 - (a) the quantum of profit sharing, if any, agreed upon; and
 - (b) the extent of participation, if any, of the appropriate Government, in the applicant's venture.
- (5) Upon agreement being reached pursuant to subsection (3), the applicant shall carry out such investigations as are necessary to identify and describe the forest resources on the land and any areas which should be excluded from the application on grounds of environmental or social values.

9 Area council's determination in respect of matters relating to application

- (1) Where no agreement is reached between the applicant and the customary landowners, the appropriate Government shall recommend to the Commissioner to reject the application and the Commissioner shall reject the application accordingly.
- (2) On making its determination under section 8(3), the appropriate Government shall as soon as practicable:
 - (a) issue a certificate in the prescribed form setting out its determination;
 - (b) give the public notice of its determination in the same manner as notice under section 8(2) was given; and
 - (c) forward the original certificate to the Commissioner and a copy to the applicant.

10 Appeals against act or determination of area council

- (1) Any person who is aggrieved by the determination of the appropriate Government made under section 8(3)(b) or (c) may, within one month from the date public notice was given in the manner set out in section

9(2)(b), appeal to the customary land appeal court having jurisdiction for the area in which the customary land concerned is situated and such court shall hear and determine the appeal.

- (2) Notwithstanding any provision to the contrary in any other law, the order or decision of a customary land appeal court on any appeal entertained by it under subsection (1) shall be final and conclusive and shall not be questioned in any proceedings whatsoever.
- (3) It shall be the duty of the clerk to any customary land appeal court to forthwith notify the Commissioner of the lodging in his court of an appeal under this section and where such appeal is finally determined inform the Commissioner and the appropriate Government of the result of the appeal and forward to each of them a copy of the relevant judgment.

11 Commissioner's recommendation

On receipt of the certificate issued under section 9 and on being satisfied that:

- (a) the period for lodging an appeal under section 10 has lapsed;
- (b) if an appeal has been lodged, it has finally been disposed of; and
- (c) the agreement for the granting of the timber rights referred to in such certificate has been duly completed in the prescribed form and manner and that the parties to, and the terms and provisions of, such agreement accord with such certificate or, where there has been an appeal under section 10 with the order of the court determining such appeal,

the Commissioner shall recommend to the appropriate Government to grant approval to such agreement.

12 Certificate of approval

- (1) Upon receipt of a recommendation made under section 11 and the relevant agreement duly stamped, the appropriate Government may complete a certificate in the prescribed form approving the agreement and forward a copy to the Commissioner.

- (2) The Commissioner on receipt of the copy of the certificate referred to in subsection (1) shall, within fourteen days, notify the parties to the agreement of such completion.

13 Regulations

The Minister may make regulations for the better carrying out of the provisions and purposes of this Part, and in particular but without prejudice to the generality of the foregoing may make regulations for:

- (a) the form of application for approval of agreements under this Part;
- (b) the form of agreements which may be approved under this Part and the manner in which they are to be executed;
- (c) the form of certificates to be issued by appropriate Government under section 9;
- (d) the form of certificates issued under section 12;
- (e) the fees, if any, to be paid for any act or thing done under the provisions of this Part;
- (f) the rates of royalty payments, the method of calculation and the manner of payment thereof;
- (g) the disposal of waste products and the protection of the environment;
- (h) the manner and nature of reforestation so as to protect the timber industry;
- (i) prohibiting or regulating the taking of any specified kind of timber from any customary land; and
- (j) the amount of timber, removed from the land that is the subject of the agreement, required to be processed by the applicant.

14 Advice of Commissioner and other officers to be available

Any person proposing to negotiate the grant of any timber rights affecting customary land may be entitled to seek and to be given, in

relation to any question touching on those rights, the advice of the Commissioner or any public officer nominated by him.

15 Jurisdiction in relation to approved agreements

Notwithstanding any provision of any other law to the contrary, original jurisdiction to hear and determine any cause or matter arising out of, or relating to an approved agreement shall be exercised only by the High Court.

16 Power to enter customary land

Every enforcement officer and every forest officer shall have authority to enter any customary land to exercise the powers or to perform the functions conferred on him by this Act.

