

## **BRITISH SOLOMON ISLANDS PROTECTORATE**

### **LAND AND TITLES REGULATION, 1959**

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## **NO. 13 OF 1959**

High Commissioner,

1st December, 1959.

### **QUEEN'S REGULATION**

TO AMEND, DECLARE, AND CONSOLIDATE THE LAW RELATING TO THE TENURE OF LAND, THE RESUMPTION AND ACQUISITION OF LAND, THE REGISTRATION OF TITLE TO LAND, AND FOR OTHER LIKE PURPOSES.

Made by Her Britannic Majesty's High Commissioner for the Western Pacific under the provisions of the Pacific Order in Council, 1893.

In the name of Her Majesty, ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

#### **Short title and commencement.**

1.-(1) This Regulation may be cited as the Land and Titles Regulation, 1959, and shall come into operation on such date or dates as the High Commissioner may by proclamation appoint.

(2) Different dates may be appointed for the coming into operation of different Parts: but so that Parts II, III, IV, VI, and IX shall be brought into operation contemporaneously.

### **Interpretation.**

**2.-**(1) In this Regulation, the following expressions have the meaning hereby assigned to them, that is to say -

"Adjudication Officer" means a person appointed, by order of the High Commissioner, to act as such either generally, or for a specified period, or within a specified part of the Protectorate, or in relation to a specified matter;

#### **Cap. 34.**

"Advisory Council" means the Advisory Council established by the Advisory Council Regulation;

"appoint", in relation to a special representative, means to make a grant of probate of a will, or of letters of administration to the estate, of a deceased person; and "appointment", in relation to a special representative, has a corresponding meaning;

"authorised officer" means a person, or a member of a class of persons, specified to be an authorised officer by rules made pursuant to section **142**;

"benefit", in relation to a charge security, includes the powers and rights of the chargee;

"the Board" means the Solomon Islands Land Trust Board established by Part I;

"boundary mark" means any survey stone, metal pipe or spike, wooden peg or post, concrete post or pillar, or other survey mark;

"building" includes any structure or erection and any part of a building structure or erection, and any plant or machinery which is embedded or otherwise rigidly attached in its place;

"caveator" means a person who has lodged, under Part VI, a caveat which has not lapsed or been withdrawn or removed from the Register;

"charge security" means an instrument in writing made by the owner of an interest in land charging that interest by way of security for the payment of a sum of money;

"chargee" means the person to whom a charge security or subcharge is given or who for the time being is entitled to receive the sum of money the payment of which is thereby secured;

"chargor" includes both the person who gives a charge security or subcharge and the owner for the time being of the interest charged thereby;

"a court" means any court which would, apart from the provisions of subsection (1) of section 138 and subsection (1) of section **139**, have jurisdiction in relation to the subject matter of the proceeding in question;

"the Court" means the High Commissioner's Court when its jurisdiction and authority is being exercised by a Judicial Commissioner;

"Crown Surveyor" means the chief surveyor in the public service;

"current native usage" means the usage of Solomon Islanders obtaining in relation to the matter in question at the time when that question arises, regardless of whether that usage has obtained from time immemorial or any lesser period;

"declaratory resolution" means a resolution passed by the Board pursuant to subsection (1) of section **37**;

"develop" means to do anything which constitutes development;

"development" means the carrying out of building, engineering, mining, or other operations in, on, over, or under land, other than -

- (a) the carrying out of works for the maintenance or repair of any building; or
- (b) the carrying out of any works for the purpose of maintaining or repairing any sewers, mains, pipes, cables, or other apparatus; or
- (c) the cultivation of any land for the purpose of afforestation, agriculture, or horticulture;

"District Commissioner" means the administrative officer for the time being in charge of a district created under the Native Administration Regulation, 1953;

"estate", except in subsection (6) of section **111**, and in subsection (2) of section **137**, and in the First Schedule, means a perpetual estate or a fixed-term estate as defined in Part II;

"grantor", when used with reference to the grant of an estate, means the Board or the Commissioner of Lands, as the case may require;

"guardian" means a person who, according to law, is empowered to act on behalf of a person who is either under the age of twenty-one years or incapable, by reason of mental infirmity, of acting;

"inheritance" does not include acquisition under the terms of a will;

"interest", where used in relation to land, includes, unless the context otherwise requires, an estate; and, where used in relation to native customary land, it includes rights of

ownership of a tree as defined in this subsection; and "person interested" has a corresponding meaning;

"land" includes land covered with water, or any buildings on land, or any cellar, sewer, drain, or culvert in or under land, but does not include -

(a) land covered by the sea at mean low water; or

(b) any minerals (including oils and gases) of any nature whatsoever or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working;

"landlord" includes both the landlord for the time being and the person who granted the lease;

"lease" includes a sub-lease and any periodic tenancy;

**cap. 30.**

"native court" means a court established under the Native Courts Regulation;

"native customary land" means -

(1) land (not being registered land) owned by a Solomon Islander or group of Solomon Islanders, -

(a) which has, at some time or times during the twenty-five years immediately preceding the first day of January, 1958, been actually used, for the purpose of occupation or cultivation, by the owner or owners thereof, or by some person or persons permitted by him or them so to use it; or

(b) in respect of which the owner or owners thereof have, at some time or times during the twenty-five years immediately preceding the first day of January, 1958, received a payment or payments in consideration of his or their permitting some other person or persons, or the Government of the Protectorate, to occupy or cultivate or exercise any rights over such land; or

**No.4. of 1914**

(c) which has been adjudged to belong to the owner or owners thereof by a court or by the Sole Commissioner appointed, pursuant to the Solomon and Gilbert and Ellice Islands (Commissions of Inquiry) Regulation, 1914, to inquire into and report on certain claims to land in the Protectorate; and

(2) land which by virtue of this Regulation becomes native customary land;

"official administrator" means the person for the time being appointed to be the official

administrator of unrepresented estates under the British Solomon Islands and Gilbert and Ellice Islands (Probate and Administration) Order in Council, 1914;

"owner", in relation to an estate, means the person in whom the estate is for the time being vested; and, in relation to a charge security, it means the person in whom, for the time being, the benefit of the charge security is vested; and, in relation to native customary land, it means the person or persons who is or are, according to current native usage, regarded as the owner or owners of the land; and "own" has a corresponding meaning;

"panel" means the panel of Solomon Islanders appointed under subsection (2) of section **10**;

"paragraph", unless the context otherwise requires, means a paragraph of the subsection or Schedule in which the expression occurs;

"Part", unless the context otherwise requires, means a Part of this Regulation;

"preservation order" means all order made pursuant to subsection (1) of section **131**;

"public land" means land which, or a perpetual estate in which, is vested in the Board or the Commissioner of Lands;

"public service" means the service of the Government of the Protectorate;

"Register" means the Register kept under Part VI;

"registered land" means land in which there is for the time being an estate subsiding, other than a perpetual estate vested in the Board or the Commissioner of Lands;

"river" includes a stream, canal, creek, or other watercourse, natural or artificial, the bed of which is not less than ten feet in width;

**No.2. of 1955**

"road" means a public road as defined in the Roads Regulation, 1955, but, except in subsection (6) of section **22**, does not include any land comprised in an estate of which some person (other than the Board) is for the time being registered as owner

"Schedule" means a Schedule to this Regulation;

"section", unless the context otherwise requires, means a section of this Regulation;

"Solomon Islander" means any person one of whose parents is or was a member of a race, group, tribe, or line indigenous to the Protectorate or to the Gilbert and Ellice Islands Colony, except a person who for the time being is of status equivalent to Europeans by virtue of being registered under section **3** of the Definition (Native) Regulation;

"statutory trusts" means the trusts declared by subsection (1) of section **32**;

**Cap.26.**

"subcharge" means an instrument in writing whereby the owner of a charge security charges the benefit thereof by way of security for the payment of a sum of money: and "to subcharge" has a corresponding meaning;

"sub-paragraph", unless the context otherwise requires, means a sub-paragraph of the paragraph in which the expression occurs;

"subsection", unless the context otherwise requires, means a subsection of the section in which the expression occurs;

"survey" includes boring and the digging of trial holes and the taking of levels;

"Surveyor" means a surveyor in the public service or other surveyor for the time being authorised by the Commissioner of Lands to act as such for the purposes of this Regulation;

"tenant" includes both the tenant for the time being and the person to whom the lease was granted;

"tree", for the purposes of sections **36**, **42**, and **43**, means any tree other than a tree owned by a person merely in virtue of his being the owner of the land in which the tree is growing;

"vacant land" means any land which is neither native customary land nor public land nor registered land;

"will" includes a codicil and any other testamentary instrument.

(2) Where an interest exists in any land, that land is said to be comprised in that interest.

(3) Where an interest in land is held subject to the payment of any rent or the performance of any obligation, that rent or that obligation is said to be incident to that interest.

(4) An interest in perpetuity is deemed to subsist for a period of time within the meaning of this Regulation.

(5) An obligation is a requirement of the performance, or of the abstention from performance, of an act or series of acts; and a person who complies with the requirement is said to perform the obligation.

### **Division of Regulation.**

3. This Regulation is divided into Parts and Divisions as follows:-

- Part I - Administration (sections **4-18**).
- Part II - Land Tenure (sections **19-36**).
- Part III - Public Land (sections **37-50**).
- Part IV - Transactions in Land
  - Division 1 - General Restrictions (sections **51-53**).
  - Division 2 - Transfers Leases and Charges (sections **54-65**).
  - Division 3 - Death Bankruptcy and Incapacity (sections **66-70**).
- Part V - Compulsory Acquisition of Land (sections **71-80**).
- Part VI - Registration of Title.
  - Division 1 - The Register (section **81-90**).
  - Division 2 - Effect of Registration (section **91-95**).
  - Division 3 - Registration of Transactions (sections **96-104**).
  - Division 4 - Caveats (sections **105-109**).
  - Division 5 - Amendment of the Register, Compensation, Searches, and Registrar Powers (sections **110-113**).
- Part VII - Surveys (sections **114-119**).
- Part VIII - Offences (sections **120-123**).
- Part IX - Miscellaneous (sections **124-146**).

## **PART I - ADMINISTRATION**

### **The Commissioner of Lands and his officers.**

**4.**-(1) This Regulation shall be administered by a Commissioner of Lands, who shall be assisted by such and so many Deputy Commissioners of Lands, Surveyors, and other officers as may be appointed.

(2) All appointments made under subsection (1) shall be notified in the *Gazette*.

### **Duties and powers of Commissioners.**

**5.**-(1) It shall be the duty of the Commissioner of Lands, in addition to his other duties specified in this Regulation, to advise the High Commissioner, as often as he may be requested so to do, concerning land policy in the Protectorate.

(2) The Commissioner of Lands may by writing under his hand, delegate the control and management, subject to such conditions and restrictions (if any) as he may specify in such writing, of any land or interest vested in him to any officer in the public service: and every such delegation shall be notified in the *Gazette*.

(3) The Commissioner of Lands shall have the power to institute or defend any proceedings under his official title.

#### **Duties of Commissioner's officers.**

**6.-**(1) Every officer (other than the Commissioner of Lands) referred to in subsection (1) of section 4 shall be subject to the directions of the Commissioner of Lands and shall, subject to such directions, perform such duties and exercise such powers of the Commissioner of Lands as may be specified in the conditions of his appointment or as may be from time to time assigned or delegated to him by the Commissioner of Lands.

(2) Any person aggrieved by a decision of any of the officers (other than the Commissioner of Lands) referred to in subsection (1) of section 4 may require that the decision be confirmed by the Commissioner of Lands, who may confirm or rescind the decision or substitute for it any decision which could lawfully be given in accordance with the provisions of this Regulation.

#### **The Registrar and his officers.**

**7.-**(1) The Register shall be kept by a Registrar of Titles, who shall be assisted by such and so many Deputy Registrars, Assistant Registrars, Title Examiners, and other officers as may be appointed.

(2) All appointments made under subsection (1) shall be notified in the *Gazette*.

(3) The Registrar shall have the power to institute or defend any proceedings under his official title.

#### **Duties of Registrar's officers.**

**8.-**(1) Every officer (other than the Registrar) referred to in subsection (1) of section 7 shall be subject to the directions of the Registrar and shall, subject to such directions, perform such duties and exercise such powers of the Registrar as may be specified in the conditions of his appointment or as may be from time to time assigned or delegated to him by the Registrar.

(2) Any person aggrieved by a decision of any of the officers (other than the Registrar) referred to in subsection (1) of section 7 may require that the decision be confirmed by the Registrar, who may confirm or rescind the decision or substitute for it any decision which could lawfully be given in accordance with the provisions of this Regulation.

#### **The Solomon Islands Land Trust Board.**

**9.** (1) For the purposes of this Regulation there shall be established a Solomon Islands Land Trust Board, which shall be a body corporate and shall have perpetual succession and a common seal.

(2) The Chairman of the Board shall be the High Commissioner.

(3) The High Commissioner may, by writing under his hand, appoint any officer in the public service (other than a member of the Board) to act as chairman of the Board at any meeting or meetings; and the writing shall be produced at the meeting and recorded in the minutes thereof.

(4) The members of the Board shall be:-

(a) the chairman;

(b) the Commissioner of Lands;

(c) the Crown Surveyor;

(d) one person (being an officer in the public service) appointed by the High Commissioner;

(e) one person (not being a Solomon Islander or an officer in the public service) appointed by the High Commissioner;

(f) the Solomon Islanders appointed and selected in the manner provided by section **10**.

(5) A member appointed under paragraph (c) or (d) of subsection (4) shall hold office for two years from the date on which his appointment takes effect.

(6) The persons referred to in paragraphs (a) (b) (c) and (d) of subsection (4) are hereinafter in this Part referred to as official members of the Board.

### **The panel of members.**

**10.** For the purpose of appointing the Solomon Islander members of the Board, the High Commissioner shall cause the Protectorate to be divided into districts.

(2) The High Commissioner shall appoint a panel of Solomon Islanders, consisting of two Solomon Islanders for each district established under subsection (1).

(3) The Solomon Islanders appointed under subsection (2) shall hold office for two years from the dates on which their respective appointments take effect, except that on the first appointment of the panel the High Commissioner may appoint one of the Solomon Islanders for each district for a term of one year only.

(4) At each meeting of the Board the Solomon Islander members shall consist of those members

of the panel appointed for each district in which there is situated land, in regard to which, or an interest in which, the Board makes or proposes to make any decision.

### **Removal and resignation of members.**

**11.-** (1) If it appears to the High Commissioner that a member of the Board appointed under paragraph (d) or (e) of subsection (4) of section **9**, or any member of the panel, ought for any reason to be removed from his membership of the Board or of the panel, as the case may be, the High Commissioner may remove such member.

(2) If a vacancy occurs by death, resignation, removal, effluxion of time, or otherwise, in the office of any appointed member of the Board or panel, the vacancy shall be filled by appointment by the High Commissioner, and any person appointed to fill a casual vacancy shall hold office so long only as the member in whose place he is appointed would have held office.

(3) Any person ceasing to be an appointed member of the Board or of the panel shall be eligible for reappointment.

(4) An appointed member of the Board or of the panel may resign his office by notice in writing given to the High Commissioner, which shall be notified in the *Gazette*.

(5) All appointments made by the High Commissioner under subsection (2), or under sections **9** or **10**, and all removals made by the High Commissioner under subsection (1), shall be in writing under his hand and shall be notified in the *Gazette*.

### **Proceedings of the Board.**

**12.-**(1) The Registrar shall act as secretary to the Board, and shall keep minutes of its proceedings; but he shall not be a member of the Board.

(2) Meetings of the Board shall be summoned, as often as they may be required, by the Commissioner of Lands, who shall be responsible for taking such steps as may in his opinion be requisite for ensuring that the Solomon Islander members thereof are given notice adequate to enable their attendance thereat; and he shall summon all the members of the panel to the first meeting of the Board.

(3) The Board shall meet at least twice in every year.

(4) The quorum of the Board shall be the chairman and two other members, not more than one of whom shall be an official member thereof; but subject thereto the Board may act notwithstanding any vacancy in their number or in the panel.

(5) No act or proceeding of the Board shall be questioned on account of the appointment of any member thereof, or of the panel, having been defective.

(6) Each member of the Board present at any meeting thereof shall be entitled to one vote; and

the chairman shall be entitled to a casting vote.

(7) The Board may regulate its own procedure and make standing orders governing the conduct of its business.

### **Powers and duties of the Board.**

**13.-**(1) It shall be the duty of the Board, by bringing vacant land under public control in the manner hereinafter provided, to further the use of land in the Protectorate for the benefit of the people thereof.

(2) The Board shall have the power to purchase, take, hold, and dispose of land, interests in land, and other property for the purposes of this Regulation.

(3) The Board shall have the power to institute or defend any proceedings, and service on it of all legal processes and notices shall be effected by service on the Commissioner of Lands.

(4) The Board may compound with any person who has entered into any contract with it, or by or against whom any proceedings have been brought against or by it for any cause whatsoever, for such sums of money or other recompense as the Board thinks proper.

### **Contracts of the Board.**

**14.-**(1) The Board may enter into contracts for the purposes of this Regulation.

(2) Every such contract may be made varied or discharged as follows, that is to say -

(a) any contract which if made between private persons would be by law required to be in writing and under seal the Board may make in writing and under its common seal and in the same manner may vary or discharge the same;

(b) any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith the Board may make in writing signed by any two members of the Board (one of whom shall be an official member) acting pursuant to a resolution of the Board and in the same manner may vary or discharge the same;

(c) any contract which if made between private persons would be by law valid although made by parol only and not reduced into writing the Registrar (in his capacity as secretary to the Board and acting pursuant to a resolution of the Board) may make by parol only without writing and in the same manner may vary or discharge the same.

(3) Any contract whereby the Board undertakes to answer for the debt default or miscarriage of any person shall be in writing and under seal or signed on behalf of the Board in the manner provided by subsection (2).

### **Execution of documents.**

**15.-**(1) The seal of the Board shall be authenticated by the signatures of any two members of the Board (one of whom shall be an official member) acting pursuant to a resolution of the Board.

(2) Every instrument purporting to be an instrument issued by the Board and to be sealed with the seal of the Board authenticated in the manner provided by subsection (1), or to be signed on behalf of the Board by a person authorised to act in that behalf, shall be received in evidence and be deemed to be such an instrument without further proof unless the contrary is shown; and it shall be presumed, unless the contrary is shown, that any person who has signed or purported to sign any instrument on behalf of the Board was in so doing acting pursuant to a resolution of the Board.

### **Accounts to be kept.**

**16.-**(1) The Board shall prepare in respect of each financial year a statement of account in a form approved by the High Commissioner, and such statement shall be audited by the Principal Auditor or such other person as the High Commissioner may appoint.

(2) As soon as may be after the accounts for the year have been audited, the Board shall lay the same before the Advisory Council.

(3) As soon as may be after the end of each financial year the Board shall prepare a report of its activities during the preceding financial year and shall lay the same before the Advisory Council.

(4) The income of the Board shall not be liable to income tax.

### **Board to comply with directions.**

**17.-**(1) The Board may with the consent of the High Commissioner delegate the exercise or performance of any of its powers or duties, either generally or in relation to any specific matter, and subject to such conditions and restrictions (if any) as it may specify, to any officer in the public service.

(2) The High Commissioner may by writing under his hand require the Board to do or refrain from doing any such act matter or thing as he may specify (if in his opinion the requirement is necessary for the purposes of this Regulation or in the interests of the people of the Protectorate), and the Board shall comply with the requirement without undue delay, and, if it fails to comply, it may be summarily compelled to do so by the Court, on a petition and complaint of the Attorney-General.

### **Protection of members.**

**18.** -No member of the Board or of the panel shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his duty, whether or not within the limits of his authority, if he at the time in good faith believed himself to have authority to do or

order the act complained of.

## **PART II - LAND TENURE**

### **Estates may be granted.**

**19.**-(1) The Board or the Commissioner of Lands, as the case may require, may, subject to the provisions of this Regulation, grant to any person an estate in any public land vested in it or him.

