

Land Registration Act 1981

Chapter 191.

[Land Registration Act 1981.](#)

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 191.

[Land Registration Act 1981.](#)

ARRANGEMENT OF SECTIONS.

1. Operation of other laws.
2. Interpretation.
3. Definition of land in certain instruments.
4. Appointment of Registrar and Deputy Registrar.
5. Declaration of Office.
6. Seal.
7. Proof of documents.
8. Preparation of certificates of title.
9. Register.
10. Registration of certificates of title.
11. Certificate of title to be evidence.
12. New certificates on registration of plan.
13. New certificate following transfer.
14. Non-contiguous Lands.
15. New certificate of title for different areas.
16. Tenants in common.
17. Status of unregistered instruments.
18. Instruments in approved form, etc.
19. Attestation of instruments.
20. Certificate required of correctness of instruments.
21. Instruments may be lodged in duplicate.
22. Instruments to be accompanied by title.
23. Registration of instruments.
24. Priority for registration.
25. Manner of effecting registration.
26. Effect of registration.
27. Effective date of registration.
28. Status of registered instrument.
29. Instruments of title to be returned.
30. Procedure for registration in certain cases.
31. Remainderman, etc., may be registered.
32. Description of certain persons as proprietor.
33. Protection of registered proprietor.

34. Joint proprietors.
35. Register to be maintained.
36. Application of Act to State leases.
37. Alteration or variation.
38. Surrender of State lease.
39. Registrar to enter forfeiture.
40. Registration of State lease not executed by lessee.
41. Surrender of land subject to restoration order.
42. Requirements for transfer.
43. Short form of right-of-way in transfer of freehold.
44. Transferor has no lien for unpaid purchase money.
45. Transferee not affected by notice.
46. Transferee of mortgaged land to indemnify transferor.
47. Purchase of land by mortgagee, etc.
48. Proprietor may transfer to himself, etc.
49. Creation of lease.
50. Powers of lessor.
51. Covenants implied against lessee.
52. Short form covenants by lessee.
53. Short form of right-of-way in lease.
54. Lessee may sublet.
55. Transfer of lease.
56. Surrender of lease.
57. Disclaimer on insolvency.
58. Right to purchase freehold.
59. Lessors' rights preserved.
60. Re-entry by lessor.
61. Interpretation of Part VII.
62. Creation of mortgage or charge.
63. Effect of mortgage or charge.
64. Covenants implied against mortgagor.
65. Short form of covenant by mortgagor.
66. Transfer of mortgage or charge.
67. Notice of default.
68. Sale of property by mortgagee, etc.
69. Protection of purchaser.
70. Principal becomes due on non-payment of interest, etc.
71. Estate of mortgagor, etc., passes to purchaser.
72. Payment by instalments.
73. Power to vary period before mortgagee sale.
74. Mortgagee may enter and take possession, etc.
75. Power of distraint.
76. Mortgagee, etc., in possession liable to lessor.
77. Discharge of mortgage or charge.
78. Satisfaction of annuity.
79. Payment of mortgage money where mortgagee absent.
80. Money lent on joint account.
81. Equitable mortgages.
82. Entitlement to lodge caveat.
83. Scope of caveat.
84. Requirements for caveat.

85. Commencement.
86. Restriction on dealings.
87. Notice to persons affected.
88. Court order relating to caveat.
89. Cancellation by Registrar.
90. Lodgement of caveat without reasonable cause.
91. Lapse of caveat.
92. Prohibition against further caveat.
93. Withdrawal of caveat.
94. Service of notices on caveator.
95. Registration of easements.
96. Certificate of title evidence as to easements.
97. Registration of other rights.
98. Registration of customary rights.
99. Implied covenants operate as if set out fully.
100. Covenants may be negated or modified.
101. Parties bound severally.
102. Doing of acts, etc., to give effect to covenants.
103. Interpretation of Part XI.
104. No entry of trusts in Register.
105. Instrument of nomination.
106. Terms of trusts may be declared by separate instrument.
107. Trustees may deal as beneficial owners.
108. Saving of jurisdiction.
109. No survivorship of trustees.
110. No survivorship to be shown on certificate.
111. Vesting order to be registered.
112. Order for sale to be registered.
113. Actions in trustee's name.
114. Interpretation of Division 1.
115. Transmission on insolvency.
116. Annulment of insolvency adjudication.
117. Interpretation of Division 2.
118. Transmission of mortgage, etc.
119. Transmission of freehold and State leases.
120. Devise of mortgage, lease, etc.
121. Devise of freehold.
122. Registration of surviving joint tenant.
123. Determination of life estate.
124. Transmission where deceased not registered as proprietor.
125. Transmission to person entitled by custom.
126. Order for executor, etc., to transfer.
127. Registrar may dispense with death certificate in certain cases.
128. Interpretation of Part XIII.
129. Attorney may deal in land, etc.
130. Instrument to be evidence.
131. Registrar may presume power unrevoked.
132. Directions to be observed.
133. Certain dealings protected.
134. Loss, etc., of power.
135. Revocation.