PART IV LICENSING OF MILLS

17 Mills to be licensed

Any person who installs or operates a mill otherwise than under and in accordance with the terms and conditions of a valid licence issued under section 18 shall be guilty of an offence and liable to a fine of 20,000 penalty units or to imprisonment for two years or to both such fine and such imprisonment:

Provided that this section shall not apply to any mill or class or description of mills declared by the Minister by notice to be exempt from the provisions of this section.

18 Mill licences

- (1) Upon application therefor and payment of the prescribed fee and subject to any general or special directions that may be given by the Minister, the Commissioner of Forest Resources may issue a licence to install and operate a mill subject to such terms and conditions as he may therein specify and may, at any time, with the agreement of the licensee, alter or amend the licence.
- (2) Every licence issued under subsection (1) shall specify:
 - (a) the area or areas from which unmilled timber to be milled at the

mill may be drawn;

- (b) the maximum quantity of unmilled timber that may be acquired or milled or the maximum quantity of milled timber that may be produced, during any specified period, and, without prejudice to the power to specify terms and conditions under subsection (1), every licence may specify the maximum quantities to be drawn or acquired from any specified area during any specified period; and
- (c) the charges to be levied per cubic metre in the round or in such other manner as may be prescribed, and specified in such licence:

Provided that no such licence shall be issued to an applicant who is a foreign investor, unless he complies with the provisions of the law relating to foreign investment as applicable to him.

- (3) Any person who is aggrieved by any of the terms or conditions of a licence issued to him under subsection (1), or by the refusal of the Commissioner of Forest Resources to issue him a licence under subsection (1), may, within two months of being notified of such term, condition or refusal, appeal in writing to the Minister whose decision thereon shall be final.

PART V TIMBER LEVY

19 Power to impose levy on timber

The Minister may by order:

- (a) impose a levy on unmilled timber exported from Solomon Islands and on milled timber or timber products exported from or sold in Solomon Islands or milled or produced for the purpose of such export or sale;
- (b) impose different levies in respect of different licensees, species of trees, products, grades, places or other circumstances; and
- (c) provide for the levy to be assessed on the quantity or value of timber or milled timber or timber products, or otherwise howsoever.

PART VI STATE FORESTS

20 Power to declare state forests

- (1) The Minister may at any time by notice declare any land that is public land, land in which the Government holds a freehold interest in land or a leasehold interest in land, or land leased by or on behalf of the Government, to be a state forest.
- (2) Upon such land or part thereof ceasing to be such land as aforesaid, that land or that part shall cease to be a state forest.

21 Restriction on grant of interests in state forests

The Commissioner of Lands shall not grant any interest or licence in any land comprised in a state forest without the prior written consent of the Commissioner of Forest Resources, and such restriction shall be noted on the land register and no such grant shall be registered until the consent of the Commissioner of Forest Resources has been produced to the Registrar of Titles.

22 Offences relating to state forests

Any person who within a state forest otherwise than under and in accordance with a valid permit issued under section 23 or in pursuance of any right which existed prior to the declaration of that state forest (the onus of proving which shall lie on such person):

- (a) fells, cuts, taps, damages, burns, removes, works or sells any tree;
- (b) causes any damage therein by negligence in felling any tree, dragging any timber, lighting any fire or otherwise howsoever;
- (c) clears or breaks up any land for cultivation or any other purposes;
- (d) resides or erects any building, shelter or structure;
- (e) grazes or permits to be grazed any livestock;
- (f) has in his possession any machinery, equipment or implement for cutting, taking, working or removing any forest produce,

without being able to show that such machinery, equipment or implement is in his possession for a lawful purpose; or

(g) constructs or re-opens any road, saw-pit or work-place,

shall be guilty of an offence and liable to a fine of 10,000 penalty units or to imprisonment for one year or to both such fine and such imprisonment.

23 Permit in respect of state forests

Upon application therefor and payment of the prescribed fee, the Commissioner of Forest Resources, and subject to the directions of the Commissioner of Forest Resources, an enforcement officer or a forest officer, may issue a permit authorising any of the acts mentioned in section 22 upon such terms and conditions as the Commissioner of Forest Resources or enforcement or forest officer may therein specify.