(2) The estates which may be granted pursuant to subsection (1) shall be -

- (a) perpetual estates; or
- (b) fixed-term estates.

(3) No estate may be granted without the written consent of the High Commissioner -

- (a) in any land which becomes vested in the Board by virtue of subsection (1) of section 47;
- (b) in any land which becomes vested in the Commissioner of Lands under the provisions of Part V.

### **Perpetual estates.**

**20.**-(1) A perpetual estate in land consists of the right to occupy use and enjoy in perpetuity the land and its produce, subject to the payment of any rent and the performance of any obligations for the time being incident to the estate, and subject to such restrictions as may be imposed by or under this Regulation or any law for the time being in force.

(2) The owner of a perpetual estate may, subject to the provisions of this Regulation, dispose of it either in whole or in part, and either during his life or, at his death, by a valid will, in any manner he thinks fit:

Provided that -

- (a) a disposition by way of security for the payment of money shall be made by way of a charge security in the prescribed form and not otherwise;
- (b) a disposition of the whole or a part of the estate for a limited period shall be by way of lease in the prescribed form;
- (c) a disposition by will shall be in perpetuity.

### **Fixed-term estates.**

**21.-**(1) A fixed-term estate in land consists of the right to use, occupy and enjoy, for a period of time fixed and certain at the time of the grant thereof, the land and its produce, subject to the payment of any rent and the performance of any obligations for the time being incident to the estate, and subject to such restrictions as may be imposed by or under this Regulation or any law for the time being in force.

(2) The owner of a fixed-term estate may, subject to the provisions of this Regulation, dispose of it either in whole or in part, and either during his life or, at his death, by a valid will, in any manner he thinks fit:

Provided that -

- (a) a disposition by way of security for the payment of money shall be by way of a charge security in the prescribed form and not otherwise;
- (b) a disposition of the whole or a part of the estate for a limited period (being less than the whole remaining portion of the period for which the estate was granted) shall be by way of lease in the prescribed form;
- (c) a disposition by will shall be for the whole remaining portion of the period for which the estate was granted.

#### **Incidents of estates.**

**22.-**(1) On the grant of any estate, the grantor may -

- (a) require the payment of a premium for the grant;
- (b) provide that the estate shall be held subject to the payment of a rent;
- (c) provide that the estate shall be held subject to the performance, by the owner for the time being, of such obligations as may be specified in the grant;

and, subject to the provisions of this Regulation, the amount of any such rent and the particulars of any such obligations shall be entered on the Register.

(2) The grantor of an estate may, subject to the provisions of paragraph 17 of the Second Schedule, at intervals of not less than twenty years in the case of an estate comprising town land or thirty-three years in the case of an estate comprising land other than town land, revise the amount of any rent incident to the estate; and the amount of the revised rent shall be entered on the Register, and the payment of the revised rent may be enforced against the person who at the time of the revision is the owner of the estate in like manner as if that person had been the original grantee of the estate.

(3) The grantor of an estate may, by agreement with the owner of the estate and with all other persons interested (otherwise than solely as beneficiaries under a trust) in the estate or in the land

comprised therein, provide that the estate shall be held subject to the performance of obligations other than those created at the time of the original grant thereof; and in default of agreement the grantor may apply to the Court for an order that the estate shall be so held, and on hearing the application the Court may refuse to make the order or may make the order on such terms as it thinks just.

(4) An obligation created pursuant to subsection (3) shall be entered on the Register and may be enforced in like manner as an obligation imposed on the grant of an estate.

(5) If the grantor of an estate discovers that the amount of any rent or the particulars of any obligation (other than an obligation referred to in subsection (6)) is not entered or is incorrectly entered on the Register, he may require the Registrar to rectify the Register, and the Registrar shall comply with the requirement; and thereafter the payment of that rent and the performance of that obligation may be enforced in like manner as if the same had been correctly entered on the Register at the time of its creation: but any person interested (otherwise than solely as a beneficiary under a trust) in the estate, or in the land comprised therein, at the time of the rectification may apply to the Court for compensation for the diminution in value of his interest in the estate or in the land comprised therein by reason of the rectification, and the Court may grant him such compensation (if any) as it thinks just.

(6) Every estate shall, unless it is otherwise specified in the certificate of title, be held subject to the performance of the following obligations, that is to say -

(a) that all boundary marks or lines on or over the land comprised in the estate shall be properly maintained; and

(b) that all existing roads, and rights to use the same, through and over the land comprised in the estate shall remain free and uninterrupted (unless closed, altered, or determined with the consent of the grantor);

and, in addition, every fixed-term estate shall, unless it is otherwise specified in the certificate of title, be held subject to the performance of the following obligation, that is to say, that no gravel, stone, coral, shell, rock, guano, sand, loam or earth shall be removed outside the boundaries of the land comprised in the estate without the written licence of the grantor first being obtained, which licence may be granted by the grantor on such terms, including terms as to payment, as the grantor may think fit.

(7) For the purposes of this section, the Commissioner of Lands may by order designate any area of land (the boundaries whereof shall be specified in the order) as town land; and for the purposes of subsection (2), an estate is deemed to comprise town land if, at the time when the grant of the estate tools effect, the land comprised in it was so designated.

### **Procedure for grant of estates.**

**23.-**(1) Whenever it is proposed to grant an estate, the grantor shall furnish to the Registrar such information as may be needed to enable the Registrar to prepare the certificate of title.

(2) The Registrar shall thereupon prepare the certificate of title in draft and send the same to the grantor for approval.

(3) After the grantor has approved the draft certificate of title, the Registrar shall prepare the certificate of title in duplicate; and, on receiving notification from the grantor that the estate may be granted (which notification shall not be given by the grantor until either any premium required for the grant of the estate has been paid or the payment of any such premium has been secured to the satisfaction of the grantor).

(4) An estate shall be deemed to have been granted on the date when the registration of the certificate of title takes effect, and the period for which the estate subsists shall begin on that date or on such earlier date (if any) as may be specified in the certificate of title.

(5) When the registration of a certificate of title to an estate takes effect, it shall be conclusively presumed, in favour of all persons except -

(a) the grantor of the estate; and

(b) the original grantee thereof, if he has actual knowledge to the contrary,

that the estate has been properly and validly granted.

### **Rents.**

**24.**-(1) Any rent incident to an estate shall, subject to the provisions of subsection (2), be due and payable at the office of the Commissioner of Lands on the first day of January in each year in advance and without demand.

(2) The first payment of a rent incident to an estate (being rent in respect of the period from the date on which the estate begins to subsist until the thirty-first day of December next following) shall, unless already paid, be due and payable at the office of the grantor of the estate on the date of the grant of the estate, and the amount thereof shall be -

(a) where the estate begins to subsist before the first day of July in any calendar year, one whole year's rent;

(b) in any other case, one half year's rent;

but the grantor may remit the whole or any part of this amount in any case where it appears to the grantor to be proper so to do.

### **Termination of estates.**

**25.**-(1) An estate shall cease to subsist -

- (a) if it becomes vested, whether by way of transfer or otherwise, in the grantor thereof; or
- (b) if it is or becomes vested in the Board or the Commissioner of Lands, and the circumstances are such that, on the cesser of the estate apart from the provisions of this subsection, the land comprised therein would vest in the Board or the Commissioner of Lands, as the case may be; or
- (c) if, within three months of a revision of the rent incident to the estate pursuant to subsection (2) of section 22, the owner of the estate, with the written consent of all persons interested (otherwise than solely as beneficiaries under a trust) in the estate or in the land comprised therein, or with the leave of the Court, gives to the grantor not less than three months' notice in writing of his intention to surrender the estate, in which event the estate shall cease to subsist upon the expiration of the notice.

(2) Upon granting leave under paragraph (c) of subsection (1), the Court may impose such terms as it thinks just, and make such further provision (including the making of vesting orders) as seems to it expedient.

### **Enforcement of incidents.**

**26.**-(1) If any rent incident to an estate becomes due and is not paid, the grantor may serve notice in writing upon the owner of the estate requiring the payment thereof within thirty days, and if the notice be not complied with the grantor may -

- (a) institute proceedings before a court for the recovery of the amount due; or
- (b) institute proceedings before the Court for forfeiture of the estate, and for the recovery of the amount due.

(2) If any obligation incident to an estate is not duly performed, the grantor may serve notice in writing upon the owner of the estate requiring the performance thereof within a reasonable time (to be specified in the notice), and if the notice be not complied with the grantor may institute proceedings before the Court for forfeiture of the estate or for damages or for both forfeiture and damages.

(3) Whenever proceedings for forfeiture of an estate are instituted by the grantor, the Court shall afford a hearing to the owner of the estate and to all other persons interested (otherwise than solely as beneficiaries under a trust) in the estate or in the land comprised therein and may thereafter make such order as it thinks just; and in particular the order may provide for the vesting of the estate or of any other estate in any person or persons subject to such rights and interests and on such terms as the Court thinks fit.

(4) An order made under subsection (3) shall not take effect as regards the estate or the land comprised therein until it has been entered on the Register.

(5) Subject to the provisions of subsections (2) and (3) of section 22, no person who has acquired an estate for value (other than the original grantee of the estate) shall be made liable for failure to pay any rent or perform any obligation (other than the obligations set out in subsection (6) of section 22) incident to an estate unless the amount of that rent or the particulars of that obligation were entered on the Register immediately before that person acquired the estate.

(6) The fact that an estate has ceased to subsist shall not affect the right of the grantor thereof to recover any rent incident thereto which has accrued due and not been paid, or damages for the non performance of any obligation incident thereto, before the date on which the estate ceased to subsist; and such rent or damages may be recovered in proceedings instituted either before or after the date on which the estate ceased to subsist: and where the estate ceases to subsist pursuant to subsection (1) of section 25 it shall not be necessary for the grantor to serve notice as required by subsection (2) of this section before instituting proceedings for damages, but it shall be a defence to any such proceedings for the defendant to prove that he was not aware, before the estate ceased to subsist, of the non-performance of an obligation in respect whereof the damages are claimed.

(7) The payment of any rent and the performance of any obligations incident to an estate may be enforced only in the manner set out in this section.

#### **Restriction on subdivision.**

**27.**-(1) The owner of an estate shall not, without the consent of the grantor (which consent may, subject to subsections (2) and (3), be given subject to such conditions as the grantor may consider fit to impose), create or dispose of any interest in the land comprised in the estate so as effect a physical subdivision of that land.

(2) Any person aggrieved by a decision of the grantor of an estate refusing consent under subsection (1) or by any condition subject to which consent is given may appeal to the Court, which may make such order as it thinks just.

(3) The High Commissioner may make rules regulating the practice to be followed by the grantor of an estate in deciding whether to give consent under subsection (1).

(4) Nothing in this section shall be deemed to invalidate any interest which is solely an interest in the proceeds of sale of an estate held upon trust for sale.

#### **Easements.**

**28.**-(1) If the owner of an estate wishes to obtain an easement over land comprised in any estate, he may apply to the Commissioner of Lands, who may direct a survey to be made of the lands concerned.

(2) After receiving the report of the surveyor (if any) and affording all persons interested (otherwise than solely as beneficiaries under a trust) in the lands concerned an opportunity to be heard, the Commissioner of Lands shall make such order, either creating the easement or

dismissing the application, and including such provisions as to the payment of compensation (in the former case) and as to costs (in either case), as he thinks just.

(3) Any person aggrieved by an order of the Commissioner of Lands made under subsection (2) may appeal to the Court, which may make such order as might have been made by the Commissioner of Lands and as it thinks just.

(4) An order creating an easement shall be of no effect until it has been entered on the Register.

(5) Where any registered easement has become extinguished (whether by merger, abandonment, agreement of the parties, or otherwise), the Registrar shall, on such proof of the extinguishment as he shall require, delete the entries relating thereto from the Register.

(6) The provisions of this section shall apply to the acquisition by the Board or the Commissioner of Lands of a right over land comprised in an estate which right would, if it were being acquired for the benefit of an estate owned by the Board or the Commissioner of Lands (as the case may be), be an easement.

(7) No easement (other than one created on the original grant of the estates concerned) may be created except in accordance with this section.

**Restriction of owner's powers.**

**29.**-(1) No profit à prendre may be created in land.

(2) The owner of an estate may not create any interest in the land comprised therein which would, if the law of England were applicable thereto, take effect as a restrictive covenant running with the land in equity.

(3) No lease shall be effective unless -

(a) it is for a period of time fixed and certain at the time of the making thereof; or

(b) it creates a periodic tenancy.

(4) Where the owner of an estate purports to make any disposition (other than a lease) thereof to any person for a period of time less than the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the estate was granted, the disposition shall take effect as a declaration by the owner of the estate that he holds the estate upon the statutory trusts, and shall not operate to vest any interest (other than the interest of a beneficiary under those trusts) in any person.

(5) Any disposition of an estate by will which contravenes the provisions of sections **20** or **21** shall take effect as a disposition of the estate to the special representative of the deceased owner of the estate, or, if there be no special representative, to the Registrar, and in either case upon the statutory trusts.

(6) Any transaction or purported disposition which contravenes the provisions of subsections (1), (2), or (3) may subject a party thereto to a personal liability, but otherwise shall be utterly void and of no effect.

### **Trusts and undivided shares.**

**30.**-(1) The owner of an estate may own it either for his own use and benefit or as a trustee.

(2) Where two or more persons are or become entitled to an estate in undivided shares, then -

(a) if there are not more than five such persons who are of full age, they shall take the estate as joint owners upon the statutory trusts;

(b) if there are more than five such persons who are of full age the estate shall vest in not less than two and not more than five of them as they may appoint, as joint owners, and in default of or pending such appointment in the Registrar, and in either case upon the statutory trusts.

(3) Where two or more persons are joint owners of an estate, the estate shall, on the death of any of them, vest in the survivor or survivors.

(4) No estate shall be granted to more than five persons; and every disposition whereby an estate becomes or would become vested in more than one person who is of full age (whether or not on any trust thereby declared) shall operate (notwithstanding anything to the contrary contained therein) to vest the estate in the donees, or, if there are more than five donees who are of full age, to the five first named in the disposition, as joint owners upon the statutory trusts.

(5) where an estate becomes vested in the Registrar upon the statutory trusts (whether by operation of law or otherwise), he may apply to the Court for the appointment of new trustees, and upon such application the Court may appoint new trustees and make an order vesting the estate in them.

### **Capital money under trusts.**

**31.**-(1) Neither the proceeds of the sale of an estate held upon the statutory trusts, nor any other capital money arising under any transaction relating to an estate so held, shall be paid to or applied by the direction of fewer than two persons as trustees, except where the trustee is the Registrar; but this subsection shall not, except where capital money arises on a transaction, render it necessary to have more than one trustee.

(2) Subject to the provisions of this Regulation, joint owners of an estate shall, when acting together, have all the powers of dealing with that estate which would be possessed by a person if he were sole owner thereof.

### **Statutory trusts.**

**32.-**(1) For the purposes of this Regulation, an estate held upon the statutory trusts shall be held upon trust to sell the same (with power to postpone such sale as the trustees think fit) and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of all outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons beneficially interested in the estate.

(2) An estate held upon the statutory trusts may, subject to the provisions of section **27**, be divided by the trustees among the beneficiaries under the trust, and on any such division the trustees may provide for the payment (either in cash or by way of a charge security) of equality money.

(3) Any beneficiary under the trust who objects to the exercise or proposed exercise of the powers granted by subsection (2) may, either before such exercise or within six months thereafter, apply to the Court, which may make such order as it thinks just.

(4) An estate held upon the statutory trusts, and the interests of the beneficiaries under the trust, shall be treated as interests in land until the estate has actually been sold.

(5) The trusts and powers set out in this section shall be deemed to be incorporated in any instrument which operates expressly to vest any estate or interest in land in any person upon the statutory trusts or whereby any person expressly declares that he holds upon the statutory trust any estate or interest in land already vested in him.

#### **Licences to occupy.**

**33.-**(1) The Board or the Commissioner of Lands may grant to any person, upon such terms and conditions as the grantor may see fit to impose, a licence to occupy any public land vested in the grantor for a period not exceeding three years.

(2) Any provision in any such licence which, but for this subsection, operates, or is intended to operate, to confer upon the licensee a right to obtain a renewal of the licence shall be utterly void and of no effect.

#### **Estates for groups of persons.**

**34.** Upon an application by an unincorporated group of more than five persons for the grant of an estate, the Board or the Commissioner of Lands may, if willing to grant the estate, make arrangements for the grant of the estate to not less than two and not more than five of the members of the group as joint owners upon the statutory trusts, and for the preparation and execution of an appropriate trust instrument.

#### **Native customary land.**

**35.-**(1) The manner of holding, occupying, using, enjoying, and disposing of native customary

land shall be in accordance with the current native usage applicable thereto; and all questions relating thereto shall be determined accordingly.

(2) For the purpose of ascertaining any current native usage, a court required to determine a question in accordance therewith may refer to any books, treaties, reports (whether published or not), or other works of reference, and may accept any matter or thing stated therein as prima facie evidence of the usage in question unless and until the contrary is proved.

#### **Creation of estates from native customary land.**

**36.**-(1) Any Solomon Islander may apply to the Commissioner of Lands to be granted a perpetual estate in any native customary land.

(2) The Commissioner of Lands may, with the consent of the High Commissioner -

(a) refuse the application; or

(b) adjourn consideration of the application either until after a date named by him or indefinitely;

but if such consent is withheld, he shall conditionally approve the application.

(3) If the Commissioner of Lands conditionally approves the application, he shall forthwith refer the matter to an Adjudication Officer, who shall as soon as possible proceed to satisfy himself -

(a) that the boundaries of the land have been surveyed and marked out; and

(b) that the applicant is, according to current native usage, recognised either as the owner of the land or as the owner of the majority of the trees growing therein; and

(c) that the applicant has paid or will pay adequate compensation to -

(i) the owner of any tree growing in the land, if the applicant claims to be the owner of the land; or

(ii) the owner of the land, or of any tree growing therein, if the applicant claims to be the owner of the majority of the trees growing in the land; and

(d) that there appears to be no person (other than the applicant and the persons referred to in paragraph (c)) rightfully claiming, according to current native usage, any interest in the land;

and, for the purpose of so satisfying himself, the Adjudication Officer shall (subject to any rules which may be made) adopt such procedure as appears to him to be appropriate, and shall not be bound by any rules of evidence.

(4) The decision of the Adjudication Officer upon the matter referred to in subsection (3) shall be in writing and shall specify whether he is or is not satisfied as to all of the said matters in relation to the land; and if he is satisfied as to the said matters in relation to some part only of the land, the decision shall specify which part.

(5) Where the Adjudication Officer is satisfied as to all of the matters referred to in subsection (3) in relation to the whole of the land, he may nevertheless recommend in his decision that the estate be not granted to the applicant; and in that event he shall include in his decision his reasons for the recommendation.

(6) Copies of the decision of the Adjudication Officer shall be served upon the applicant, and upon every person who has made any claim adverse to the applicant.

(7) If the applicant, or any person who has made any claim adverse to the applicant, is aggrieved by the decision of the Adjudication Officer and desires to question it or any part of it, on the ground that it is erroneous in point of law or that the Adjudication Officer has failed to comply with any procedural requirement of this Regulation, he may, within six weeks from the service upon him of a copy of the decision, appeal to the Court; and on any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by the failure of the Adjudication Officer to comply with any procedural requirement of this Regulation, quash the decision, either wholly or in part, and substitute for the decision or the part thereof quashed such decision as in its opinion ought to have been given by the Adjudication Officer.

(8) A decision of the Court on an appeal under subsection (7) shall be in writing, and copies of it shall be furnished to the appellant, and to all other parties to the appeal.

(9) A decision of the Court on an appeal under subsection (7), and (subject to the provisions of that subsection) a decision of the Adjudication Officer under this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(10) If, by a final and conclusive decision, each and every one of the matters referred to in subsection (3) is decided affirmatively as regards the whole of the land, and if the decision does not include a recommendation under subsection (5), the Commissioner of Lands shall forthwith issue a final approval of the grant of an estate in the land to the applicant.

(11) If, by a final and conclusive decision, each and every one of the matters referred to in subsection (3) is decided affirmatively as regards the whole of the land, and if the decision includes a recommendation under subsection (5), the Commissioner of Lands may, with the consent of the High Commissioner -

(a) direct that no estate in the land be granted to the applicant; or

(b) issue a final approval of the grant of an estate in a specified part only of the land to the applicant; or

(c) direct that the grant of an estate in the land, or in a specified part thereof, to the applicant be postponed either until after a date named in the direction or indefinitely;

but if such consent is withheld the Commissioner of Lands shall as soon as may be issue a final approval of the grant of all estate in the land to the applicant.

(12) If, by a final and conclusive decision, each and every one of the matters referred to in subsection (3) is decided affirmatively as regards some part only of the land, the Commissioner of Lands may, in his absolute and unfettered discretion -

(a) issue a final approval of the grant of an estate in that part of the land, or in some part of that part, to the applicant; or

(b) direct that no estate in the land be granted to the applicant; or

(c) direct that the grant to the applicant of an estate in that part of the land, or in some part of that part, be postponed either until after a date named in the direction or indefinitely.

(13) Whenever the Commissioner of Lands issues a final approval of the grant of an estate under this section, he shall furnish all appropriate information to the Registrar, who shall thereupon register the applicant as owner of a perpetual estate according to the tenor of the final approval.

(14) A perpetual estate in land granted under this section shall not be made subject to the payment of any premium or rent or the performance of any obligation.

(15) On the grant of a perpetual estate under this section the land comprised therein shall cease for ever to be native customary land; and if for any reason (other than as a result of the making of a declaration under section 71 or under section 77) the estate ceases to subsist, the land shall vest in the Board as public land.

(16) No estate shall be granted under this section in respect of any land as regards which any of the matters referred to in subsection (3) is decided negatively by a final and conclusive decision.

(17) In this section -

the expression "decision" means a decision as to the matters referred to in subsection (3); and

the expression "the land" means the land for the grant of all estate in which an application is made under subsection (1).

### **PART III - PUBLIC LAND**

**Vacant land may be brought under public control.**

**37.**-(1) Whenever, in the opinion of the Board, any vacant land ought to be brought under public control, the Board may by resolution (hereinafter in this Part called "a declaratory resolution") declare it to be public land.

(2) The declaratory resolution shall specify, as accurately as the circumstances of the case may permit, the situation, area, and general boundaries of the land referred to.

#### **Preliminary procedure.**

**38.**-(1) As soon as may be after the declaratory resolution has been passed, the Board shall -

- (a) cause the boundaries of the land concerned to be surveyed and marked out, so far as may be necessary to bring them to the notice of the public;
- (b) cause notices of the declaratory resolution, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land;
- (c) take such other steps as may in its opinion be necessary or expedient to bring the declaratory resolution to the notice of all persons who may wish to claim that the land, or any part of it, is not vacant land.

(2) After the Board has performed the duties imposed on it by subsection (1), it shall by resolution fix a date (not being a date earlier than the date of such resolution) on which the performance of those duties shall be deemed to have been completed.

(3) As soon as may be after the resolution referred to in subsection (2) has been passed, the Board shall cause notices thereof, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land.

(4) It shall be the duty of the Board to assist any such person as is referred to in paragraph (c) of subsection (1), being a person whose claim is disputed by the Board, to institute an appeal in the manner provided by section 39; but a failure by the Board to perform this duty shall not give rise to any cause of action.

(5) A resolution passed by the Board in pursuance or purported pursuance of subsection (2) shall not be questioned, in any proceedings whatsoever, on the ground that, on the date when the resolution was passed or on any later date, the performance by the Board of the duties imposed on it by subsection (1) had not in fact been completed.

#### **Adjudication of disputed facts.**

**39.**-(1) Any person who claims that the land specified in a declaratory resolution, or any part of it, is not vacant land may, if his claim is disputed by the Board, appeal to an Adjudication Officer.

(2) An appeal shall be instituted by serving on the Board or on the District Commissioner (who

shall forthwith forward the same to the Board) a notice in the prescribed form within six calendar months from the date specified in the resolution referred to in subsection (2) of section **38**.

(3) If two or more appeals are instituted with respect to the area of land specified in a declaratory resolution, the Adjudication Officer may hear and determine those appeals together.

(4) Every appellant shall be entitled to be heard either personally or by an agent, by the Adjudication Officer.

(5) The Adjudication Officer shall be deemed not to have completed the hearing of an appeal until he has personally inspected the land which is the subject of the appeal; and it shall be his duty to give to the appellant or his agent, as the case may be, and to the Board, adequate notice of his intention to carry out such inspection on a date to be specified by him, and the appellant or his agent, as the case may be, and the Board or its agent shall have the right to accompany him during such inspection.

(6) Subject to the provisions of subsections (4) and (5) and to any rules which may be made, the Adjudication Officer shall adopt such procedure for hearing an appeal as may appear to him to be appropriate; and he shall not be bound by any rules of evidence.

(7) After completing the hearing of an appeal, the Adjudication Officer shall give his decision thereon; and the decision shall be in writing and shall specify whether the whole or any part or parts, and in the latter case which part or parts, of the land specified in the declaratory resolution is or are vacant land.

(8) Copies of the decision of the Adjudication Officer shall be served upon the Board and upon the appellant.

(9) If any person aggrieved by the decision of the Adjudication Officer desires to question it, or any part of it, on the ground that it is erroneous in point of law or that the Adjudication Officer has failed to comply with any procedural requirement of this Regulation, he may, within three months from the service upon him of a copy of the decision, make an application to the Court; and on any such application the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the applicant have been substantially prejudiced by the failure of the Adjudication Officer to comply with any procedural requirement of this Regulation, quash the decision, either wholly or in part, and substitute for the decision or the part thereof quashed such decision as in its opinion ought to have been given by the Adjudication Officer.

(10) A decision of the Court on an application under subsection (9) shall be in writing; and copies of it shall be furnished to the Board and to the applicant.

(11) A decision of the Court on an application under subsection (9), and, subject to the provisions of that subsection, a decision of an Adjudication Officer under this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

#### **Amendment and rescission of resolutions.**

**40.**-(1) At any time after it has passed a declaratory resolution and before the land specified therein has become vested in it, the Board may -

- (a) rescind the resolution; or
- (b) amend the resolution so as to exclude therefrom any of the land specified therein, and cause the boundaries of the land to be adjusted.

(2) A resolution in pursuance or purported pursuance of subsection (2) of section **38** may be passed by the Board notwithstanding that the Board at its same meeting has passed or proposes to pass a resolution under subsection (1) of this section amending its previous declaratory resolution.

### **Vesting.**

**41.**-(1) This section shall take effect subject to the provisions of section **40**.

(2) Immediately upon the expiration of the time limited by subsection (2) of section 39 for instituting an appeal, any land, being the whole or a part of the area of land specified in a declaratory resolution, in respect of which no appeal has been instituted shall vest in the Board as public land.

(3) If, within the time limited by subsection (2) of section **39**, an appeal has been instituted in respect of any land specified in a declaratory resolution, then upon the giving of the decision on the appeal so much of that land as is specified in the decision as being vacant land shall vest in the Board as public land.

(4) For the purposes of subsection (3), a decision on an appeal shall be deemed to have been given -

- (a) if an application in respect of the decision is made to the Court under subsection (9) of section **39**, immediately upon the giving of the decision of the Court on such application;

- (b) in any other case, immediately upon the expiration of six weeks from the service upon the appellant of the decision of the Adjudication Officer, or if there be more than one appellant, from the last date on which such service upon an appellant occurred.

### **Provision as to incidental rights.**

**42.**-(1) Where, before any land specified in a declaratory resolution becomes vested in the Board as public land, any person or group of persons satisfies the Board that he is or they are entitled, according to current native usage, to exercise any rights (other than rights of occupation or of cultivation or of ownership of trees) in respect thereto, and that he was or they or some of them were actually exercising those rights during the five years then immediately preceding, the Board

may by resolution -

- (a) declare that those rights shall continue to be exercisable; or
- (b) declare that those rights shall be extinguished; or
- (c) declare that some of those rights shall continue to be exercisable and the remainder of them shall be extinguished;

and every such resolution shall specify, with as much accuracy as the circumstances of the case permit, the nature and extent of any such rights as will continue to be exercisable, and the persons entitled to exercise them.

(2) Where, before any land specified in a declaratory resolution becomes vested in the Board as public land, any person satisfies the Board that he is the owner, according to current native usage, of any tree or trees growing therein, the Board shall, if the said land becomes vested in it as public land, be liable to pay that person compensation for the loss of his interest in the said tree or trees.

(3) Any person or group of persons whose rights are extinguished pursuant to subsection (1) shall be entitled to receive compensation therefor from the Board.

(4) If any dispute shall arise between the Board and any person or group of persons as to the existence of any such rights as are referred to in subsection (1), or as to the ownership of any tree or trees growing on any land specified in a declaratory resolution, the dispute shall be determined -

(a) if the hearing of an appeal by an Adjudication Officer in respect to the land specified in such declaratory resolution, or any part of it, has not been completed, by such Adjudication Officer;

(b) in any other case, by the Court;

and the decision of the Adjudication Officer or the Court, as the case may be, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(5) Any dispute between the Board and any person or group of persons as to the amount of any compensation payable under this section, or as to the persons entitled to receive and give a good discharge for the payment of such compensation, shall, unless otherwise agreed by the parties to the dispute, be determined by the Court.

(6) Nothing in this section or in section 43 shall confer upon any person or group of persons any right to receive compensation for the extinguishment of any rights (other than rights of ownership of trees) which he or they may have in any land, being land specified in a declaratory resolution, which becomes vested in the Board as public land, unless he was or they or some of them were actually exercising those rights during the five years immediately preceding the date

on which the land became vested in the Board.

**Further provision as to incidental rights.**

**43.**-(1) Where, after any land specified in a declaratory resolution has become vested in the Board as public land, any person or group of persons proves that, immediately before the land became so vested, he was or they were entitled, according to current native usage, to exercise any rights (other than rights of occupation or of cultivation or of ownership of trees) in respect thereto, and that he was or they or some of them were actually exercising those rights during the five years immediately preceding the vesting, he or they shall be entitled to receive from the Board compensation for the extinguishment of such rights.

(2) Where, after any land specified in a declaratory resolution has become vested in the Board as public land, any person proves that, immediately before the land became so vested, he was the owner, according to current native usage, of any tree or trees growing therein, he shall be entitled to receive from the Board compensation for the loss of his interest in the said tree or trees.

(3) Any dispute between the Board and any person or persons as to the right of such person or persons to receive such compensation, or to give a good discharge therefor, or as to the amount thereof, shall, unless the parties otherwise agree, be determined by the Court.

**Effect of vesting.**

**44.**-(1) Whenever any land specified in a declaratory resolution becomes vested in the Board as public land such land shall so vest subject to such rights (if any) as may be declared to continue to be exercisable by any resolution passed pursuant to subsection (1) of section **42**, but otherwise free from all rights and interests whatsoever.

(2) As soon as may be after any land has become vested in the Board as public land, the Board shall furnish to the Registrar all appropriate information to enable him to record on the Register the holding of the land by the Board; and the Registrar shall forthwith enter the Board's holding on the Register accordingly.

**Acquisition of additional land.**

**45.**-(1) Whenever the Board is of opinion that the acquisition by it of any land (not being vacant land), or any interest in any land, is desirable in order to ensure the economic or other proper use of any public land vested in it, or of any vacant land about to become vested in it as public land, it may pass a resolution (which shall specify the land or interest concerned) to that effect.

(2) As soon as may be after passing the resolution, the Board shall -

(a) cause notices of the resolution, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land concerned;

(b) serve on every owner (other than an owner according to current native usage) of any

land or interest specified in the resolution, or of any interest in such land, a notice in the prescribed form stating the effect of the resolution and drawing attention to the right of petition conferred by subsection (3);

(c) notify, in the prescribed manner, every person or group of persons, as the case may be, appearing to it to be, or to claim to be, the owner or owners, according to current native usage, of any land specified in the resolution, or any interest therein, of the effect of the resolution and of the existence of the right of petition conferred by subsection (3).

(3) Any such person, or group of persons, as is or are mentioned in paragraphs (b) or (c) of subsection (2) may, within six months from the date on which the resolution was passed, submit to the High Commissioner a petition in writing praying that the acquisition of any land or interest therein be not permitted to proceed.

(4) Where any land or interest therein is owned by more than one person, only one petition may be submitted in respect thereof, and the petition shall state whether all of the owners are parties thereto, and if they are not, it shall state the numbers of the owners who are petitioners and non-petitioners respectively.

(5) It shall be the duty of the District Commissioner to assist any person or group of persons requesting him so to do to draw up and submit a petition; but a failure by him to perform this duty shall not give rise to any cause of action.

(6) The High Commissioner may, after receiving a petition, make or cause to be made such enquiries with respect to any matter appearing to him to arise therefrom as he thinks fit; and, after considering the petition and the information resulting from such enquiries (if any), he may give to the Board such directions as he thinks fit.

(7) If no petition is submitted to the High Commissioner within the period specified in subsection (3), then, subject to the provisions of section 46, immediately upon the expiration of the said period, any land specified in the resolution shall vest in the Board as public land, and any interest specified in the resolution shall cease to subsist and the land comprised in such interest shall, if not already vested in the Board, vest in it as public land.

(8) If a petition is submitted to the High Commissioner within the period specified in subsection (3), then, unless the High Commissioner directs the Board to rescind the resolution, the provisions of subsection (7) shall take effect upon such date as the High Commissioner may proclaim (instead of upon the date specified in subsection (7)) but subject to such directions (if any) as the High Commissioner may give to the Board before that date.

### **Procedure and compensation.**

**46.-**(1) The provisions of sections 42 and 44 shall apply to any land specified in a resolution passed by the Board pursuant to subsection (1) of section 45 in like manner as they apply to land specified in a declaratory resolution; save that any dispute between the Board and any person or group of persons, being a dispute of the kind referred to in subsection (4) of section 42 (as

applied by this subsection) shall, unless otherwise agreed by the parties to the dispute, be determined by the Court.

(2) The Board shall be liable to pay compensation to the owner or owners (whether according to current native usage or otherwise) of any land which vests in the Board as public land, or of any estate or interest in land which ceases to subsist, by virtue of section **45**.

### **Ownership of foreshore, roads, etc.**

**47.**-(1) There shall vest in the Board as public land, by virtue of this subsection -

- (a) the subsoil of every road and the bed of every river;
- (b) the seashore between the points of mean high water and mean low water;
- (c) all land adjoining the sea coast within sixty-six feet of mean high water mark;
- (d) all land within sixty-six feet on each side of every road and every river.

(2) The Board may grant to any person, in accordance with the provisions of section **33**, a licence to occupy any such land as is mentioned in paragraphs (b) (c) and (d) of subsection (1).

(3) It shall not be necessary for the Board to cause any entry to be made on the Register in respect of any land vested in it by virtue of subsection (1).

(4) This section shall not apply to any land comprised in an interest of which any person becomes or is entitled to become registered as owner pursuant to the provisions of the Second Schedule, or to any native customary land.

### **Public reserves on vacant land.**

**48.**-(1) Where it appears to the Board that any land is vacant land, the Board may, by resolution, declare that land to be a public reserve.

(2) The resolution shall specify, as accurately as the circumstances of the case may permit, the situation, area, and general boundaries of the land referred to.

(3) As soon as may be after the Board has passed a resolution pursuant to subsection (1), it shall -

- (a) cause notices of the resolution, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land; and
- (b) take such other steps as may in its opinion be expedient to bring to the notice of the public the existence and effect of the resolution.

(4) A resolution passed by the Board pursuant to subsection (1) shall come into force

immediately upon the expiration of six weeks from the date on which it was passed; and it shall remain in force -

- (a) for such period, if any, not exceeding five years, as may be specified by it; or
- (b) if no such period be specified, for five years;

unless in the meantime the land to which it refers, or any part thereof, becomes vested in the Board as public land, upon which event the resolution shall forthwith cease to be in force as regards the land so vested.

(5) Subject to the provisions of subsection (7), while a resolution passed pursuant to subsection (1) is in force, no person shall, without the permission of the Board, enter upon or remove anything from the land specified in the resolution, or any part thereof.

Penalty: a fine of ten pounds.

(6) It shall be a defence to a charge of an offence under subsection (5) to prove that the land with reference to which the alleged offence was committed was not vacant land.

(7) Notwithstanding that a resolution passed pursuant to subsection (1) is in force, any person who, according to current native usage, was, immediately before the resolution came into force, entitled to hunt or to remove timber or other produce for his own personal or domestic use over or from any land specified in the resolution may hunt thereover or remove timber or other produce for such use therefrom; but the removal of any timber or other produce for the purpose of sale or exchange, or of manufacturing or preparing therefrom anything to be sold or exchanged, does not constitute removal for personal or domestic use within the meaning of this subsection.

#### **Government reserves.**

**49.**-(1) The Commissioner of Lands may, if he thinks fit, make an order declaring that he will not grant any estate in, or licence to occupy, any land in respect of which he could, apart from such order, grant such estate or licence; and he may from time to time, whenever he thinks fit, revoke any such order as to either the whole or any part of the land specified therein.

(2) The order, and any revocation thereof, shall be notified to the Registrar, who shall make appropriate entries on the Register.

(3) So long as there remains on the Register any entry of an order made pursuant to subsection (1), the Registrar shall not register any estate in the land referred to in such entry.

#### **Assessment and payment of compensation.**

**50.**-(1) The provisions of sections **74**, **76** (except subsection (3) thereof), **79**, and **80** (except subsection (2) thereof) shall apply to the claiming, assessment, and payment of any

compensation payable by the Board under the provisions of this Part as if those provisions were herein set forth at length with the following modifications, that is to say -

- (a) for references therein to the Commissioner of Lands there shall be substituted references to the Board; and
- (b) references therein to compensation payable under the provisions of that Part shall be construed as if they were references to compensation payable under the provisions of this Part.

(2) Any compensation payable under the provisions of this Part shall carry interest from the date on which the land or interest therein, the vesting of which in the Board gives rise to the liability to pay the compensation, becomes vested in the Board.

## **PART IV - TRANSACTIONS IN LAND**

### **DIVISION I - GENERAL RESTRICTIONS**

#### **Purchase of native customary land by Board or Commissioner.**

**51.** Notwithstanding any current native usage prohibiting or restricting such sale, native customary land may be sold by the owner or owners thereof (according to current native usage) to the Board or the Commissioner of Lands.

#### **Procedure for such purchase.**

**52.-**(1) Whenever the Board or the Commissioner of Lands wishes to purchase any native customary land pursuant to section **51**, it or he, as the case may be, shall enter into a written agreement for such purchase with the vendors or with some person or persons acting, in accordance with current native usage, on behalf of the vendors.

(2) The agreement shall specify, as accurately as the circumstances of the case may permit, the situation, area, and general boundaries of the land.

(3) As soon as may be after the agreement has been made, the purchaser shall -

- (a) cause the boundaries of the land to be surveyed and marked out;
- (b) cause notices of the agreement, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land;
- (c) take such other steps as may in the opinion of the purchaser be necessary or expedient to bring the agreement to the notice of all persons who may wish to claim that the land, or any part of it, is not owned by the vendors.

(4) In the case of a purchase by the Board, it shall, after it has performed the duties imposed on it

by subsection (3), by resolution fix a date (not being a date earlier than the date of such resolution) on which the performance of those duties shall be deemed to have been completed.

(5) In the case of a purchase by the Commissioner of Lands, he shall, after he has performed the duties imposed on him by subsection (4), by order fix a date (not being a date earlier than the date of such order) on which the performance of those duties shall be deemed to have been completed.