PART VII FOREST RESERVES

24 Declaration of forest reserves

Where the Minister is satisfied that for the purpose of conserving water resources within Solomon Islands it is necessary or desirable to protect the forest or other vegetation in any rainfall catchment area, he may, subject to the provisions of this Part, by notice declare such area or part thereof to be a forest reserve, and shall in the same notice specify what rights and the extent to which such rights may be exercised in the forest reserve.

25 Notice, enquiries and compensation

Before declaring any area to be a forest reserve the Minister shall:

- (a) cause to be published in such manner as he may in his discretion consider to be adequate or most effective for the purpose of bringing it to the attention of all persons likely to be thereby affected, notice of the intention so to do;
- (b) cause to be afforded to such persons an opportunity to make representations thereon; and

(c) cause to be made such enquiries as he may, in his discretion, deem fit for the purpose of ascertaining:

(i) what rights exist in that area and to what extent such rights may be expected to be exercised in the absence of a declaration as aforesaid;

(ii) the extent to which the exercise of such rights could be permitted without prejudice to the purposes of a forest reserve;

(iii) in respect of the extent to which the exercise of such rights could not be so permitted, what reasonable alternative arrangements could be made or what compensation would be appropriate,

and shall, in respect of such rights which cannot be permitted to be exercised, cause such arrangements as aforesaid to be made or such compensation as aforesaid to be paid, within one month of the making of the declaration under section 24.

26 Appeal against compensation

- (1) Any person not permitted to exercise any of his rights in a forest reserve who is aggrieved by the amount of the compensation paid or offered or the alternative arrangements made or offered to be made under section 25, may within three months of the declaration of the forest reserve, appeal to a Magistrate's Court, which may make such order as it considers just.
- (2) Any person who is aggrieved by the order or decision of a Magistrate's Court under subsection (1) and desires to question it on the ground that it is erroneous in point of law may, within two months of the date of the order or decision, appeal to the High Court.
- (3) The High Court may, if satisfied that the order or decision is erroneous in point of law, make such order as it considers just.
- (4) The order or decision of the High Court and, subject to the provisions of this section, the order or decision of a Magistrate's Court under this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

27 Offences relating to forest reserves

- (1) Any person who within a forest reserve otherwise than under and in accordance with a valid permit issued under section 28:
- (a) fells, cuts or removes any forest produce otherwise than for his own personal or domestic use;
 - (b) clears or breaks up any land for cultivation, or any other purpose;
 - (c) resides or erects any building, shelter or structure; or
 - (d) grazes or permits to be grazed any livestock,

shall be guilty of an offence and liable to a fine of 10,000 penalty units or imprisonment for one year or to both such fine and such imprisonment.

- (2) Subsection (1) shall not apply to any person acting in exercise of any right specified under section 24, but any person charged with an offence under this section shall, until the contrary is proved, be presumed not to have been a person acting as aforesaid.

28 Permits in respect of forest reserves

Upon application therefor and payment of the prescribed fee, the Commissioner of Forest Resources and, subject to the directions of the Commissioner of Forest Resources, an enforcement officer or a forest officer, may issue a permit authorising any of the acts mentioned in section 27 (1) upon such terms and conditions as the Commissioner of Forest Resources or enforcement officer or forest officer may therein specify.

PART VIII PROCEDURE AND PENALTIES

29 Penalties for falsification of timber marks

Any person who:

- (a) knowingly counterfeits upon any tree or timber, or has in his possession any implements for counterfeiting, any mark used by enforcement officers or forest officers to indicate that such

tree or timber may lawfully be felled or removed by some person; or

- (b) unlawfully or fraudulently affixes to any tree or timber any mark used by enforcement officers or forest officers; or
- (c) alters, defaces or obliterates any such mark placed on any tree or timber by or under the authority of an enforcement officer or a forest officer; or
- (d) wastes timber by such acts or operations as are specified in the regulations,

shall be guilty of an offence and liable to a fine of 20,000 penalty units or to imprisonment for two years or to both such fine and such imprisonment.

30 Receiving illegally obtained forest produce

Any person who receives any forest produce knowing or having reasonable cause to believe it to have been obtained in contravention to this Act shall be guilty of an offence and liable to a fine of 10,000 penalty units or to imprisonment for one year or to both such fine and such imprisonment.