(6) As soon as may be after the resolution referred to in subsection (4) has been passed, or the order referred to in subsection (5) has been made, as the case may be, the purchaser shall cause notices thereof, in the prescribed form, to be posted in prominent positions on or near the boundaries of the land.

(7) It shall be the duty of the purchaser to assist any such person as is referred to in paragraph (c) of subsection (3), being a person whose claim is disputed by the purchaser, to institute an appeal in the manner provided by subsection (9); but a failure by the purchaser to perform this duty shall not give rise to any cause of action.

(8) A resolution passed by the Board in pursuance or purported pursuance of subsection (4), or an order made in pursuance or purported pursuance of subsection (5), shall not be questioned, in any proceedings whatsoever, on the ground that, on the date when the resolution was passed or the order was made, or on any later date, the performance by the purchaser of the duties imposed by subsection (3) had not in fact been completed.

(9) Any person who claims that the land, or any part of it, is not owned by the vendors may, if his claim is disputed by the purchaser, appeal to an Adjudication Officer.

(10) An appeal shall be instituted by serving on the purchaser or on the District Commissioner (who shall forthwith forward the same to the purchaser) a notice in the prescribed form within six calendar months from the date specified in the resolution referred to in subsection (4), or order referred to in subsection (5), as the case may be.

(11) If two or more appeals are instituted with respect to the land, or with respect to a part or two or more parts of it, the Adjudication Officer may hear and determine those appeals together.

(12) The vendors, and every appellant, shall be entitled to be heard either personally or by an agent, by the Adjudication Officer.

(13) The Adjudication Officer shall be deemed not to have completed the hearing of an appeal until he has personally inspected the land which is the subject of the appeal; and it shall be his duty to give to the appellant or his agent, as the case may be, and to the vendors and to the purchaser, adequate notice of his intention to carry out such inspection on a date to be specified by him, and the appellant or his agent, as the case may be, and the vendors or their agent, and the purchaser or the agent of the purchaser, shall have the right to accompany him during such inspection.

(14) Subject to the provisions of subsections (12) and (13) and to any rules which may be made, the Adjudication Officer shall adopt such procedure for hearing an appeal as may appear to him to be appropriate; and he shall not be bound by any rules of evidence.

(15) After completing the hearing of an appeal, the Adjudication Officer shall give his decision thereon; and the decision shall be in writing and shall specify whether the whole or any part or parts, and in the latter case which part or parts, of the land is or are owned by the vendors.

(16) Copies of the decision of the Adjudication Officer shall be served upon the appellant, and upon the vendors, and upon the purchaser.

(17) If any person aggrieved by the decision of the Adjudication Officer desires to question it, or any part of it, on the ground that it is erroneous in point of law or that the Adjudication Officer has failed to comply with any procedural requirement of this Regulation, he may within three months from the service upon him of a copy of the decision, make an application to the Court; and on any such application the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the applicant have been substantially prejudiced by the failure of the Adjudication Officer to comply with any procedural requirement of this Regulation, quash the decision, either wholly or in part, and substitute for the decision or the part thereof quashed such decision as in its opinion ought to have been given by the Adjudication Officer.

(18) A decision of the Court on an application under subsection (17) shall be in writing; and copies of it shall be furnished to the appellant and to the vendors and to the purchaser.

(19) A decision of the Court on an application under subsection (17), and, subject to the provisions of that subsection, a decision of an Adjudication Officer under this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(20) Any part of the land in respect of which no appeal has been instituted shall for all purposes whatsoever be deemed to be owned by the vendors immediately upon the expiration of the time limited by subsection (10) for instituting an appeal.

(21) Where an appeal has been instituted in respect of any part of the land, so much of that part as is specified in the decision as being owned by the vendors shall for all purposes whatsoever be deemed to be so owned upon the giving of the decision on the appeal.

(22) For the purposes of subsection (21), a decision on an appeal shall be deemed to have been given -

(a) if an application in respect of the decision is made to the Court under subsection (17), immediately upon the giving of the decision of the Court on such application;

(b) in any other case, immediately upon the expiration of three months from the service upon the appellant of the decision of the Adjudication Officer, or if there be more than one appellant, from the last date on which such service upon an appellant occurred.

(23) Within three months after the land, or any part thereof, has become deemed to be owned by the vendors, the purchaser may implement the agreement by paying the purchase money and making an order vesting the land in the purchaser; and if the agreement be not so implemented, the vendors may, after the expiration of the said three months and if the agreement has not been rescinded, institute proceedings for and obtain from the Court a decree for the specific performance thereof in the manner aforesaid.

(24) A vesting order shall be registered; and upon the registration thereof, the land referred to therein shall vest in the purchaser as public land free from all rights and interests whatsoever.

(25) The purchaser may, with the consent of the High Commissioner, rescind an agreement at any time before proceedings for specific performance thereof have been instituted, if it appears to the purchaser that any part of the land is not owned by the vendors and that it would be inexpedient to purchase the remainder of the land.

(26) In this section -

the expression "agreement" means a written agreement for purchase made pursuant to subsection (1);

the expression "the land" means the land referred to in an agreement;

the expression "the purchaser" means the Board or the Commissioner of Lands, as the case may be;

the expression "the vendors" means the persons purporting to be the owners of, and to sell, the land.

#### **Restrictions on disposition of native customary land.**

**53.-**(1) Except to the extent to which the contrary is expressly provided in this Regulation, no person other than a Solomon Islander may hold or enjoy any interest of whatsoever nature in over or affecting native customary land.

(2) Nothing in subsection (1) shall affect the acquisition or enjoyment of any interest in native customary land by a person (not being a Solomon Islander) who -

(a) is or has been married (whether according to current native usage or otherwise) to a Solomon Islander, and who according to current native usage becomes entitled to acquire or enjoy the interest in question in right of his being or having been so married; or

(b) acquires or becomes entitled to enjoy such interest by inheritance according to current native usage.

(3) Every contract, agreement, or arrangement made or entered into, orally or in writing, whether before or after the commencement of this section, shall, so far as it has or purports to have the

purpose or effect of in any way, directly or indirectly, defeating, evading, or preventing the operation of subsection (1), be utterly void and of no effect; and the Commissioner of Lands may in his discretion institute proceedings in the Court against any person for a declaration that any such alleged contract, agreement, or arrangement is utterly void and of no effect, and in any such proceedings the Court may make such declaration and such further or other order as may appear to it expedient for giving effect to subsection (1).

## **DIVISION 2 - TRANSFERS LEASES AND CHARGES**

### **Dealings in native customary land.**

**54.** Subject to the provisions of this Regulation, every transaction or disposition of or affecting native customary land or any interest therein shall be made or effected according to the current native usage applicable to the land concerned.

### **Transfers of estates.**

**55.-**(1) A disposition of the whole or part of an estate for the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the estate was granted shall, unless made by will, be by way of transfer in the prescribed form.

(2) On the transfer of an 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 rent and obligations incident to the estate have been paid and observed up to the date of the transfer; and

(b) on the part of the transferee, a covenant with the transferor that so long as the estate subsists the transferee and the persons deriving title under him will pay the rent and 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-payment of the rent or the non-performance of any of the obligations.

(3) On the transfer of an estate subject to a charge security, there shall be implied, in addition to the matters specified in subsection (2) -

(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 charge security) which would render the charge security liable to be enforced; and

(b) on the part of the transferee, an undertaking with the transferor that so long as the charge security subsists the transferee and the persons deriving title under him will pay all moneys payable thereunder and perform the obligations contained therein, and will keep the transferor and the persons deriving title under him 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.

(4) On the transfer of part of an estate, the undertakings implied on the part of the transferee by subsection (2) shall be limited to the payment of the apportioned rent, if any, and the performance of the obligations incident to the estate so far only as they affect the part transferred; and where the transferor remains owner of part of the estate, there shall also be implied on his part, as respects the part retained, an undertaking with the transferee similar to that implied on the part of the transferee under subsection (2) as modified by this subsection.

(5) On the transfer of part of an estate subject to a charge security, the undertakings implied on the part of the transferee by subsection (3) shall be limited to the payment of the apportioned part, if any, of the moneys payable under the charge security and the performance of the obligations contained therein so far only as they affect the part transferred; and where the transferor remains owner of part of the estate, there shall also be implied on his part, as respects the part retained, an undertaking with the transferee similar to that implied on the part of the transferee under subsection (3) as modified by this subsection: but unless the chargee gives his consent in writing to the apportionment of the moneys payable under or severance of the obligations contained in the charge security (which consent when given shall be irrevocable), nothing in this subsection shall be deemed to impair his right to recover from any person owning any part of the estate comprised in the charge security the whole of the moneys payable thereunder or to enforce the charge security against the whole of the estate.

### **Leases of estates.**

**56.**-(1) On the lease of the whole or part of an estate, there shall be implied, on the part of the landlord, a warranty that he has a good right to grant the lease, and the following undertakings with the tenant -

(a) that the landlord and the persons deriving title under him will, during the term created by the lease, and so far only as the tenant is not liable (under the terms of the lease or otherwise) so to do, pay the rent and perform the obligations incident to the estate and take all reasonable steps to ensure that the estate continues to subsist during the said term; and

(b) that the tenant shall, so long as he pays the rent and performs the obligations which under the express or implied terms of the lease he is liable to pay and perform, peaceably hold and enjoy the leased premises during the term created by the lease without any interruption by the landlord or any person rightfully claiming under or in trust for him.

(2) On the lease of the whole or part of an estate, there shall be implied, on the part of the tenant, the following undertakings with the landlord -

(a) to pay the rent reserved by the lease as and when the same becomes payable; and

(b) except in so far as the lease may otherwise specify, to perform all such of the obligations incident to the estate as ought to be performed by the person in occupation of

the land comprised in the estate or that part thereof which is leased; and

(c) except in so far as the lease may otherwise specify, to keep and at the end of the term to yield up all buildings for the time being on the land comprised in the estate, or that part thereof which is leased, in good repair, fair wear and tear excepted; and

(d) to permit the landlord to enter upon the leased premises with or without surveyors workmen and others once in every year of the term at a reasonable time of the day in order to ascertain the estate of repair of the leased premises.

### **Charge securities.**

**57.**-(1) An owner of an estate may not create any security for the payment of money enforceable against the estate other than a charge security.

(2) The owner of an estate may create one or more charge securities in respect of the estate which shall rank according to the order in which they are registered.

(3) A security for the payment of money which is created otherwise than by way of a charge security, or a charge security which is not registered, may give rise to a personal liability, but shall not be enforceable in the manner provided by this Part.

### **Consolidation and further advances.**

**58.**-(1) A chargor seeking to discharge a charge security shall be entitled to do so without discharging any separate charge security made by him, or by any person through whom he claims, solely in respect of an estate other than that comprised in the charge security which he seeks to discharge.

(2) A prior chargee shall have a right to make further advances to rank in priority to subsequent charge securities if, and only if -

(a) an arrangement to that effect has been made with the subsequent chargees; or

(b) the charge security imposes an obligation to make such further advances; or

(c) the charge security was made expressly for securing a current account up to a specified limit, in which case the right shall extend only up to such limit.

(3) Where a charge security imposes an obligation to make further advances, or is made expressly for securing a current account up to a specified limit, the Registrar shall, when registering it, include in the relevant memorandum the words "subject to further advances", or words to that effect.

### **Transfers, variations and subcharges of charge securities.**

**59.**-(1) A chargee may transfer the benefit of the charge security to another person by an instrument in the prescribed form.

(2) The terms of a charge security may be varied by an instrument in the prescribed form made between the parties for the time being to the charge security.

(3) The provisions of subsection (1), and of sections **57, 58, 60, 61, 62, 63, 64, 66, 67, 68**, and **69** shall apply to subcharges with the following modifications, that is to say -

(a) for reference therein to an estate there shall be substituted references to a charge security;

(b) for references therein to a charge security there shall be substituted references to a subcharge;

(c) paragraph (c) shall be deemed to be deleted from subsection (1) of section **62**; and

(d) the words "enter on the land and" shall be deemed to be deleted from paragraph (b) of subsection (2) of section **64**.

### **Undivided shares.**

**60.** Sections **30** and **31** and subsection (1) of section **32** shall apply to charge securities with the following modification, that is to say, for references therein to an estate there shall be substituted references to the benefit of a charge security.

### **Discharge of charge securities.**

**61.**-(1) The Registrar shall, if required by the chargee, or on proof of the satisfaction in whole or in part of a charge security, register the cesser in whole or in part of the charge security.

(2) Where a chargor is desirous of wholly satisfying a charge security and the chargee, or, if there are two or more chargees, any of the chargees, is or are dead or cannot be found, the chargor may pay the moneys owing in respect of the charge security into the Court; and upon proof of such payment the Registrar shall register the cesser of the charge security, and thereupon the charge security shall cease to have effect.

### **Implications in charge securities.**

**62.** - (1) There shall be implied in every charge security, on the part of the chargor, the following obligations -

(a) to pay to the chargee the principal sum secured, and interest, if any, thereon, at the appointed time and rate;

(b) to pay interest, if any, at the appointed time and rate as well after as before any

judgment is obtained in respect of the charge security on so much of the principal sum (including arrears of interest, if any) as for the time being remains unpaid;

(c) to pay the rent and perform the obligations incident to the estate comprised in the charge security.

(2) A charge security may provide for the payment of interest at a higher rate than that appointed if the interest at the appointed rate is not paid within a specified period after the same shall have become due; but so that the higher rate shall not exceed the appointed rate by more than three per centum per annum.

#### **Action for recovery of debt.**

**63.** Any principal sums or interest due under a charge security may, subject to the provisions of subsection (4) of section **64**, be recovered by action in any court.

#### **Enforcement of charge securities.**

**64.**-(1) A charge security in respect of an estate may be enforced upon application to the Court, and not otherwise.

(2) Upon any such application, the Court may make an order -

(a) empowering the chargee or any other specified person to sell and transfer the estate charged, and providing for the manner in which the sale is to be effected and the proceeds of the sale applied; or

(b) empowering the chargee or any other specified person to enter on the land and act in all respects in the place and on behalf of the owner of the estate for a specified period, and providing for the application of any moneys received by him while so acting; or

(c) vesting the estate in the chargee or any other person either absolutely or upon such terms as it thinks fit.

(3) The Court shall, in exercising its jurisdiction under this section, take into consideration any action brought under section **63** and the results thereof.

(4) After the Court has made an order under paragraphs (a) or (c) of subsection (2), or while an order under paragraph (b) of subsection (2) is in force, no action may be commenced or judgment obtained under section **63** in respect of the charge security, except with the consent of the Court and subject to such conditions, if any, as the Court may impose.

(5) Any order made by the Court under this section shall be registered, but for the purposes of subsection (4) shall be effective from the time when it is made.

#### **Leases by charger.**

**65.** No lease (except a lease for a period not exceeding one year, or a periodic tenancy, taking effect in possession not later than three months after its date) of an estate subject to a charge security shall be valid or binding against the chargee unless he has given his consent in writing to it before its registration.

### **DIVISION 3 - DEATH, BANKRUPTCY, AND INCAPACITY**

#### **Devolution on death.**

**66.**-(1) On the death of the sole owner, or of the survivor of two or more joint owners, of an estate, or of a sole chargee or of the survivor of two or more joint chargees, the estate or the benefit of the charge security shall vest in the official administrator until a special representative is appointed.

(2) On the appointment of a special representative the estate or the benefit of the charge security shall vest in him.

(3) The special representative may, by writing under his hand accompanied by proof of his authority to act, require the Registrar -

(a) to register him as owner of the estate or as chargee; or

(b) to register as owner or joint owners of the estate or as chargee or joint chargees some other specified person or persons.

(4) If no special representative is appointed within a period of six months from the death of the estate owner or chargee, as the case may be, the official administrator may apply to the Court for the appointment of a special representative.

#### **Disposition of property on death.**

**67.**-(1) Where the provisions of section **66** take effect with respect to an estate or the benefit of a charge security to which the deceased was entitled for his own use and benefit, the estate or the benefit of the charge security shall vest in the official administrator or special representative upon the trusts declared by this section, but subject always to the right of the official administrator or special representative to dispose of such property in some other manner in due course of administration.

(2) If the deceased validly disposed of the property by a valid will, the property shall be held upon trust to give effect to the terms of the disposition.

(3) If the deceased did not validly dispose of the property by a valid will, the property shall be held upon the trusts set out in the First Schedule.

#### **Wills.**

**68.**-(1) Subject to the provisions of subsection (2), an interest in land may be created or disposed of by a valid will, that is to say, a will which would be regarded by the law of England as effective for the purpose of disposing of English immovable property.

(2) For the avoidance of doubt, it is hereby declared that the following matters are to be determined according to current native usage -

(a) the question whether any native customary land is capable of being disposed of by will; and

(b) if any native customary land is capable of being disposed of by will, the manner and form (if any) in which such will must be made.

### **Devolution on bankruptcy.**

**69.**-(1) Upon the bankruptcy of the owner of an estate, or of a chargee, his trustee in bankruptcy shall (on proof of his appointment and of the fact that the estate is part of the property of the bankrupt divisible amongst his creditors) be entitled to be registered as owner of the estate or as chargee in his place; and the official receiver shall (on proof of the receiving order and of the aforesaid fact) be entitled to be registered as owner of the estate or as chargee pending the appointment of a trustee in bankruptcy.

(2) Where a trustee in bankruptcy disclaims an estate and an order is made by a court vesting the estate in any person, the Registrar shall, on being served with such order, forthwith (without notice to the bankrupt or any other person and without requiring production of the certificate of title) enter the effect thereof on the Register, and no right to indemnity under this Regulation shall arise by reason of his so doing.

### **Infants and persons who are mentally infirm.**

**70.**-(1) If the Registrar is of opinion that any person whose name is entered on the Register is under the age of twenty-one years or incapable (by reason of mental infirmity) of acting, he shall refuse to register any transaction to which that person is expressed to be a party or affecting any right or interest owned by or vested in that person, unless the transaction is effected or approved in writing by the guardian of that person.

(2) Where any person claims to be the guardian of a person whose name is entered on the Register and who in the opinion of the Registrar is under the age of twenty-one years or incapable (by reason of mental infirmity) of acting, the Registrar may in his discretion require him to apply to the Court for confirmation of his claim.

(3) On the hearing of an application under subsection (2), the Court may make an order -

(a) declaring that the applicant is the guardian of the person in question; or

(b) appointing some other person to be such guardian.

## **PART V - COMPULSORY ACQUISITION OF LAND**

### **Land may be acquired for public purpose.**

**71.**-(1) Whenever it appears to the High Commissioner that any land is required for any public purpose, he may make a declaration to that effect.

(2) The declaration shall specify (either by reference to a plan or otherwise) the boundaries and extent of the land so required, and the general nature of the public purpose for which it is required.

(3) As soon as may be after the declaration has been made, the Commissioner of Lands shall -

(a) cause to be posted, in prominent positions on or near the boundaries of the land specified in the declaration, notices in the prescribed form stating the fact that the declaration has been made and drawing attention to its effect and to the right to claim compensation conferred by section **74** and to the liberties and restrictions respectively conferred and imposed by section **73**;

(b) serve on every owner (other than an owner according to current native usage) of an interest in any land (other than native customary land) specified in the declaration, or of any other interest (other than all interest arising under current native usage) which by virtue of section **72** ceases to subsist on the publication of the declaration in the *Gazette*, a notice in the prescribed form stating and drawing attention to the matters which are to be stated or to which attention is to be drawn in or by a notice posted pursuant to paragraph (a) of this subsection;

(c) notify, in the prescribed manner, every person or group of persons, as the case may be, appearing to him to be, or to claim to be, the owner or owners, according to current native usage, of any native customary land specified in the declaration, or of any interest therein, of the effect of the declaration and of the rights liberties and restrictions conferred or imposed on him or them by the provisions of this Part.

(4) It shall be the duty of the District Commissioner to assist any person or group of persons requesting him so to do to draw up and submit any document which such person or group of persons may desire to draw up and submit for the purpose of exercising or claiming, or in connection with the exercise or claim of, any right or liberty conferred on him or them by the provisions of this Part; but a failure by the District Commissioner to perform this duty shall not give rise to any cause of action.

### **Effect of declaration: Appeals.**

**72.**-(1) On the publication in the *Gazette* of a declaration that land is required for a public purpose, all interests in or affecting the land specified in the declaration shall cease to subsist,

and the right to use occupy and enjoy the land and any buildings thereon and its produce shall vest in the Commissioner of Lands as public land, and the Registrar shall forthwith make the appropriate entries on the Register.

(2) Any person or group of persons having an interest which ceases to subsist by virtue of subsection (1) may within six calendar months next after the publication of the declaration in the *Gazette* apply to the Court for an order quashing the declaration in so far as it applies to the land subject to or affected by the interest.

(3) On hearing the application, the Court may, if it is of opinion that the purpose referred to in the declaration is not a public purpose, make an order quashing the declaration; and the Registrar shall on production of the order cancel the entries made on the Register pursuant to the declaration.

(4) If, on hearing the application, the Court is of opinion that the land referred to in the application, or any part of that land, is not required for the purpose referred to in the declaration (being a public purpose), it may make an order quashing the declaration in so far as it applies to the land not required; and the Registrar shall on production of the order cancel any entries made on the Register with respect to the land affected thereby.

(5) A declaration duly published in the *Gazette* shall for all purposes be deemed to be valid and effective until it is quashed in whole or in part pursuant to the provisions of this section.

#### **Occupier may remain in possession pending notice to vacate.**

**73.**-(1) Notwithstanding the provisions of section 72, any person who, immediately before the publication of the declaration in the *Gazette*, was lawfully occupying any land, or lawfully exercising any right affecting any land, specified in the declaration as required for a public purpose, may continue to occupy the land or exercise the right until he is ordered in writing by the Commissioner of Lands to cease from so doing.

(2) A person occupying land in exercise of the liberty conferred by subsection (1) shall not carry out any development of the land without the consent in writing of the Commissioner of Lands, which consent may be given on such terms and may embody such agreements (including agreements for the payment of compensation by the Commissioner of Lands) as the Commissioner of Lands thinks fit.

#### **Claim for compensation.**

**74.**-(1) Any person entitled to an interest which, by reason of section 72, ceases to subsist may claim compensation from the Commissioner of Lands.

(2) The Commissioner of Lands shall, after considering the claim, and, if the claimant so desires, hearing the claimant, make in the prescribed form an offer to pay to the claimant such amount of compensation (if any) as he may think proper, and serve the offer upon the claimant.

(3) If the claimant does not wish to accept the offer, he may within three months from the service thereof upon him appeal to the Court, which shall assess the amount of compensation payable (if any).

(4) If the claimant does not, within the period specified in subsection (3), appeal to the Court, he shall be deemed to have accepted the offer.

(5) Where the interest in respect of which compensation is claimed is owned by trustees, the compensation, if any, shall be paid to the trustees in such manner and subject to such additional trusts and conditions, if any, as the Commissioner of Lands or the Court, as the case may be, directs, and no compensation shall be payable in respect of that interest to any beneficiary under the trust.

### **Special provision as to easements.**

**75.**-(1) Where a claim for compensation is made in respect of an easement which ceases to subsist by virtue of section 72, and that easement subsisted for the benefit, in whole or in part, of an estate which continues to subsist, then if the Commissioner of Lands is of opinion that the continued subsistence of the easement would not prejudicially affect the carrying out of the public purpose specified in the declaration made pursuant to section 71, he shall inform the High Commissioner accordingly.

(2) The High Commissioner may thereupon make an order that the right to enjoy the easement shall be restored to the claimant; and the Commissioner of Lands shall furnish a copy of the order to the Registrar, who shall register it.

(3) When an order under subsection (2) has been registered, no compensation in respect of the easement shall be payable to the claimant, other than compensation for any temporary interruption of the enjoyment of the easement which may have occurred.

### **Payment of compensation.**

**76.**-(1) When an offer for compensation in respect of a claim has been accepted, or has become deemed to be accepted, or when the amount of such compensation has been assessed, the Commissioner of Lands or the Court, as the case may be, shall furnish to the claimant an order for payment.

(2) The order for payment shall be directed to the Accountant-General, and shall authorise him to pay to the claimant, in such manner and subject to such trusts and conditions (if any) as may be specified, the specified amount of compensation together with interest thereon up to the date of payment at such rate, and from such date, as may be specified.

(3) The interest on the compensation shall be in respect of the period from the date on which the declaration under section 71 was published in the *Gazette* up to and including the date of payment: except that where the claimant has been exercising the liberties conferred by subsection (1) of section 73 it shall be in respect of the period from the date on which the

claimant ceased to exercise the said liberties up to and including the date of payment.

(4) Forthwith after the presentation to him of the order for payment, the Accountant-General shall pay to the claimant the amount authorised thereby to be paid.

(5) The High Commissioner may make rules prescribing rates of interest for the purpose of subsection (2).

### **Temporary occupation of land.**

**77.**-(1) Whenever the High Commissioner is of opinion that the temporary occupation and use of any land is required for any public purpose, he may direct the Commissioner of Lands to procure such occupation and use for a specified period not exceeding three year.

(2) The Commissioner of Lands shall thereupon, serve notice on the occupiers (if any) of the land, requiring them to give up possession thereof to him for the said period; and the occupiers shall be bound to give up possession in accordance with the terms of such notice.

(3) Compensation rental for the temporary occupation and use of the land shall be paid by the Commissioner of Lands to each lawful occupier by equal monthly payments; and it shall be deemed to accrue due from day to day.

(4) At the end of the specified period possession of the land shall be restored to the lawful occupiers, and there shall be paid to any person having an interest in or affecting the land compensation for the diminution in value (if any) of such interest consequent upon any damage done to the land during the specified period.

(5) Any compensation or compensation rental payable under subsections (3) or (4) shall be claimed, and offered and accepted, or assessed, in like manner as compensation payable under section **72**; and forthwith thereafter compensation rental shall be paid by the Commissioner of Lands in the manner provided by subsection (3), and the provisions of section **76** shall apply to the payment of compensation under subsection (4).

(6) If, during or within three months next after the end of the specified period, the High Commissioner is of opinion that -

(a) the damage (if any) done to the land during the specified period is so substantial and of so permanent a nature that it would be just to the persons having interests in the land that the High Commissioner should permanently resume the use and occupation thereof; or

(b) that the land has been developed during the specified period and that the value of the development ought to be secured for the benefit of the people of the Protectorate;

the High Commissioner may make a declaration to that effect, and the declaration shall have the same effect as a declaration that the land is required for a public purpose; and the provisions of

this Part shall apply thereto accordingly, save that for references therein to the date of which a declaration under section **71** was published in the *Gazette* there shall be substituted references to the date on which possession of the land was given to the Commissioner of Lands under subsection (2).

(7) For the purposes of this section -

- (a) the expression "the land" means the land referred to in a direction given under subsection (1) or any part or parts thereof;
- (b) the expression "the specified period" means the period specified in a direction given under subsection (1).

### **Assessment of compensation.**

**78.** The amount of any compensation or compensation rental which under the provisions of this Part falls to be assessed by the Court shall be such amount as the Court in its absolute discretion thinks just, having regard to -

- (a) the condition of the land concerned, as it existed -
  - (i) at the date on which the declaration under section **71** was published in the *Gazette*, in the case of compensation payable under section **74**, or
  - (ii) in any other case, at the date on which possession of the land was given to the Commissioner of Lands under subsection (2) of section **77**; and
- (b) all such other matters and circumstances as the Court may consider relevant and in particular in assessing compensation rental shall have regard to any diminution in value to the occupier of the land concerned of land contiguous thereto.

### **Special provisions regarding native customary land.**

**79.-**(1) The provisions of this Part concerning compensation special provisions and compensation rental shall apply to native customary land, and interests therein, subject to the modifications set out in this section.

(2) The Commissioner of Lands may, by agreement with any person, or the majority of a group of persons, grant to that person or that group of persons, in the manner provided by Part II, an estate in land in lieu of paying to him or them, as the case may be, any compensation which he has or they have claimed.

(3) Where the Commissioner of Lands wishes to exercise the power conferred by subsection (2), he shall, after considering the claim to compensation, make, in the prescribed form or manner, an offer to grant the estate to the claimant or claimants; and if the offer be not accepted within three months next after the making thereof by the claimant, or, where the claim is made by a group of

persons, by a majority of such group, it shall be deemed to have been refused, and the provisions of section 74 shall take effect as if it had not been made.

(4) Any dispute as to whether any persons, being members of a group, constitute a majority of the group shall, unless the parties otherwise agree, be determined by a court.

(5) Where any compensation or compensation rental is payable to a group of persons claiming rights or interests in land according to current native usage, such compensation or compensation rental shall be payable to the group and for the benefit of all of them; and any dispute among the members of the group, as to the manner in which the compensation or compensation rental shall be dealt with when received, shall be determined by a court.

(6) Where any compensation or compensation rental is payable to a group of persons claiming rights or interests in land according to current native usage, the Commissioner of Lands may, if he has any doubt as to whether an offer thereof has been accepted by all the members of the group, or as to the persons to whom he should make, or order the making of, any payment in respect thereof, apply to a court for directions.

#### **Costs.**

**80.**-(1) Where an offer of compensation is made by the Commissioner of Lands, and is accepted, or deemed to be accepted, the Commissioner of Lands shall include in the order for payment a specified amount equivalent to the amount of the costs which in his opinion have been reasonable and properly incurred by the claimant in preparing and settling the claim to such compensation; and such amount shall not carry any interest in respect of any period prior to the expiration of thirty days next after the presentation of the order for payment to the Accountant-General.

(2) Where an offer of compensation rental is made by the Commissioner of Lands and is accepted, or deemed to be accepted, the Commissioner of Lands shall, as soon as may be thereafter, pay to the claimant an amount equivalent to the amount of the costs which in his opinion have been reasonably and properly incurred by the claimant in preparing and settling the claim to such compensation rental.

(3) Where any compensation or compensation rental is assessed by the Court, the Court may make such order, concerning the payment of a specified amount in respect of costs (including costs relating to the preparation of the claim and any proceedings before or dealings with the Commissioner of Lands in respect thereof) by or to the claimant, as it thinks just; and the order shall include such directions as the Court may think expedient to provide for the recovery or payment of such amount from or to the claimant, but so that any deduction of such amount which may be directed to be made from any compensation payable to the claimant shall be disregarded for the purpose of computing any interest on such compensation.

## **PART VI - REGISTRATION OF TITLE**

### **DIVISION 1 - THE REGISTER**

## **The Register.**

**81.** The Registrar shall keep a Register and shall enter thereon certificates of title and all instruments, dealings, and other matters required or permitted to be registered or entered on the Register.

## **Certificates of title.**

**82.-**(1) The Registrar shall issue in respect of every estate certificates of title in duplicate, of which the original shall be filed in the Register and the duplicate delivered to the person entitled thereto.

(2) Whenever any conflict occurs between the contents of or entries on any original certificate of title and the contents of or entries on the duplicate, the contents of or entries on the original certificate of title shall prevail.

(3) Only one duplicate certificate of title shall be issued in respect of an estate of which two or more persons are entitled to be registered as joint owners.

## **Contents of Register.**

**83.-**(1) Each certificate of title shall constitute a separate page of the Register.

(2) The Registrar shall enter on the certificate of title, in such manner as to preserve its priority, a memorandum of every dealing or matter affecting the estate and required or permitted by this Regulation to be entered on the Register.

(3) Save as otherwise expressly provided the registration of a certificate of title shall take effect when the Registrar enters thereon the volume and page of the Register.

## **Replacement of certificate of title.**

**84.-**(1) The Registrar, on being satisfied that a duplicate certificate of title has been lost or destroyed or has become illegible, and subject to such conditions as he thinks fit to impose, may cancel the original certificate of title and issue a new certificate of title in duplicate.

(2) If any original certificate of title is lost or destroyed or becomes illegible the Registrar may cause another certificate of title to be prepared on the basis of such evidence as is available as to the contents of the original and the entries endorsed thereon, and the certificate set prepared may, under the authority of the Registrar, be filed in the Register and used in place of the original.

## **Consolidation and subdivision.**

**85.-**(1) Subject to the provisions of this Regulation -

(a) on the application of a registered owner or person entitled to be registered as owner of two or more estates of the same kind and on the surrender of the duplicate certificates of title, the Registrar may issue either a single new certificate of title for an estate in the whole of the land comprised in the several estates or two or more new certificates of title for estates in parts of that land;

(b) on the application of a registered owner or person entitled to be registered as owner of an estate and on the surrender of the duplicate certificate of title, the Registrar may issue two or more new certificates of title for estates in parts of the land comprised in that estate;

and upon so doing he shall cancel the previous certificate or certificates of title.

(2) Whenever part of the land comprised in an estate is transferred, or the condition of a duplicate certificate of title is such that the Registrar deems it inadvisable to reissue it, he may require a new certificate of title to be taken out.

#### **Mode of registration.**

**86.**-(1) Except as provided by subsections (2), (3), (4) and (5), every instrument shall be deemed to be registered when a memorandum thereof has been entered on the relevant certificate of title.

(2) Every sub-lease shall be deemed to be registered when a memorandum thereof has been entered on the instrument whereby the interest sub-leased was created.

(3) Every subcharge shall be deemed to be registered when a memorandum thereof has been entered on the charge security which is thereby subcharged.

(4) Every charge security given in respect of a lease shall be deemed to be registered when a memorandum thereof has been entered on the lease.

(5) Every transfer or variation of a charge security, or of a lease, or of a subcharge, shall be deemed to be registered when a memorandum thereof has been entered on the charge security or lease or subcharge so transferred.

(6) Every memorandum entered pursuant to the provisions of this section shall be deemed to be entered on the Register.

#### **Priority of registration.**

**87.**-(1) Except as provided by subsection (2), every instrument lodged for registration shall be registered in the order in which and as from the time at which it is produced for that purpose, and instruments purporting to affect the same interest shall be entitled to priority as between themselves according to the order of their lodgment for registration, and not according to the order of their dates or any other factor.

(2) If two or more instruments purporting to affect the same interest are at or about the same time lodged for registration, the Registrar shall register them in such order as to afford priority to the instrument which is lodged by the person producing the duplicate certificate of title, charge security, lease, or subcharge, as the case may require.

(3) An instrument lodged for registration by post shall be deemed to be produced for that purpose at four o'clock in the afternoon of the day on which it is received in the office of the Registrar.

### **Duplicate and triplicate instruments.**

**88.**-(1) Any instrument (other than a transfer) lodged for registration may be in duplicate or, in the case of a lease, in duplicate or triplicate.

(2) Upon registration the Registrar shall retain the original and return any duplicate or triplicate to the persons entitled.

(3) In the case of a lease made in triplicate the word "triplicate" shall be endorsed on each copy and the words "landlord's part" on one copy and "tenant's part" on the other copy so returned and the provisions of this Regulation as to duplicate instruments shall apply to the copy endorsed "tenant's part".

(4) The Registrar may, on being satisfied that a duplicate instrument has been lost or destroyed or has become eligible, and subject to such conditions as he thinks fit to impose, issue a reproduction thereof in place of the lost duplicate instrument.

### **Contents of memoranda.**

**89.**-(1) Every memorandum of the registration of an instrument shall state the date of the lodgement of the instrument for registration.

(2) Whenever a memorandum has been entered on the Register, the Registrar shall enter a like memorandum on the duplicate certificate of title or other relevant duplicate instrument (if any).

(3) The Registrar shall endorse on every instrument registered a certificate that a memorandum thereof has been entered on the Register.

### **Trusts.**

**90.**-(1) The Registrar shall not enter any trust on the Register.

(2) An instrument which declares, or is deemed to declare, any trust, or a certified copy thereof, may be deposited with the Registrar for safe custody and reference; but such instrument or copy shall not form part of the Register or be deemed to be registered.

(3) Whenever the Registrar becomes aware that any registered interest is affected by a trust, he may, but shall not be bound to, protect in such manner as he thinks fit the rights of any person

beneficially interested under the trust or thereby required to give any consent.

## **DIVISION 2 - EFFECT OF REGISTRATION**

### **Effect of registration.**

**91.**-(1) No instrument dealing or other matter which is by the provisions of this Regulation required to be registered or entered on the Register shall until it has been registered or entered be effectual to create or extinguish or transfer or charge any interest in land.

(2) No court shall recognise or assist or enforce or protect, as against a registered owner or a person claiming through or under a registered owner, any claim to the possession, enjoyment, or occupation of any land, or any interest affecting land, which is founded upon or arises from any instrument which by reason of subsection (1) is not effectual to create or extinguish or transfer or charge any interest in land; but nothing in this subsection shall operate to defeat a claim to damages or for specific performance founded upon or arising from such an instrument.

(3) An instrument, which by virtue of subsection (1) is ineffectual to create or extinguish or transfer or charge any interest in land, shall be treated as ineffectual for such purposes by every court until it has been registered in accordance with the provisions of this Regulation, notwithstanding the existence of a right to specific performance.

(4) The deposit with any person, by way of security for the payment of money, of any document affecting or relating to land may operate as an agreement to create a charge security, but shall not give rise to any claim to enforcement as a charge security unless and until a charge security relating to the same transaction has been created and registered.

(5) Every instrument when registered shall have the same effect for all purposes as if it had been made under seal.

### **Conclusiveness of certificate of title.**

**92.**-(1) A certificate of title issued pursuant to this Regulation shall not be questioned by reason of any informality or irregularity in any instrument dealing matter or proceeding prior to the issue thereof.

(2) A certificate of title shall, subject to the provisions of section **93**, be conclusive evidence that the person named in the certificate as the owner of an estate is the owner of the estate described therein.

### **Indefeasibility of title.**

**93.** Notwithstanding the existence in any other person of any interest and registered owner of an estate or other interest in land shall, except in the case of fraud, hold estate or interest subject to the registered interests affecting the same but free from all other interests except -

- (a) the estate of all owner entitled under a certificate of title issued before the issue of the first certificate of title under or through which the first-mentioned registered owner claims;
- (b) as regards any land that by wrong description is included in the certificate of title, unless the registered owner is a purchaser for value of an estate or interest in the land wrongly included (or derives title from or through such a purchaser), and that land is not native customary land;
- (c) unless otherwise stated in the certificate of title, the obligations set out in subsection (6) of section 22;
- (d) the interest (excluding any option to purchase or option to renew) of a tenant in possession under a lease for a term of not more than two years or under a periodic tenancy;
- (e) any charge, created by the provisions of this or any other Regulation, in respect of the land comprised in the estate or interest; and
- (f) any public rights of way.

**Doctrine of notice abrogated.**

**94.** Except in the case of fraud no person, whether or not he has become registered as owner of an interest, who contracts or deals with or takes a transfer from the registered owner (or a person who is entitled to be registered as owner), shall be concerned to ascertain the circumstances under which such owner or any previous owner was registered or to see to the application of any purchase money or other capital money, or shall be affected by notice actual or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

**Effect of fraud.**

**95.-**(1) Any certificate of title or entry or alteration on the Register procured or made by fraud shall be void as against any person defrauded or who may be defrauded thereby and no person who is party or privy to the fraud or who claims solely as a volunteer under such a person shall take any benefit therefrom.

(2) But nothing in this Regulation shall be so interpreted as to place in doubt the title of any person who is a purchaser in good faith and for value of any interest and who is registered as the owner of such interest, on the ground that the registered owner through or under whom he claims was registered as owner through fraud or error, whether such fraud or error consists in a misdescription of the land or otherwise.

**DIVISION 3 - REGISTRATION OF TRANSACTIONS**

### **What instruments to be registered.**

**96.**-(1) Subject to the provisions of subsection (2), every instrument creating or disposing of or charging or extinguishing, or purporting to create or dispose of or charge or extinguish, an interest in land shall be registered.