31 Removal of unauthorised buildings, etc.

- (1) When any person is convicted of erecting any unauthorised building, shelter or structure or of planting any unauthorised crops in a state forest or forest-reserve, the court may in addition to any penalty it may impose, order such building, shelter, structure or crops to be removed and the land restored to its previous condition within such time as it shall fix.
- (2) Any person who fails to obey an order made under subsection (1) within the time fixed, shall unless he satisfies the court that he has used all diligence to carry out such order, be liable to a fine not exceeding 1,000 penalty units for every day during which the default continues.
- (3) Notwithstanding the provisions of subsection (2), when an order has been made under subsection (1) and not carried out within the time

fixed, the Commissioner of Forest Resources may cause the order to be carried out and may recover the expenses of so doing as a civil debt from the person convicted.

32 Search, arrest, etc.

- (1) Any enforcement officer or forest officer or police officer may without a warrant:
 - (a) demand from any person the production of any authority or licence for any act done or committed by such person in any state forest or forest reserve or in relation to any forest produce for which a licence or permit is required under this Act;
 - (b) require any person found within any state forest or forest reserve or in the vicinity of such forest, and who has in his possession any forest produce, to give an account of the manner in which such person became possessed of such produce, and may arrest that person if he fails to give a satisfactory account;
 - (c) arrest any person reasonably suspected of being guilty of a forest offence or of being in possession of any forest produce in respect of which an offence has been committed:

Provided that no person shall be arrested under this subsection unless such person refuses to give his name and address or gives a name and address which there is reasonable cause to believe is false or there is reasonable cause to believe that he will abscond;

- (d) seize and detain any livestock found trespassing or found without any person in charge of them in any state forest or forest reserve;
 - (e) enter any timber yard or mill by day to inspect forest produce therein.
- (2) Any enforcement officer or forest officer making an arrest under this section shall without unnecessary delay take or send the person arrested to a police officer, and any police officer making an arrest under this section or to whom a person arrested under this section is taken, shall deal with such person in accordance with the provisions

of the *Criminal Procedure Code Act* relating to persons arrested without a warrant.

33 Seizure of property used in committing a forest offence

- (1) Where there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, machinery, equipment, boats, conveyances and livestock reasonably suspected to have been used in the commission of such offence, may be seized by any enforcement officer or forest officer or police officer.
- (2) Every officer seizing any property under this section shall place on such property, or on the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, so soon as may be, make a report of such seizure to a Magistrate.
- (3) In any proceedings in respect of a forest offence alleged to have been committed in respect of any forest produce, the averment that any substance is forest produce shall be sufficient without proof of such fact unless the person charged proves the contrary.

34 Forfeiture of property after conviction for a forest offence

- (1) When any person is convicted of a forest offence, all forest produce in respect of which such offence has been committed, and all tools, machinery, equipment, boats, conveyances and livestock used in the commission of such offence, shall be liable to be forfeited by order of the court recording the conviction.
- (2) Such forfeiture may be in addition to any other penalty prescribed for such offence.

35 Power to dispose of property seized when person suspected of forest offence is unknown

- (1) Where there is reason to believe that a forest offence has been committed by a person who is unknown or cannot be found, any property seized in respect of such suspected offence under section 33 shall be taken possession of and may be disposed of by or under the direction of the Commissioner of Forest Resources, but no such property shall be sold or otherwise disposed of until the expiration of

one month from the date of the service or publication of the notice given under subsection (2), or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he may produce in support of his claim within such period of one month, or until after the determination of any appeal under section 37.

- (2) When possession is taken of any property under subsection (1), the Commissioner of Forest Resources, or, subject to the directions of the Commissioner of Forest Resources, an enforcement officer or a forest officer, shall cause notice thereof to be served upon any person whom he has reason to suspect to be interested in the property or may publish such notice in such manner as he deems fit.

36 Sale of perishable property

A Magistrate or an enforcement officer or forest officer may, notwithstanding section 35, direct the sale of any property seized under section 33 and which is subject to speedy and natural decay, and may deal with the proceeds of such sale as he might have dealt with the property had it not been sold.

37 Appeal by person claiming seized property

Any person claiming to be interested in any property seized under section 33 may, within one month from the service or publication of a notice in respect of such property under section 35(2), appeal to a Magistrate against the taking into possession of such property.