(2) It shall not be necessary to register -

- (a) any lease for a period not exceeding two years, or any periodic tenancy;
- (b) any transfer charge security or other instrument disposing of any lease, being a lease for a period not exceeding two years, or of any periodic tenancy;
- (c) any will;
- (d) any appointment of a special representative;
- (e) any appointment of a trustee in bankruptcy, or any receiving order in bankruptcy; or
- (f) any order of a court, unless the registration thereof or of the effect thereof is specifically required by this Regulation.

(3) The Registrar may, if requested so to do, register any such instrument as is mentioned in subsection (2), if made in the appropriate form.

### **Effect of transfer.**

**97.**-(1) Subject to the provisions of this Regulation, upon the registration of a transfer, made by a registered owner, of an interest of which he is entitled to dispose, so much of the interest as is set out in such transfer, with all rights powers and privileges pertaining thereto, shall pass to the transferee who shall thereupon become the registered owner thereof.

(2) Upon registration of every such transfer, the right to sue upon any instrument affecting the interest transferred and to recover any debt, sum of money, or damages thereunder, and all the interest of the transferor in any such debt, sum of money, or damages, shall vest in the transferee; but nothing in this subsection shall prevent the enforcement of a trust affecting such debt, sum of money, or damages, if the transferee holds as trustee.

### **Registrar's vesting orders.**

**98.** If the Registrar is satisfied that an interest has been sold or disposed of by the registered owner thereof and that the whole of the consideration for such sale or disposition has passed but that a transfer or other proper instrument of disposition cannot be obtained because the registered owner is dead or out of the Protectorate or cannot be found or because for any reason it is impracticable to obtain his signature within a reasonable time, then the Registrar may make a

vesting order to give effect to the sale or disposition and shall register such order, whereupon the person in whom the order vests the interest shall become the transferee and registered owner thereof.

**Effect of registered transmission.**

**99.** Any person registered pursuant to section **66** or **69** as the owner of an interest shall hold such interest subject to all such burdens and liabilities as affected the interest while held by his immediate predecessor in title.

**Death of joint owner.**

**100.** On the proof of the death of any person registered as joint owner of any interest, the Registrar shall register the survivor or survivors as owner or owners of the interest and he or they will thereupon become the transferee or transferees of such interest and the registered owner or owners thereof.

**Executions judgments and pending actions.**

**101.-**(1) The Registrar, on being served with a copy of a writ of execution or judgment decree or order of any court and on being satisfied that an interest which is entered on the Register is affected thereby, shall mark on such copy the date of such service and enter a memorandum thereof on the Register, and no dealing with the interest pursuant to such writ judgment decree or order shall be effected until the memorandum has been so entered.

(2) After the interest has been dealt with pursuant to any such writ judgment decree or order, the Registrar shall, on lodgment of an instrument in the appropriate form, register such instrument if lodged within a period of three months from the date of service of the copy on the Registrar, in which case no other instrument dealing with the interest and lodged after the service of the copy but before the lodgment of the first-mentioned instrument shall be registered or be deemed to be lodged for registration; but if no such instrument is lodged within the period of three months the writ judgment decree or order shall cease to affect the interest.

(3) On the registration of a transfer by way of sale pursuant to the provisions of subsection (2) the purchaser shall become the transferee and registered owner of the interest in all respects as if the transfer were a transfer for value by the registered owner.

(4) Upon proof to the Registrar of the satisfaction of any writ judgment decree or order a copy whereof has been served as aforesaid, he shall make an entry on the Register to that effect, whereupon such writ judgment decree or order shall cease to affect the interest concerned.

(5) Save as in this section provided no execution or pending action shall affect and registered interest.

**Vesting orders and instruments.**

**102.** No vesting order made by any court, and no instrument effecting a change in trusteeship, shall have any effect in transferring or otherwise vesting any interest until the same has been registered.

**Determination of leases.**

**103.** Where any registered lease is surrendered or frustrated or validly determined the Registrar, on such proof of the surrender or frustration or determination as he shall require, shall make appropriate entries on the Register.

**Production of title by chargee.**

**104.** When any disposition of an estate subject to a charge security is made by the registered owner thereof and such owner or the person entitled to the benefit of the disposition desires the registration of the disposition, the chargee, if he holds the duplicate certificate of title, shall, upon the request and at the cost of the person seeking registration, produce such duplicate to the Registrar so that the disposition may be registered.

**DIVISION 4 - CAVEATS**

**Lodging of caveats.**

**105.**-(1) Any person making any claim with respect to an interest, or the agent of any such person, may lodge with the Registrar a caveat in the prescribed form forbidding the registration of any person as transferee of, or of any instrument affecting, that interest, either absolutely or conditionally, and may at any time withdraw the caveat.

(2) A memorandum of every caveat shall be entered on the certificate of title or other instrument to which it relates and the Registrar shall take such steps as he thinks fit to bring notice of the caveat to the registered owners of interest affected by it.

(3) Every caveat shall specify an address in the Protectorate whereat notices relating to the caveat or proceedings in respect thereof may be served on the caveator.

(4) Every notice relating to any caveat and any proceedings in respect thereof shall be deemed to be duly served if served at the address in the Protectorate specified in the caveat.

**Effect of caveat.**

**106.** So long as any caveat remains in force the Registrar shall not, except in accordance with the provisions of the caveat or with the consent in writing of the caveator or his agent, enter on the Register any change in ownership (except a transmission under section **66** or **69**) of or any dealing (except a dealing which is shown to the satisfaction of the Registrar not to be to the prejudice of the person for whose protection the caveat has been lodged) affecting the interest in respect of which the caveat is lodged; but no instrument already lodged for registration shall be affected by any caveat lodged subsequently.

**Registrar's caveat.**

**107.** The Registrar may enter a caveat to prohibit any transfer or dealing with any interest belonging or supposed to belong to a person under a disability or absent from the Protectorate, or to prohibit dealings with any interest in any case in which it appears that an error has been made in any certificate of title or instrument, or to prevent any fraud or improper dealing.

**Lapse and removal of caveats.**

**108.**-(1) Subject to the provisions of this section, a caveat (other than a caveat entered by the Registrar or lodged by the Commissioner of Lands) shall lapse, as to any interest affected by any transfer or other dealing, except -

- (a) a transmission under section **66** or **69**; or
- (b) a transfer or dealing to which the caveator or his agent has lodged with the Registrar his consent in writing; or
- (c) a transfer or dealing which is shown to the satisfaction of the Registrar not to be to the prejudice of the person for whose protection the caveat has been lodged.

upon the expiration of thirty days after notice give by the Registrar to the caveator that a transfer or dealing has been lodged for registration, which notice shall be given whenever any transfer or dealing whatsoever is lodged.

(2) Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (5), the Registrar may at any time and from time to time and on such conditions as he deems fit extend the operation of a caveat or revive a lapsed caveat; and if the caveator serves upon the Registrar a certified copy of pending Court proceedings the Registrar shall extend the operation of the caveat until the outcome of those proceedings.

(3) Any person adversely affected by any caveat may apply to the Registrar for the removal of the caveat.

(4) The Registrar on his own motion may, or on the application of any interested person shall, give notice to a caveator requiring him to withdraw his caveat or to substantiate his claim, and if the caveator does not comply with the notice within thirty days or within the said period file with the Registrar a certified copy of pending Court proceedings the Registrar shall remove the caveat from the Register.

(5) A caveat which has been removed pursuant to subsection (4) shall not be renewed by or on behalf of the same person in respect of the same claim.

(6) Any person lodging any caveat with the Registrar without reasonable cause shall be liable to pay such compensation as the Court thinks just to any person who sustains damage thereby.

(7) In this section, the expression "pending Court proceedings" means pending proceedings in the Court as a result of which the validity or invalidity of the claim of the caveator appears likely to be determined.

### **Stay of registration.**

**109.**-(1) Any person proposing to deal for value with the registered owner of an interest may with the consent in writing of such owner and on stating the particulars of the proposed dealing lodge with the Registrar an application for a stay of registration in the prescribed form.

(2) If as shown by the Register the owner is free to deal with his interest, the Registrar shall make an order certifying that the owner is so free and staying registration of any instrument affecting the interest for one month from the time specified in the order, and such order shall be affixed to the relevant certificate of title or instrument.

(3) If within the said period of seven days an instrument effecting the proposed dealing is lodged for registration such instrument shall have priority over any other instrument lodged for registration after the time specified in the order and shall be registered notwithstanding any caveat lodged with, or any copy of caveat of execution or judgment decree or order of any court served on, the Registrar after the time specified.

## **DIVISION 5 - AMENDMENT OF THE REGISTER**

### *Compensation, Searches, and Registrar's Powers*

#### **Amendment of the Register.**

**110.** If it appears to the Registrar that any certificate of title or other registered instrument does not truly declare the actual interest to which any person is entitled under this Regulation or is in some other respect erroneous or imperfect, the Registrar, after taking such steps as he thinks fit to bring to the notice of any person shown by the Register to be interested and giving every such person an opportunity to be heard, may amend, as from such date as he thinks fit, the certificate of title or instrument and any duplicate thereof and make such further amendments or additions to the entries on the Register as the circumstances require.

#### **Compensation.**

**111.**-(1) Subject to the provisions of this Regulation, any person sustaining loss or damage by reason of -

- (a) any amendment of the Register; or
- (b) any error misdescription or omission on or from the Register; or
- (c) the registration of any other person as owner; or

(d) his having made or given any payment or consideration to any other person on the faith of any entry on the Register or any official document issued by the Registrar; or

(e) the loss or destruction of any document lodged with the Registrar for inspection or safe custody; or

(f) any omission mistake or misfeasance of the Registrar in the execution of his duties;

shall be entitled to compensation.

(2) A claim for compensation shall be made to the Registrar, and, if not admitted by him, shall, if the claimant so requests, be transmitted to and determined by the Court; and on the hearing thereof by the Court the Registrar may join any other person as co-defendant.

(3) No compensation shall be payable under this section -

- (a) where the claimant or his agent caused or substantially contributed to the loss or damage by fraud wilful default or neglect or where the claimant claims (otherwise than by reliance upon a registered disposition for value) through a person who or whose agent has been guilty of such fraud wilful default or neglect; or
- (b) on account of costs incurred in taking or defending any legal proceedings without the consent of the Registrar, except any costs which may be awarded against the Registrar in any proceedings to which he is a party.

(4) No compensation shall be payable under this section in respect of any loss or damage occasioned by the breach of any trust.

(5) The amount of any payment payable under this section shall, when finally determined, be specified in an order for payment, to be made by the Registrar or the Court (as the case may be), and the provisions of section 74 shall apply to such order as if it were an order for payment of compensation under that section.

(6) Where an order for payment of compensation under this section has been made, the Registrar may recover, by action before the Court, the amount of the compensation (or such lesser amount as the Court thinks just) from the person whose fraud wilful default or neglect occasioned the loss or damage, or, if he be dead, from his estate.

### **Searches.**

**112.**-(1) Any person may, on payment of the prescribed fee, inspect the Register at any time during office hours.

(2) Any person desiring to learn whether a registered owner of an interest is able to deal with his interest free from obstruction by any caveat or instrument lodged for registration or by any writ

of execution or judgment order or decree of any court or by any other cause known to the Registrar but not appearing on the Register may, on payment of the prescribed fee, obtain from the Registrar a search certificate in the prescribed form.

### **Registrar's powers.**

**113.**-(1) The Registrar may, in connection with the exercise of his powers under this Regulation, state any case or reserve any question for consideration by the Court, and the Court shall thereupon have power to hear and determine the case or question.

(2) Any person aggrieved by a decision of the Registrar given in pursuance of his powers under this Regulation may, with the consent of the Registrar or of the Court, appeal to the Court, which may confirm quash or vary the decision as it thinks just: but no appeal shall lie under this subsection in any case where the decision of the Registrar has been given in conformity with the determination by the Court of a case or question stated or reserved by him in connection with the same matter for its consideration under subsection (1).

(3) The Registrar may, for the purposes of this Regulation -

(a) require any person to produce any document, or give any information, relating to land or to an interest;

(b) in connection with any dealing with all interest, or with any disposition or transmission of or affecting an interest, require any person having the custody or control of any duplicate certificate of title or duplicate or triplicate instrument concerned to bring it into the office of the Registrar to be endorsed cancelled amended inspected or otherwise dealt with as the case requires;

(c) at his discretion dispense with the production of any duplicate certificate of title or any instrument or the duplicate or triplicate thereof or any signature or the supply of any information or any advertisement or notice;

(d) make or delete all such entries upon or from the Register or any certificate of title instrument duplicate triplicate map plan or other document as are necessary by reason of the operation of this or any other Regulation;

(e) order that the costs of any proceedings before him incurred by any party shall be paid by any other party and may settle the amount of any costs to be paid under any such order or direct in what manner they are to be taxed.

## **PART VII - SURVEY**

### **Power to enter and survey.**

**114.** Any Surveyor may at a reasonable time enter upon any land which he is required to mark out or survey for any purpose, and upon any neighbouring land, and may make all such enquiries

as may be necessary, and may affix or set up any boundary mark in or upon such land and dig up any ground for the purpose of so doing, and may cut down and remove any timber or other growth which may obstruct any survey line or any boundary; but he shall do as little damage as possible to the land or any property thereon.

**Power to require assistance in survey.**

**115.** Any Surveyor may cause a notice to be served on any person applying for claiming or owning any interest (otherwise than solely as a beneficiary under a trust) in or affecting any land which the Surveyor is required to mark out or survey for any purpose, or any adjacent land, or on any person occupying or employed on or in connection with such land, requiring such person to attend before him at a time and place specified in the notice for the purpose of pointing out the boundaries of such land.

**Power to require clearance of survey lines.**

**116.-**(1) Any Surveyor may cause a notice to be served upon any applicant for the grant of an estate in any land requiring him to clear any boundary line of such land.

(2) If any person on whom such a notice has been served fails to comply therewith, the Surveyor may hire labour to perform the work specified in the notice which has not been performed, and the Commissioner of Lands may by action in any court recover the cost of such labour from the person so in default.

**Power to mark out boundaries.**

**117.-**(1) Where -

- (a) an estate is subsisting in any land; or
- (b) an application is made for the grant of an estate in any land;

any Surveyor may, after making such enquiries (if any) as may be necessary, mark out the boundaries of that land, and may unless sufficient boundary marks have already been affixed or set up cause the same to be affixed or set up in such manner and number as he may consider sufficient.

(2) Whenever a Surveyor becomes aware that a boundary mark has been injured destroyed or removed or has fallen into disrepair, he shall report the fact to the Commissioner of Lands, and shall if so authorised by the Commissioner of Lands cause the boundary mark to be repaired or replaced as the case may require.

(3) The Commissioner of Lands may by action in any court recover the cost of marking out the boundaries of any land or of affixing setting up repairing or replacing any boundary mark on any land from the lawful occupier of, or applicant for the grant of an estate in, that land, as the case may be.

### **Removal of boundary marks.**

**118.-**(1) Any person who desires the temporary or permanent removal of any land mark, boundary mark, trigonometrical station or other survey mark may apply therefore in writing to the Commissioner of Lands setting forth his reasons for such application, and the Commissioner of Lands may, if he thinks fit, remove the mark or station and (in the case of a temporary removal) restore or replace it in due course.

(2) The Commissioner of Lands may recover by action in any court the expenses incurred in acting upon any such application from the person making it.

### **Compensation.**

**119.-**(1) If, in the exercise of the powers conferred by the preceding sections of this Part, any damage is caused to any buildings fences trees or crops lawfully erected or planted or to any movable property, the Commissioner of Lands shall either cause such damage to be made good or pay compensation therefor to the owner thereof.

(2) Any dispute as to the making good of such damage or the amount of compensation payable under subsection (1) shall, unless the parties otherwise agree, be referred to and settled by a court.

## **PART VIII - OFFENCES**

### **Trespass.**

**120.-**(1) No person shall, without lawful excuse, occupy, or assert any right or privilege over, any public land.

Penalty: a fine of ten pounds.

(2) No person, except a Solomon Islander, shall, without lawful excuse, occupy, or assert any right or privilege over, any native customary land.

Penalty: a fine of ten pounds.

(3) Any court which has recorded a conviction under subsection (1) or (2) shall, upon the application of the prosecutor, issue a warrant addressed to all police officers requiring them forthwith to remove from the land the person convicted, together with any movable property belonging to him found thereon, and any police officer into whose hands the warrant may come shall forthwith proceed to carry it into execution.

(4) Any court which has recorded a conviction under subsection (1) or (2) may, upon the application of the prosecutor, enquire into and assess any damage caused to the public land or to the native customary land or to any property (movable or immovable) on such land by the

commission of the offence, and may, in addition to imposing a penalty for the offence, order the offender to pay the amount of the damage as so assessed (together with a specified amount in respect of the expenses incurred in making any survey which in the opinion of the court was necessary to establish the offence or the extent of such damage) to the Commissioner of Lands or the Board or the owners of the native customary land or other property, as the case may be; and the order may, in addition to any other mode of enforcement, be enforced in the same manner as the payment of a fine.

(5) An application under subsection (3) or (4) may be made, without further process, before the court recording the conviction adjourns, but if not so made shall be made by summons returnable in the court recording the conviction, in which event the court shall before making any order require proof of the service of the summons upon the person convicted.

### **Obstruction of Surveyor, etc.**

**121.**-(1) No person shall -

(a) without lawful excuse obstruct or hinder any Surveyor in the execution of the powers conferred upon him by section **114**; or

(b) having been served with a notice under section **115** -

(i) without lawful excuse fail to attend at the time and place specified therein; or

(ii) without lawful excuse fail to do any thing or afford any assistance or information lawfully and reasonably required by a Surveyor; or

(c) having been served with a notice under section **116**, without lawful excuse fail to comply therewith; or

(d) without lawful authority deface, obliterate, move, injure, destroy, impair, or render useless any land mark, boundary mark, trigonometrical station, or other survey mark.

Penalty: a fine of ten pounds or imprisonment for one month or both such fine and imprisonment.

(2) Where a person is charged with an offence under paragraph (a), or subparagraph (ii) of paragraph (b), of subsection (1), the fact, if proved, that at the time of committing the alleged offence he did not know and had no reason to believe that the person purporting to execute the powers or making the requirement (as the case may be) was a Surveyor shall be a lawful excuse; and if evidence of that fact be given, if may be rebutted by proof that at or immediately before the time when the alleged offence was committed, the Surveyor produced to the person charged a document signed by the Commissioner of Lands and evidencing the appointment of such Surveyor.

(3) A court recording a conviction under paragraph (d) of subsection (1) may, upon the

application of the prosecutor, enquire into and assess the cost of making good the damage caused by the commission of the offence, and may, in addition to imposing a penalty for the offence, order the offender to pay to the Commissioner of Lands the cost as so assessed, together with a specified amount in respect of the expenses incurred in making any survey which in the opinion of the court was necessary to establish the offence or the extent of such damage, and the order may, in addition to any other mode of enforcement, be enforced in the same manner as the payment of a fine: and an application under this subsection may be made, without further process, before the court recording the conviction adjourns, but if not so made shall be made by summons returnable in the court recording the conviction, in which event the court shall before making any order require proof of the service of the summons upon the person convicted.

(4) On the trial of an offence under paragraph (c) of subsection (1), the court shall enquire whether any action has been taken under subsection (2) of section **116**, and, if so, whether any judgment given therein has been satisfied in whole or in part; and the court shall -

- (a) if it is shown that any such judgment has been wholly satisfied, dismiss the charge; or
- (b) in any other case in which it proceeds to conviction, if it is shown that any such judgment has been partly satisfied, take that matter into consideration when deciding upon the penalty for the offence.

(5) After a conviction for an offence under paragraph (c) of subsection (1) has been recorded, no action shall be begun or, if an action has already been begun, no judgment shall be given therein, under subsection (2) of section **116** in respect of the same matter.