38 Property taken possession of to vest in Crown

When possession has been taken of any property under section 33, and after the expiration of the time limited for appealing under section 37 or the determination of any such appeal in favour of the Commissioner of Forest Resources, such property or the proceeds of sale thereof if sold under section 36 shall vest in the Crown absolutely.

PART IX MISCELLANEOUS

39 Cancellation and suspension of licences and permits

- (1) Where the Commissioner of Forest Resources is satisfied that the

holder of a licence or permit issued under this Act has contravened any of the provisions of this Act, or that there has been a contravention of any of the terms of conditions of such a licence or permit, he may by notice in writing cancel or suspend the licence or permit:

Provided that no such licence or permit shall be cancelled or suspended without giving such holder of license or permit an opportunity of being heard.

- (2) Any person who is aggrieved by the cancellation or suspension of his licence or permit under subsection (1) may within two months thereof appeal in writing to the Minister whose decision thereon shall be final.

40 Effect of licences and permits

No licence or permit issued under this Act shall convey or be construed to convey any right which the Government does not have and in particular no such licence shall convey nor be construed to convey any right or authority to enter any private land nor take any action with respect to anything without the authority of the owner of that land or thing.

41 No action to lie for act in good faith

No action shall lie against any person in respect of any act done by him in good faith in the execution or intended or purported execution of his duties or powers under this Act.

42 Declaration of state forests and forest reserves to be registered

- (1) The Conservator shall furnish to the Registrar of Titles every declaration of a state forest and of a forest reserve and every amendment and cancellation thereof, authenticated in such manner as the Registrar may require, and the Registrar shall note in the land register, in such manner as he thinks fit, every such declaration, amendment and cancellation affecting registered land.
- (2) Without prejudice to the power of the Registrar of Titles to require further information, a copy of the declaration purporting to have been

made under this Act shall be sufficient evidence to support a note in the land register as aforesaid.

- (3) The Registrar of Titles shall not be concerned to note any licence or permit issued by the Commissioner of Forest Resources or any enforcement officer or forest officer under this Act in respect of state forests or forest reserves nor to file in the land registry, nor to furnish certified copies thereof, nor to provide for inspection, any instrument embodying such licence or permit.

43 Acquisition of timber rights in customary land

Nothing contained in section 241 of the *Land and Titles Act* shall prohibit or invalidate the acquisition by a person other than a Solomon Islander of any right to cut and remove any trees growing on customary land, or of any right of access to or over customary land for the purpose of cutting or removing trees growing on customary land.

44 Regulations

- (1) The Minister may make regulations for the better carrying out of the provisions and purposes of this Act, and in particular, without prejudice to the generality of the foregoing power, such regulations may:
 - (a) provide for the forms of licences and permits to be issued under this Act, the procedure for the issue of such licences and the terms and the conditions to which they may be subject;
 - (b) prescribe the fees to be paid on the application for a grant of any licence or permit under this Act;
 - (c) prescribe the form and manner in which returns of timber felled, sawn, or otherwise processed or milled, shipped, or sold shall be made, and may require the holder of any such licence to submit for inspection, books, records and accounts relating to any transactions in respect of forest produce or timber;
 - (d) prescribe the procedure for payment of timber levies and provide for the effective recovery thereof;

- (e) prescribe rates of royalty to be paid in respect of forest produce obtained from state forests or from other land owned or leased by the Government or rates of stumpage to be paid for wastage of timber from a customary land in contravention of the prohibition imposed under paragraph (r), and the method of calculating such stumpage;
- (f) prohibit or regulate the taking of any specified kind of forest produce from any state forest;
- (g) provide for the survey and demarcation of state forests and forest reserves and for rights of entry upon any land for the purpose of carrying out any such survey;
- (h) regulate the marking of timber and the manufacture, use and possession of timber marking instruments;
- (i) provide for the standard methods of grading and measurement of timber for export and sale and for the prohibition of the export of timber not of good merchantable quality;
- (j) provide for the protection of timber against insect and fungus attack;
- (k) regulate the lighting of fires within a state forest or a forest reserve and prescribe the precautions to be taken to prevent the spreading of fires;
- (l) regulate the entry of persons into state forests or forest reserves and the periods during and the conditions under which persons may remain therein;
- (m) provide for:
 - (A) requiring the persons licensed under this Act:
 - (i) to replant trees over land from which they have felled trees and removed timber,
 - (ii) to construct, repair and maintain roads, pathways and bridges for the purpose of access to such land for felling trees and removing timber therefrom; and

- (B) for the closing of such roads, pathways and bridges to persons or traffic or such persons or traffic as may be specified;
- (n) prohibit or regulate the hunting of birds or animals or fishing in any state forest or forest reserve;
- (o) provide for the impounding of stray livestock found in any state forest or forest reserve and of any livestock found in any such forest in contravention of this Act, for the costs and fees to be paid by the owner of such livestock and for the disposal of such livestock as are not claimed or for which the costs and fees are not paid;
- (p) provide for the regulation of tree felling and timber milling operations;
- (q) provide for the safety of persons employed in the timber industry;
- (r) prohibit:
 - (i) the felling and removal of any protected tree declared in Schedule 1;
 - (ii) wastage of timber caused by such acts or operations as may be specified;
 - (iii) logging within fifty metres on any side of any river or stream; and
 - (iv) logging of forests above 400 metres above sea levels;
- (s) declare any land whether it is a state forest land or customary land as a sanctuary for the purpose of conservation of flora or fauna, and prohibiting felling of any tree or removal of any timber from such sanctuary:

Provided that no customary land shall be declared as a sanctuary unless it is compulsorily acquired in accordance with the provisions of Part V of the *Land and Titles Act* as amended by Schedule 2;

- (t) prescribe anything by this Act required or authorised to be prescribed.
- (2) Regulations made under subsection (1) may also make a provision that the contravention of any such regulation as may be specified in that provision shall be an offence punishable with a fine not exceeding 3,000 penalty units or imprisonment for a term not exceeding three months, or both, in cases where no such contravention is constituted as an offence for which no penalty is provided, elsewhere under this Act.

SCHEDULE 1

[Section 44(1)(r)]

PROTECTED TREES

1. Rosewood (*Pterocarpus indicus*),
2. Ironwood (*Intsia bijuga*);
3. Ebony (*Diospyros spp.*);
4. Kauri (*Agathis macrophylla*);
5. Nali Nuts (*Canarium indicum*);
6. all edible fruit trees; and
7. any other timber tree as the Minister may, by order, declares to be a protected tree in this behalf, for the conservation of timber producing trees in Solomon Islands.

SCHEDULE 2

[Section 44(1)(s)]

AMENDMENTS TO PART V AND PART X OF THE LAND

AND TITLES ACT (Cap. 133)

Provisions of Division 2 (compulsory Acquisition of land) of Part V and Part X (Estates) read with such definitions of the words and expressions in section 2 of that Act as have been used in those provisions, of the *Land And Titles Act*, shall apply to the compulsory acquisition of customary land, for purposes of declaring it to be sanctuary under this Act, subject to the following amendments:

- (1) in section 71, in subsection (1):
 - (a) substitute “the Minister is satisfied, having regard to the provisions of section 8(1)(a) and (b) of the *Constitution*, that any customary land is required for declaring it to be a sanctuary under the *Forest Resources and Timber*

Utilisation Act” for “it appears to the Minister that any land is required for any public purposes”

(b) insert the following provisions at the end:

“Provided that before making such declaration, there shall be prior negotiations with the owner of such land:

Provided further that the owner shall have a right of access to independent legal advice throughout the acquisition proceedings:

Provided also that so far as practicable the interest to be acquired in such customary land shall be limited to a fixed-term interest.”,

- (2) in section 72, substitute “registered customary land” for “registered land” appearing in the marginal heading, and in the text of the section;
- (3) in section 73, substitute “any unregistered customary land” for “interests in any unregistered land or land registered as customary land”;
- (4) in section 74, substitute “appropriate Government as defined in section 6 of the *Forest Resources and Timber Utilisation Act*” for “Provincial Secretary” wherever it appears;
- (5) in section 77:
 - (a) in paragraph (a), substitute “registered customary land” for “registered land”; and
 - (b) in paragraph (b), insert “customary land” after “land is unregistered”;
- (6) in section 79:
 - (a) in subsection (2):
 - (i) insert “or his lawyer” after “hearing the claimant”,
 - (ii) substitute “reasonable amount of compensation (the

valuable consideration of which may take the form of cash or some other form, and may be payable by way of lump sum or by instalments) having regard to all the relevant circumstances” for “such amount of compensation as he may think proper”; and