### **Contempt of the Registrar.**

**122.**-(1) No person shall, being in possession of any document required by the Registrar to be produced to him pursuant to this Regulation, without lawful excuse fail or refuse to deliver up the same to the Registrar after having been served with a notice in writing requiring him to deliver it up within a specified time.

Penalty: a fine of ten pounds or imprisonment for one month or both such fine and imprisonment.

(2) No person shall, having any information required by the Registrar to be given to him pursuant to this Regulation, without lawful excuse fail or refuse to give the same to the Registrar after having been served with a notice in writing requiring him to give it within a specified time.

Penalty: a fine of ten pounds or imprisonment for one month or both such fine and imprisonment.

### **Jurisdiction.**

**123.**-(1) The Court shall have exclusive jurisdiction to entertain proceedings under section **122**.

(2) No prosecution under section **122** shall be instituted without the written consent of the Attorney-General thereto.

## **PART IX - MISCELLANEOUS**

### **Protection for persons dealing with Board or Commissioner.**

**124.** No person who deals with the Board or with the Commissioner of Lands in connection with any land or interest shall be concerned to enquire whether any consent or authority to or for the Board or dealing, required by or under this Regulation or any other law, has been obtained, or whether the dealing contravenes any direction given by the High Commissioner to the Board or to the Commissioner of Lands.

### **Frustration of leases.**

**125.** A lease of an estate may be frustrated in the same manner, and subject to the same consequences, as a commercial contract.

### **Spouses to be treated as separate persons.**

**126.** A husband and wife shall, for all purposes of any transaction affecting or concerning an interest, be treated as separate persons.

### **Persons transacting with themselves.**

**127.** A person may enter into any transaction affecting or concerning an interest with himself, either alone or jointly with any other person; but nothing in this subsection precludes any such transaction from being liable to be set aside if, by reason of any fiduciary relationship or otherwise, that transaction is precluded from being validly effective.

### **Presumption as to age.**

**128.** The parties to any transaction affecting or concerning an interest shall, until the contrary is proved, be presumed to be of the age of twenty-one years or more at the date thereof.

### **Party walls.**

**129.**-(1) Where any wall or structure lies along the boundary of two plots of land which are comprised in separate estates, that wall or structure shall be deemed to be severed vertically in two and the land comprised in each estate shall include the appropriate vertical part thereof.

(2) Either of the two estate owners may apply to the Registrar for the registration of the wall or structure as a party wall or party structure; and the Registrar may, after giving notice of the application to the other estate owner and affording him an opportunity to be heard, register it as such.

(3) Where a wall or structure is registered as a party wall or party structure, each estate owner shall have such rights to support and user over the part thereof which is not comprised in his estate as may be requisite.

**No title by adverse possession.**

**130.** The possession or occupation of any land, not being native customary land, or the assertion or purported exercise of any right interest or privilege over in or affecting any land, not being native customary land, for any period however long, shall not give rise to any interest in over or affecting that land, nor to any presumption that the possession, occupation, assertion, or purported exercise had a lawful origin.

**Preservation orders for places of public interest.**

**131.-**(1) Whenever the High Commissioner is of opinion that places of the preservation of any land is a matter of public interest by reason of the historic, architectural, traditional, artistic, archaeological, or religious interest attaching thereto he may make a preservation order placing the land under his protection.

(2) A preservation order shall -

(a) specify the land to which it applies;

(b) prohibit the doing of all such acts (being acts the doing of which would, in the opinion of the High Commissioner, be or tend to the injury of the public interest by reason of any of the aforesaid matters) on or affecting the land as may be specified.

(3) As soon as may be after a preservation order has been made, the Commissioner of Lands shall -

(a) cause notices thereof, in the prescribed form, to be posted in prominent positions on or near to the boundaries of the land concerned;

(b) take such other steps as may, in his opinion, be necessary or expedient to bring the order to the notice of all persons who may be affected by it.

(4) Any person may submit to the High Commissioner a petition in writing praying that a preservation order be varied or revoked.

(5) It shall be the duty of the District Commissioner to assist any person requesting him to do so to draw up and submit a petition under subsection (4); but a failure by him to perform such duty shall not give rise to any cause of action.

(6) The High Commissioner may, after receiving a petition under subsection (4), make or cause to be made such enquiries with respect to any matter appearing to him to arise therefrom as he thinks fit; and, after considering the petition and the information resulting from such enquiries (if

any), he may vary or revoke the order as he thinks fit.

(7) The High Commissioner may, from time to time, of his own motion, vary or revoke any preservation order made by him.

(8) A preservation order shall remain in force until revoked by a further order made by the High Commissioner.

(9) As soon as may be after the High Commissioner has made a preservation order, or varied or revoked a preservation order, the Commissioner of Lands shall furnish to the Registrar all such information in respect thereof as may be requisite, and the Registrar shall enter the effect of such order on the Register.

### **Contracts.**

**132.**-(1) No action may be brought upon any contract for the sale or other disposition of any interest which is by this Regulation required to be registered, unless the contract is in writing and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after this section comes into operation; but it does not affect the law relating to part performance.

(3) Stipulations in a contract, as to time or otherwise, which according to the rules of equity are not deemed to be or to have become of the essence of the contract, shall also be construed and have effect at law in accordance with the same rules.

### **Authority of absent owner.**

**133.**-(1) Any person who has absented, or intends to absent, himself from the Protectorate may deposit with the Registrar a written authority, in the prescribed form, authorising some person in the Protectorate to act on his behalf in any matter in any way affecting land or an interest.

(2) Every such authority may be revoked by a written notice, in the prescribed form, served upon the Registrar.

(3) Every such authority shall be deemed to be a power of attorney and shall have effect from the date specified therein, or if no date be specified, from the date of its deposit with the Registrar.

### **Attestation of instruments.**

**134.**-(1) No instrument required to be registered shall be registered unless each signature by or on behalf of every party thereto is attested by an authorised officer, who shall certify in such attestation that the instrument has been explained to the party and that the party appeared to understand its contents.

(2) For the purposes of subsection (1), the expression "party" does not include any body

corporate or any person who is an authorised officer or an officer in the public service.

### **Services of notices.**

**135.**-(1) Any notice required or authorised to be served by or under this Regulation upon any person shall be in writing.

(2) The notice may be delivered to the person personally.

(3) If the address of the person in the Protectorate be known and there be postal communication with that place, notice may be served by posting it by registered letter addressed to the person at the said address; and, unless the letter be returned to the sender as undelivered, the notice shall be deemed to have been served at the time when it ought, in due course of post, to have been delivered at the address to which it was sent.

(4) If the person is absent from the Protectorate, the notice may be served upon his agent in the Protectorate; and if the person is dead, the notice may be served upon the special representative.

(5) If it is impracticable to serve notice in any of the manners specified in subsections (2) to (4), the notice may be served in such manner as may be directed by an order of any court.

(6) Notwithstanding anything in subsections (1) to (5) -

(a) it shall be the duty of any person seeking to serve the notice to do everything reasonably practicable to ensure that the contents of the notice come to the knowledge of the person affected thereby;

(b) any court may in any case make an order directing the manner in which any notice is to be served or dispensing with the service thereof.

### **Law governing leases.**

**136.**-(1) The following provisions of this Regulation, namely, subsections (1), (2), (3), (4), and (6) of section 26, sections 28, 29, 30, and 31, subsections (1) and (4) of section 32, and sections 55, 56, 57, 58, 62, 64, 65, 66, 67, 68, 69, and 70, shall apply to the interest created by a lease in like manner as they apply to an estate, and for that purpose shall be read as if for references therein to an estate, the grantor of an estate, the owner of an estate, the rent incident to an estate, and the obligations incident to an estate there were respectively substituted references to the interest created by the lease, the landlord, the tenant, the rent reserved by the lease, and the covenants and conditions contained in the lease and to be performed and observed on the part of the tenant.

(2) Subsection (2) of section 21 shall apply to a lease, subject to any provision to the contrary or restriction contained in the lease, in like manner as it applies to a fixed-term estate, and for that purpose shall be read as if for references therein to an estate and to the owner of an estate there were respectively substituted references to the interest created by the lease and to the tenant.

(3) Section 27 shall apply to the interest created by a lease, subject to any provision to the contrary or restriction contained in the lease, in like manner as it applies to an estate, and for that purpose shall be read as if for references therein to the owner of an estate or to the grantor of an estate there were respectively substituted references to the tenant and to the Commissioner of Lands.

(4) Subject to the provisions of this Regulation, the law governing leases shall be the rules of the common law and of equity as modified by -

(a) such statutes of general application affecting leases as were in force in England on the first day of January 1926; and

(b) such statutes affecting leases, being statutes which have come into force in England since the first day of January 1926, as the High Commissioner may from time to time by proclamation specify.

(5) The High Commissioner may by proclamation define which English statutes shall be deemed to satisfy the description set out in paragraph (a) of subsection (4), and may from time to time by proclamation vary or revoke such definition.

#### **Cases not provided for.**

**137.**-(1) Subject to the provisions of subsection (2) and of section **136**, any question arising before the Court which is not expressly or impliedly provided for in this Regulation shall be determined by the Court either by way of analogy to the provisions of this Regulation, or, if in the opinion of the Court no such analogy appears to exist, so far as may be possible in conformity with the general tenor of this Regulation, and in either case without recourse, so far as possible, to the legal rules, principles, or decisions obtaining in any other State or country.

(2) But, for the avoidance of doubt, it is hereby declared that nothing in subsection (1) is intended to prevent the application, in the determination of any question which is not expressly or impliedly provided for in this Regulation, of the general rules of law applicable to any of the following matters, that is to say-

(a) trusts and trustees;

(b) wills;

(c) executors and administrators;

(d) the administration of the estates of deceased persons;

(e) bankruptcy, and the administration of the estates of persons who have committed an act of bankruptcy;

(f) incapacity by reason of age, and the guardianship of persons who have not attained

full age; and

(g) incapacity by reason of mental infirmity, and the administration of the estates of persons who are so incapable.

**Jurisdiction of native courts.**

**138.**-(1) A native court shall, subject to the provisions of this section, have exclusive jurisdiction in all matters and proceedings of a civil nature affecting or arising in connection with native customary land other than -

(a) any such matter or proceeding for the determination of which some other provision is expressly made by this Regulation;

(b) any matter or proceeding involving a determination whether any land is or is not native customary land.

(2) A native court shall have jurisdiction to hear and determine any matter or proceeding of a civil nature referred to it by the Court.

(3) Any matter or proceeding over which a native court would, apart from this subsection, have exclusive jurisdiction may, with the consent of the District Commissioner given upon application to him by a party to the matter or proceeding, be heard and determined by the Court.

(4) The decision of a native court given in the exercise of its jurisdiction under this section shall be final, conclusive, and not subject to any appeal, save that -

(a) if the jurisdiction was exercised pursuant to subsection (2), the decision shall be subject to such appeal (if any) as the Court may, upon application made to it in that behalf, permit, or as may be specified in the order of referral;

(b) if the jurisdiction was exercised pursuant to subsection (1), any party to the matter or proceeding who is aggrieved by the decision may, with the consent of the District Commissioner given upon application to him by such party, appeal to the Court.

(5) The Judicial Commissioner may from time to time issue general directives for the guidance of District Commissioners in exercising their functions under this section.

(6) The provisions of this section shall have effect notwithstanding anything contained in any other law or in any warrant establishing any native court.

(7) Nothing in the foregoing provisions of this section shall operate to confer or be construed as conferring, upon a native court any jurisdiction over any person who by reason of his status would not, apart from those provisions, be subject to the jurisdiction of a native court.

**Jurisdiction of the Court.**

**139.**-(1) Except as expressly provided in this Regulation, the Court shall have exclusive jurisdiction in all matters and proceedings of a civil nature arising under this Regulation or involving its interpretation.

(2) If in any matter or proceeding before any court, person, body, or tribunal (other than a native court exercising its jurisdiction under section **138**) the matter or proceeding cannot be determined without deciding a question involving the interpretation of this Regulation, that court, person, body, or tribunal may, and if requested by any party to the matter or proceeding shall, state the question in the form of a case for determination by the Court and adjourn the matter or proceeding until the question shall have been determined.

(3) A decision (whether given in an original proceeding or on appeal) of the Court given in any matter or proceeding arising under this Regulation or involving its interpretation, shall, subject to the provisions of subsection (4), be final and conclusive and not subject to any appeal.

(4) Any person aggrieved by any such decision as is referred to in subsection (3) may appeal to the Court of Appeal in Fiji if, and only if-

(a) the decision was not given by the Court in exercise of its jurisdiction under sections **36**, **39**, or **52**, or under paragraph 11 of the Second Schedule; and

(b) some question other than a question of fact is raised by the appeal; and

(c) the person aggrieved obtains leave to appeal either from the Court or from the Court of Appeal in Fiji.

(5) The provisions of this section shall have effect notwithstanding anything contained in any other law; but they shall not affect or restrict any right to appeal (whether by special leave or as of right) to Her Majesty in Council.

#### **Attorney-General may intervene.**

**140.** The Attorney-General shall have the right to intervene and be heard in any matter or proceeding arising under this Regulation or involving its interpretation.

#### **Forms.**

**141.** Instruments in the like form, or using expressions to the like effect, to any prescribed form, or the expressions used therein, shall, in regard to the form and expression, be sufficient.

#### **Rules.**

**142.**-(1) The High Commissioner may make such rules as may seem to him expedient for carrying into effect any of the purposes or provisions of this Regulation.

(2) In particular, such rules may-

(a) regulate the practice to be followed on any application made to, or in any proceedings before, the Commissioner of Lands, or the Registrar, or an Adjudication Officer, or any court, under or arising out of this Regulation, and in particular make provision -

- (i) as to the form in which any decision thereon or therein is to be given;
- (ii) as to the fees chargeable in respect thereof;
- (iii) as to the evidence which may be required or admitted thereon or therein;
- (iv) as to the time within which any such application or proceedings shall be made or begun, if no such time is specified in this Regulation;

(b) prescribe what kind of evidence shall be required where any matter has to be proved to the Commissioner of Lands or to the Registrar or to the Board;

(c) prescribe the manner in which any public action of estates to be granted by the Commissioner of Lands or the Board shall be conducted;

(d) prescribe the manner in which any ballot or tender for the grant of estates by the Commissioner of Lands or the Board shall be conducted or dealt with;

(e) determine the manner in which any premium or rent incident to an estate granted by the Commissioner of Lands or the Board shall be fixed;

(f) apply the provisions of this Regulation relating to the transmission of interests in or affecting land on death or bankruptcy to the case of the dissolution or liquidation of a corporation, with such adaptations as may seem requisite;

(g) prescribe the form of the Register;

(h) regulate the practice, and prescribe the duties, of the Commissioner of Lands and the Registrar and the other officers referred to in sections 4 and 7, and the fees and charges to be paid or made for any act, matter, or thing to be done or observed under Part VI;

(i) prescribe forms to be followed in connection with any act, matter, or transaction to be done or made under or in connection with this Regulation;

(j) appoint any specified public servants, or all public servants of any specified class or classes, as persons to whom any document or instrument which is required to be submitted to the Commissioner of Lands or the Board or the Registrar may be delivered, or through whom any document or instrument issued by the Commissioner of Lands or the Board or the Registrar may be transmitted;

(k) specify the persons, or class or classes of persons, who shall be authorised officers for the purposes of this Regulation;

(l) provide for any proceeding or class of proceedings arising under this Regulation to be conducted wholly or partly in private;

(m) provide for the payment of the reasonable travelling expenses of any member of the Board or of the panel incurred or to be incurred by him when acting as such member;

(n) provide for the remission of any fees or charges;

(o) provide for the payment, to the owners of estates, or of any specified class of estates, of compensation for any buildings erected on or other improvements made to the land comprised in such estates during their subsistence;

(p) make such modifications in or additions (whether of the same or of a different nature) to the provisions of the Second Schedule as may appear to him necessary or expedient for preventing anomalies or for removing or alleviating hardship; provided that the powers conferred by this paragraph shall not be exercised after the expiration of three years from the commencement of that Schedule;

(q) prescribe any fee, rate, matter, or thing which is required, appears to be expedient, to be prescribed under or in connection with this Regulation.

**Publication.**

**No.13 of 1954.**

**143.**-(1) The following are hereby declared to be instruments within the meaning of section **3** of the Interpretation and General Clauses Regulation, 1954, that is to say-

(a) any declaration made pursuant to subsection (1) of section **71**, or to subsection (6) of section **77**;

(b) any declaratory resolution;

(c) Any directive given pursuant to subsection (5) of section **138**;

(d) any order made pursuant to subsection (7) of section **22**, or to subsection (1) of section **49**, or to subsection (3) of section **72**;

(e) any preservation order, or any variation or revocation thereof;

(f) any resolution made pursuant to subsection (1) of section **40**, or to subsection 1 of section **42**, or to subsection (1) of section **45**, or to subsection (1) of section **48**.

(2) Whenever any decision is given by an Adjudication Officer, or by the Court, in exercise of the jurisdiction conferred by sections **36**, **39**, or **52**, or by paragraph 11 of the Second Schedule, a

copy or summary thereof shall be published in like manner as if it were an instrument within the meaning of section **3** of the Interpretation and General Clauses Regulation, 1954. **No. 13 of 1954.**

**Repeals and transitional provisions.**

**144.**-(1) The provisions of the Second Schedule shall have effect for the purpose of effecting the transition from the law existing before the commencement of Parts **II, III, IV, VI, and IX** to the law enacted by those Parts.

(2) The Regulations specified in the first column of the Third Schedule are hereby repealed to the extent specified in the second column of that Schedule.

(3) The amendments specified in the second column of the Fourth Schedule to this Regulation, being consequential amendments, shall be made in the Regulations specified in the first column of the said Schedule.

**Crown to be bound.**

**145.** This Regulation shall bind the Crown.

**Treaties to prevail in case of conflict.**

**146.** Where there is any conflict between the provisions of this Regulation and the provisions of any treaty, convention, arrangement, or engagement with any foreign power, the latter shall prevail.

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**FIRST SCHEDULE**

**DEVOLUTION ON INTESTACY**

**1.** Any property of a deceased which vests in the Registrar or special representative under section **66**, and which is not validly disposed of by a valid will, shall be held upon the trusts set out in this Schedule.

**2.** If the deceased leaves no issue, and no parent, and no brother or sister of the whole blood, or issue of such brother or sister, the property shall be held in trust for the surviving husband or wife absolutely.

**3.** If the deceased leaves issue, then, subject to paragraph 7, the property shall be held upon the statutory trusts for such issue.

**4.** If the deceased leaves no issue but both parents, then, subject to paragraph 7, the property shall be held upon the statutory trusts for the parents in equal shares absolutely.

**5.** If the deceased leaves no issue but one parent, then, subject to paragraph 7, the property shall be held in trust for that parent absolutely.

**6.** If the deceased leaves no issue and no parent, but brothers and sisters of the whole blood, then, subject to paragraph 7, the property shall be held upon the statutory trusts for such brothers and sisters.

**7.-1)** The trusts set out in paragraph 3 are subject to a paramount trust in favour of a surviving husband or wife of the deceased during his or her life.

(2) The trusts set out in paragraphs 4, 5, and 6 shall, if the deceased leaves a husband or wife, take effect as to one-half only of the property; and the remaining one-half shall be held in trust for the surviving husband or wife absolutely.

**8.** If the deceased leaves no husband or wife, and no issue, and no parent, then the property shall be held in trust for the following persons living at the death of the deceased and in the following order and manner, that is to say -

First, upon the statutory trusts for the brothers and sisters of the whole blood of the deceased, but if no person takes a vested interest under such trusts, then

Secondly, upon the statutory trusts for the brothers and sisters of the half blood of the deceased, but if no person takes a vested interest under such trusts, then

Thirdly, for the grandparents of the deceased, and, if more than one survive the deceased, in equal shares, but if there is no member of this class, then

Fourthly, upon the statutory trusts for the uncles and aunts of the deceased (being brothers or sisters of the whole blood of a parent of the deceased), but if no person takes a vested interest under such trusts, then

Fifthly, upon the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the deceased).