- (b) in subsection (3), substitute “If the claim has been rejected, or the claimant is dissatisfied with the offer, the claimant may, within three months from the service upon him of the notice or the offer as aforesaid, appeal to the High Court for the determination of his right or interest in the land acquired, the legality of taking possession or acquisition of his customary land, the reasonableness of the amount of compensation offered, and the period of time of its payment, and the High Court may, determine and accept the relief claimed, or may reject the same, or may modify the Commissioner’s rejection of claim, or his offer” for the words beginning with “If the claim has been rejected” and ending with the words “which may confirm the Commissioner’s rejection of the claim or his offer”;

- (7) for section 84, substitute the following section:

“84. Right of owner of customary land to purchase estate in land

- (1) Where the claimant is furnished under section 81, with an order for payment of compensation, he may, by notice, in writing, given to the Commissioner, choose to obtain from the Commissioner, by transfer or grant, made in his favour, in the manner provided by Part X an estate in land, by paying the price or consideration of that transfer or grant, as the case may be, with the amount of compensation payable to him under that order.
- (2) Where the Commissioner, upon receipt of the notice given under subsection (1), decides to accept the choice, he shall make an offer to the claimant, by notice in writing, the estate in land he proposes to transfer by sale, or grant, as the case may be, identifying such land, and setting out the nature of the estate offered, with the terms and conditions, if any, affecting the same.

- (3) Where the claimant accepts such offer the Commission shall make the transfer of the estate as provided in Part X, after receiving the price or the consideration for the transfer, and shall declare such estate in land to be customary land under section 242.
- (4) Where the claimant does not receive from the Commissioner the offer referred to in subsection (2) within three months from the date of his notice given under that subsection, the choice made by the claimant shall be deemed to have been refused, and shall take effect as if it has not been made.”;
- (8) in Part X, section 132(2) to (4), and sections 135 to 142 shall cease to have effect in their application to the estate in land transferred or granted under section 84, and
- (9) in section 133:
 - (a) insert “in land transferred or granted under section 84”, after “Every estate”; and
 - (b) the latter portion of that section beginning with the words “and, in addition” and ending with the words “as he may think fit” shall cease to have effect.

ENDNOTES

1

KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 40 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act from that date to 1 October 2009.

2

LIST OF LEGISLATION

Forest Resources and Timber Utilisation Act (Cap. 40)

<i>Constituent legislation:</i>	9 of 1969 (Commenced 1 October 1970)
	11 of 1972
	16 of 1977
	LN 46A of 1978
	6 of 1984
	8 of 1987
	9 of 1989
	3 of 1990
	7 of 1990
	5 of 1991

Forest Resources and Timber Utilisation (Amendment) Act 2000 (No. 6 of 2000)

Assent date	18 January 2001
Gazetted	18 January 2001*
Commenced	18 January 2001*

*[*Note: The Gazettal of the Act and the commencement date are provided by s 4 of the Constitution (Amendment and Validation) Act 2023 and s 33 of the Legislation Amendment, Repeal and Validation Act 2023]*

Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)

Assent date	29 July 2009
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Gazetted	1 October 2009
Commenced	1 October 2009

3 LIST OF AMENDMENTS

s 4	amd by Act No. 14 of 2009
s 6	amd by Act No. 6 of 2000
s 7	amd by Act No. 6 of 2000
s 8	amd by Act No. 6 of 2000
s 9	amd by Act No. 6 of 2000
s 10	amd by Act No. 6 of 2000
s 13	amd by Act No. 6 of 2000
s 17	amd by Act No. 14 of 2009
s 22	amd by Act No. 14 of 2009
s 27	amd by Act No. 14 of 2009
s 29	amd by Act No. 14 of 2009
s 30	amd by Act No. 14 of 2009
s 31	amd by Act No. 14 of 2009
s 44	amd by Act No. 14 of 2009