**9.** In default of any person taking a vested interest under the foregoing provisions, the property shall belong to the Board: and the Board may make provision out of such property, if and in such manner as it thinks fit, for dependants, whether kindred or not, of the deceased, and other persons for whom the deceased might reasonably have been expected to make provision.

**10.** Where the deceased and the deceased's husband or wife have died in circumstances rendering it uncertain which of them survived the other, this Schedule shall, notwithstanding any other provision of law or presumption to the contrary, have effect as if the husband or wife had not survived the deceased.

**11.-1)** Where, under this Schedule, any property is directed to be held upon the statutory trusts for the issue of the deceased, such property shall be held upon the following trusts, that is to say,

in trust, in equal shares if more than one, for all or any the children or child of the deceased, living at the death of the deceased, and for all or any of the issue, living at the death of the deceased, of any child of the deceased who predeceases the deceased, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the deceased, and so that no issue shall take whose parent is living at the death of the deceased.

(2) The provisions of section **32** shall apply to any statutory trusts arising under this Schedule.

**12.** Where, under this Schedule, any property is directed to be held upon the statutory trusts for any class of relatives of the deceased, other than issue of the deceased, such property shall be held on trusts corresponding to the statutory trusts for the issue of the deceased as if such trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the deceased.

**13.-**(1) Where a person, who would be entitled to take an interest in the property of the deceased under the preceding provisions of this Schedule, is precluded from taking that interest by reason of his having murdered the deceased, the provisions of this Schedule shall take effect as if that person had predeceased the deceased.

(2) For the purposes of sub-paragraph (1), a person who has aided, abetted, counselled, or procured the murder of the deceased is deemed to have murdered him.

**14.** For the purposes of this Schedule, a person shall be deemed to be a husband or wife notwithstanding that the marriage was celebrated solely in accordance with native custom.

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## SECOND SCHEDULE

### TRANSITIONAL PROVISIONS

**1.-**(1) In this Schedule -

the expression "assignment" means a transaction whereby the ownership of an existing leasehold interest in land passes from one person to another person, or from one person to himself and another person jointly, other than a transaction as an immediate result of which the leasehold interest merges in the reversion expectant thereon and is extinguished or a transaction which is a mortgage;

the expression "commencement date" means the date of the commencement of Parts **II**, **III**, **IV**, **VI** and **IX**;

the expression "conveyance" means a transaction (not being a mortgage) whereby the ownership of a freehold interest in land passes from one person to another person, or from one person to himself and another person jointly;

the expression "deeds register" means a register book register or file of memorials within the meaning of the Land Registration Regulation; **Cap.50.**

the expression "freehold interest in land" means an estate in fee simple absolute in possession or any interest in land of a similar nature;

the expression "leasehold interest in land" means the interest of a tenant arising by virtue of a lease of land;

the expression "mortgage" means a transaction whereby a freehold interest, or an existing registrable leasehold interest, in land becomes charged with the payment of a sum of money by the owner thereof to some other person, or to himself and some other person jointly, or whereby a freehold interest, or an existing registrable leasehold interest, in land passes, subject to a right of redemption (whether express or implied), from one person to another person, or from one person to himself and another person jointly; but it does not include a mere deposit of deeds for securing the payment of a sum of money;

the expression "native land" has the meaning assigned to it by the Land Regulation; **Cap. 49.**

the expression "the previous law" means the law in force immediately before the commencement date;

the expression "private land" has the meaning assigned to it by the Land Regulation; **Cap.49.**

the expression "public land", except in paragraph 16, has the meaning assigned to it by the Land Regulation; **Cap.49.**

the expression "registrable leasehold interest in land" means a leasehold interest in land created by a lease which, if made after the commencement date, would be required to be registered;

the expression "repealed Regulation" means a Regulation repealed by this Regulation, or a Regulation repealed before the commencement date.

(2) For the purposes of this Schedule, a transaction is deemed to have occurred when a devise or bequest of an interest in land takes effect beneficially (whether by assent thereto or otherwise), or when an interest in land to which some person becomes beneficially entitled (that is to say, otherwise than merely as administrator) on the death of another person intestate (so far as that interest is concerned) becomes vested in the first-mentioned person beneficially.

**2.** Any person who claims to hold a freehold interest or a leasehold interest in any land may apply to the Registrar for registration as owner of an interest in the land so held; and the Registrar shall either register or refuse to register such person as owner of an interest.

**3.** The Registrar may, without any application being made to him in that behalf, register as owner of an interest in land any person who, according to satisfactory information in his possession, would be entitled, under the provisions of this Schedule, to be registered as such owner upon making application to the Registrar.

**4.** Subject to the provisions of paragraph 6, every conveyance of a freehold interest in land executed after the commencement date and every assignment of a registrable leasehold interest in land executed after the commencement date shall, upon the expiration of six months from the time when such conveyance or assignment takes effect, become utterly void and of no effect, unless the grantee, that is to say, the person who is entitled to be registered as owner of an interest by virtue of the conveyance of assignment, or his successor in title or assign has in the meantime applied to be registered as such owner.

**5.** Subject to the provisions of paragraph 6, every grant of a lease executed after the commencement date, being a grant whereby a registrable leasehold interest is created, and every mortgage executed after the commencement date, shall, upon the expiration of six months from the time when such grant or mortgage takes effect, become utterly void and of no effect, unless the grantor or mortgagor, or his successor in title or assign, has in the meantime applied to be registered as owner of the interest out of which the lease or mortgage is created.

**6.-**(1) The Registrar, or the Court on appeal from the Registrar, may, on the application of any persons interested in any particular case in which the Registrar or the Court is satisfied that the application for registration cannot be made within the said period of six months, or can only be made within that period by incurring unreasonable expense, or that the application has not been made within that period by reason of some accident or other sufficient cause, make an order extending the said period.

(2) A note of an order made under sub-paragraph (1) shall, upon the relevant registration being made, be endorsed on the relevant conveyance, assignment, lease, or mortgage.

**7.-**(1) Any person who owns an interest in land which arises, whether mediately or immediately, under or in virtue of any such conveyance, assignment, lease, or mortgage as is mentioned in paragraphs 4 and 5, or who but for the provisions of those paragraphs would own such an interest, may by notice in writing require the grantee or grantor under or of such conveyance, assignment, lease, or mortgage, or his successor in title or assign, as the case may require, to apply to be registered as owner of an interest in the land concerned.

(2) If the requirement be not met within one month from the service of the notice, the owner of the interest may, subject to the provisions of paragraphs 4, 5, and 6, himself make the application in the name of and of behalf of the person who would, apart from the provisions of this paragraph, be entitled to make it, and he may recover the costs incurred by him in so acting from such person (if he be the person upon whom the requirement was made) by action in any court.

**8.-**(1) Where a freehold interest or a leasehold interest in any land is or becomes, by virtue of this Regulation, vested in two or more persons as joint owners, any one of such persons may apply for the registration of all of such persons as joint owners of the interest.

(2) The Registrar shall, upon receiving such application, serve notice thereof upon such of the joint owners as did not make the application.

**9.** An application to be registered as owner of an interest shall be in the prescribed form and shall specify, with such accuracy as the circumstances of the case permit, the boundaries and area of the land comprised in the interest.

**10.-**(1) The Registrar shall not register any person applying for registration as owner of an interest otherwise than in accordance with the tenor of the application, or refuse to register such person as owner of an interest, interest, unless he has previously afforded that person an opportunity to be heard.

(2) The Registrar shall not register as owner of an interest any person who has not applied to be so registered, unless he has previously afforded that person an opportunity to be heard.

(3) The provisions of sub-paragraphs (1) and (2) shall not apply to any case in which the Registrar acts pursuant to an order of the Court.

**11.-**(1) Before registering any person as owner of an interest pursuant to the provisions of this Schedule, the Registrar shall satisfy himself as to all matters requisite for the purpose of effecting the registration in accordance with such provisions.

(2) For the purpose of so satisfying himself, the Registrar may, in addition to exercising any other power he may possess -

(a) accept as evidence recitals statements and descriptions of the facts matters and parties in deeds documents or statutory declarations not less than twenty years old, copies of orders of any court, memorials of registration under any Regulation concerning the registration of instruments relating to or affecting land, and any other matter contained or recorded in any deeds register;

(b) give effect to any judgment or order of a court affecting land, notwithstanding that a memorial thereof was not registered in the manner required by the Land Registration Regulation; **Cap. 50.**

(c) inspect or cause to be inspected any land, with a view to ascertaining the nature of the interest therein (if any) owned by any person appearing to be in lawful occupation thereof;

(d) publish, in such newspapers as he thinks fit, or in the *Gazette*, advertisements of his intention to effect the registration, and accept as evidence any information gained by him as a result of any response, or the lack of any response, to such advertisements;

(e) refer any matter or question to the Commissioner of Lands or to a District Commissioner for report or decision, and accept as evidence such report or decision when made or given;

(f) refer any matter or question to an Adjudication Officer for report or decision, and accept as evidence such report when made.

(3) Where the Registrar refers any matter or question for report or decision pursuant to the powers conferred upon him by sub-paragraph (2), any person who has been afforded, by the person to whom such matter or question is referred, an opportunity to be heard during the course of the investigation or decision of the matter or question shall, for the purposes of paragraph 10, be deemed to have been afforded an opportunity to be heard by the Registrar.

(4) Where the Registrar refers any question to an Adjudication Officer for decision, the Adjudication Officer shall (subject to any rules which may be made) adopt such procedure for deciding the question as appears to him to be appropriate, and he shall not be bound by any rules of evidence; and the decision of the Adjudication Officer shall be in writing, and copies of it shall be served upon every person affected by it; and the provisions of subsection (9), (10), and (11) of section 39 shall apply to such decision in like manner as they apply to a decision given under that section save that references therein to the Board shall be deemed to have been deleted and replaced by references to every person (other than the applicant) affected by the decision of the Court.

**12.** Any application which could be made under the provisions of this Schedule by any person, and any opportunity to be heard which ought under such provisions to be afforded to any person, and any notice which is required by such provisions to be served on any person, may or shall, if that person be dead, be made by or afforded to or served on his special representative.

**13.-**(1) Every freehold interest in land subsisting at the commencement date shall be converted into and take effect thereafter as a perpetual estate in that land.

(2) Every leasehold interest in land subsisting at the commencement date and created by -

(a) any certificate of occupation granted in the exercise of any power conferred by any repealed Regulation; or

(b) any lease of native land or of public land granted in the exercise of any power conferred by any repealed Regulation; or

(c) any lease validly made before the commencement of the Solomons (Land) Regulation, 1896

shall be converted into and take effect thereafter as a fixed-term estate for a period equivalent to the unexpired residue of the term created by the certificate of occupation or lease.

(3) The provisions of this paragraph shall take effect subject to paragraph 15.

**14.**-(1) Every estate which takes effect by virtue of the provisions of this Schedule shall take effect and may only be registered subject to such leases charge securities and other rights and interests as are, by virtue of this Regulation, applicable thereto.

(2) Every fixed-term estate which takes effect by virtue of paragraph 13, and every perpetual estate which is registered pursuant to paragraph 15, shall take effect and be registered subject to the same rent and obligations (if any) as the interest in substitution for which it takes effect.

**15.** Where the unexpired residue, at the commencement date, of the term of any leasehold interest (being a leasehold interest held immediately of the High Commissioner) such as is mentioned in sub-paragraph (2) of paragraph 13 exceeds nine hundred years, the Registrar shall, if so directed by the Commissioner of Lands (who shall not be bound to give any such direction), register the owner thereof as owner of a perpetual estate.

**16.**-(1) Where an estate registered pursuant to the provisions of this Schedule ceases to subsist, the land comprised therein shall, subject to sub-paragraph (2), vest in the Board as public land, unless the estate was vested in the Commissioner of Lands as public land.

(2) If, under the previous law, the land comprised in the estate would, upon the cesser of the leasehold interest, have become native land, the land shall, if the estate ceases to subsist, and no further estate therein is granted within six months from the date of such cesser become native customary land and vest in the person of group of persons entitled thereto by current native usage.

**17.**-(1) Where an estate registered pursuant to the provisions of this Schedule is subject to a rent, the provisions of subsection (2) of section **22** shall not, save as provided by this paragraph, apply thereto.

(2) Where, if the previous law had continued to govern the matter, the rent of the estate could have been revised at the intervals of time greater than those referred to in subsection (2) of section **22**, then the provisions of that subsection shall apply to the estate if the registered owner, at the time of registration, signifies his consent in that behalf in writing; and in that event the Registrar shall enter a memorandum of the consent on the certificate of title.

(3) Where, if the previous law had continued to govern the matter, the rent of the estate could have been revised at intervals of time less than those referred to in subsection (2) of section **22**, then, unless there is, on the certificate of title, an entry showing the intervals of time at which the rent may be revised, the owner of the estate may, on the first occasion after the commencement date on which it is proposed to revise the rent, elect in writing that the provisions of subsection (2) of section **22** shall apply to the estate; and in that event the Registrar shall enter a memorandum of the election on the certificate of title.

(4) Save as provided by sub-paragraphs (2) and (3), the rent of the estate may be revised at the same intervals, and in the same manner, as if the previous law had continued in force.

**18.** Every estate registered pursuant to the provisions of this Schedule shall be deemed to have been granted by the Commissioner of Lands.

**19.-**(1) Every perpetual estate, or part of a perpetual estate, which takes effect by virtue of sub-paragraph (1) of paragraph 13 may, within three years from the commencement date, be forfeited by the Commissioner of Lands in the same manner as the freehold interest in land from which it has been converted could have been forfeited under section 5 and 6 of the Solomons (Land) Regulation 1896 as amended by any subsequent repealed Regulation.

(2) Whenever the Commissioner of Lands desires to forfeit an estate pursuant to sub-paragraph (1), he shall institute proceedings before the Court for such forfeiture; and the Court shall, on proof of the liability to forfeiture, make an order vesting the estate, or the part thereof which is liable to forfeiture, in the Commissioner of Lands.

**20.-**(1) Subject to the provisions of the Schedule -

(a) every mortgage validly made under the previous law and subsisting at the commencement date shall take effect as a charge security under the provisions of the Regulation;

(b) every lease validly made under the previous law and subsisting at the commencement date shall take effect as a lease under the provisions of this Regulation;

(c) every other transaction affecting land or an interest therein and subsisting or pending at the commencement date shall, if it was validly made under the previous law, have the like effect as it would have had under the provisions of this Regulation if it has been effected after the commencement date.

(2) All personal rights and obligations existing immediately before the commencement date by virtue of any such mortgage lease or other transactions as is mentioned in sub-paragraph (1) shall, subject to the provisions of this Regulation, continue in full force and effect.

**21.-**(1) The Commissioner of Lands shall, in respect of every such estate as is mentioned in sub-paragraph 16, account for the rent received by him in like manner as if the previous law had continued in force.

(2) The Board may, in respect of any such estate as is mentioned in sub-paragraph (2) of paragraph 16, provide for the extinguishment of the rights of the persons referred to in that sub-paragraph upon payment of just compensation therefor; and such provision may be made either by agreement with those persons, or, if for any reason their agreement cannot be obtained, with the consent of the High Commissioner; and upon the payment of the compensation being made, the land comprised in the estate shall vest, subject to any estate in such land which may for the time being be subsisting, in the Board as public land free from all rights whatsoever of the persons referred to in sub-paragraph (2) of paragraph 16.

(3) The High Commissioner may make rules providing for the manner in which sub-paragraph (2) may be implemented, and in particular for the manner in which the amount of the compensation payable is to be ascertained.

**22.** The fact, if proved, that any land has, during the twenty-five years immediately preceding the commencement date, been continuously dealt with, by or on behalf of the Government of the Protectorate, as public land or waste land within the meaning of any repealed Regulation shall be conclusive evidence that such land was public land or waste land as aforesaid at the time when it was first so dealt with.

**23.** Where, at any time before the commencement date, any land has been set aside by the Government of the Protectorate for occupation by Solomon Islanders, such land shall, if it has been continuously occupied by Solomon Islanders since it was first so set aside, and if it was not so set aside in pursuance of any power conferred by a repealed Regulation, be deemed to be and shall become native customary land, and vest in the person or group of persons entitled thereto by current native usage.

**24.** For the avoidance of doubt, it is hereby declared that, in determining whether there subsisted, at the commencement date, a freehold interest or a leasehold interest in any land, regard shall be had to the provisions of the Imperial Limitation Act, 1939, or of any enactment repealed thereby, as the case may require, and such provisions shall be deemed to have applied, before the commencement date, to land in the Protectorate in the same manner as they apply to English land.

**25.-**(1) Every person having the custody or control of any deeds register shall as soon as possible thereafter hand over such deeds register to the Registrar.

(2) The Registrar shall be responsible for the safe custody of every deeds register handed over to him.

(3) Whenever the Registrar shall be of opinion that all information relevant to the purposes of this Regulation and contained in any deeds register in his custody has been obtained therefrom, and that the contents of such register accordingly have historical value only, he may report his opinion to the High Commissioner and thereafter deal with such register in accordance with any directions in that behalf which may be given to him by the High Commissioner.

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### THIRD SCHEDULE

#### REGULATIONS REPEALED

<i>Name of Regulation</i>	<i>Extent of Repeal</i>
The Land Regulation, 1914	Sections 3 and 5
The Certificate of Occupation Regulation, 1918	The whole Regulations
The Certificate of Occupation of Levers Pacific Plantations Ltd. Validation Regulation, 1921	The whole Regulation.

The Land Claims Regulation, 1923	The whole Regulation.
The Land Regulation, 1929	Sections 2 and 3.
The Aliens (Land-Holding) Regulation	The whole Regulation.
The Residence on Native Land Regulation	The whole Regulation.
The Land Regulation	The whole Regulation.
The Land Registration Regulation	The whole Regulation.
The Land Surveys Regulation	Sections <b>9, 10, 11, and 13</b> .
The Military Occupation (Relief of Landholders) Regulation	The whole Regulation.
The Land (Amendment) Regulation, 1954	The whole Regulation.
The Church of England (British Solomon Islands Protectorate) Property Regulation, 1954	Sections <b>6 and 7</b> .
The Land (Amendment) Regulation, 1955	The whole Regulation.
The Ports Regulation, 1956	Section <b>25</b> .

#### FOURTH SCHEDULE

##### CONSEQUENTIAL AMENDMENTS

First Column Name of Regulation	Second Column Amendment
Native Courts Regulation (Cap. 30)	<p>Subsection (1) of section <b>2</b> amended by the deletion of the words "such jurisdiction" and by the insertion immediately before the full stop at the end thereof of the following words -</p> <p style="padding-left: 40px;">"the jurisdiction therein defined and such jurisdiction as may be conferred by any Regulation on native courts generally".</p>
Bills of Sale Regulation (Cap. 71)	<p>(i) The Regulation shall be read and construed as if the references contained therein to "The Registrar of the Land Registry Office" and to "the Registrar" are references to the Registrar of the Titles referred to in subsection (1) of section <b>7</b> of this Regulation.</p> <p>(ii) Section <b>10</b> is amended by the deletion of the following words and comma - "which is kept in the Land Registry Office in accordance with the provisions of section 5 of the Land Registration Regulation,".</p>

National Parks Regulation, 1954

Section 4 is amended by the deletion of the following words "Part II of the Lands Regulation" and by the substitution therefor of the words "Part V of the Land and Titles Regulation, 1959."

Roads Regulation, 1955

Section 4 is amended by the deletion of the words "Part II of the Land Regulation" and the substitution therefor of the words "Part V of the Land and Titles Regulations, 1959."

Published and exhibited in the Public Office of the High Commissioner for the Western Pacific

This first day of December, one thousand nine hundred and fifty-nine.

*By Command,*

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Chief Secretary to the  
Western Pacific High Commission

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