136. Offence.
137. Fees and contributions.
138. Assurance Fund.
139. Application of [Public Finances \(Management\) Act 1995](#)..
140. Contributions payable to Assurance Fund.
141. Payments out of the Assurance Fund.
142. Fund not liable for breach of trust.
143. Proceeds of investment.
144. Recovery of money paid out of Assurance Fund.
145. Registrar may be summoned to show cause.
146. Ejectment against registered proprietor.
147. Registrar to be co-defendant in certain cases.
148. Improvements.
149. Orders on recovery of land.
150. Damages for deprivation of land.
151. Damages for mistakes of Registrar, etc.
152. Damages to be limited in certain cases.
153. Amendment of certificate of title.
154. Adjustment of discrepancies in boundaries.
155. Registrar may refuse to receive certain instruments.
156. Production of instruments for registration of dealing, etc.
157. Survey plan required in certain cases.
158. Registrar may dispense with production.
159. Informal documents may be registered.
160. Production of instruments wrongly issued, etc.
161. Cancellation and correction of instruments and entries.
162. Replacement of instrument of title.
163. Caveats by Registrar.
164. Special case.
165. Powers and functions of Deputy Registrar.
166. Custodian for Trust Land.
167. Appointment of Custodian.
168. Certain instruments need not refer to successors of the Custodian.
169. References to First Assistant Secretary, etc.
170. Partition.
171. Writs of execution.
172. Certificate of title conclusive evidence in action for specific performance.
173. Searches of Register and copies of instruments.
174. Certified copies to be furnished and to be evidence.
175. Execution of instruments by the State.
176. Execution of instruments by corporation.
177. Persons may be accounted dead in certain cases.
178. Consent, etc., may be endorsed.
179. Representation in cases of incapacity.
180. Witness expenses.
181. Protection of Registrar.
182. Regulations.
183. Repeal.
184. Rights and liabilities to continue.
185. Former Register Books.
186. Register of Government Leases, etc.

187. Register of powers of attorney.
188. Instrument of encumbrance to continue as charge.
189. Registrar and Deputy Registrar to continue.
190. Certain documents may be accepted.
191. Land held by Director, etc.
192. References to “owner”.
193. Transfer of funds.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

[Land Registration Act 1981](#),

Being an Act to unify the law relating to the registration of title to land, and for related purposes.

[PART I](#) – PRELIMINARY.

1. OPERATION OF OTHER LAWS.

(1) Sections 5 and 6 of the Laws Repeal and Adopting Act 1921 of the former Territory of New Guinea (Adopted) shall be read subject to this Act.

(2) Subject to Subsection (1), this Act does not affect the operation of any other Act and in particular the powers conferred by Section 28 of the Land (Ownership of Freeholds) Act 1975 may be exercised notwithstanding anything in this Act.

2. INTERPRETATION.

(1)^[1] In this Act, unless the contrary intention appears—

^[2]“approved form” means a form approved by the Registrar under Section 18 for the purposes of this Act;

“the Assurance Fund” means the fund established by Section 138;

“certificate of title” means an instrument evidencing the seisin of the fee simple or other estate of freehold in land and includes a grant or provisional grant;

“charge” means a charge on land created for the purpose of securing the payment of an annuity or sum of money other than a debt;

“chargee” means the proprietor of a charge;

“chargor” means the registered proprietor of land subject to a charge;

“the commencement date” “the commencement date” means 30 November 1981, the date on which the [Land Registration Act 1981](#) came into force;

“contribution” means a contribution imposed under Section 137;

“the Court” means the National Court;

“the Custodian” means the Custodian for Trust Land appointed under Section 167;

“dealing” means a disposition of an estate or interest otherwise than by way of transmission and includes a transfer, lease, surrender, mortgage, charge, discharge, easement and similar interest, and nomination of trustees;

“Deputy Registrar” means a Deputy Registrar of Titles appointed under Section 4;
 “document” means any writing relating to land whether of a formal nature or otherwise and includes a will, register, map or plan;
 “encumbrance” includes all prior estates, interests, rights, claims and demands which can or may be had, made or set up in, to, on, or in respect of, land;
 “grant” means the original grant of land in fee simple by the Administration or Government of a former Territory;
 “instrument” includes a certificate of title and a document relating to a dealing;
 “mortgage” means a charge on land created merely for securing a debt;
 “mortgagee” means the proprietor of a mortgage;
 “mortgagor” means the proprietor of land subject to a mortgage;
 “proprietor” means a person seised or possessed of a freehold or other estate or interest in land at law or in equity in possession or in futurity or expectancy, and includes a person in possession of or entitled to a charge or encumbrance on land;
 “the Public Curator” means the Public Curator appointed under the [Public Curator Act 1951](#);
 “register”, in relation to a matter affecting an estate or interest, means—
 (a) the entry of the matter in the Register on the relevant folio or instrument as the nature of the estate or interest requires; and
 (b) the endorsement of the matter on the instrument of title to the estate or interest;
 “Register” means the Register maintained by the Registrar under Section 9;
^[3]“Register of State Leases” means the Register of State Leases maintained by the Registrar under Section 35;
 “registered” means registered under this Act;
 “registered proprietor” has the meaning ascribed to it by Section 32;
 “Registrar” means the Registrar of Titles appointed under Section 4;
 “the repealed Act” means—
 (a) in relation to the part of the country formerly known as the Territory of Papua—the Real Property Act, 1913 (Papua) (Adopted); and
 (b) in relation to the part of the country formerly known as the Territory of New Guinea—the Lands Registration Act 1924 (New Guinea) (Adopted);
 “State lease” means a lease granted by the State and includes a lease granted or continued in operation under the [Land Act 1996](#);
 “this Act” includes the regulations;
 “transaction” means a dealing or transmission;
 “transfer” means the passing of an estate or interest in land whether for valuable consideration or otherwise;
 “transmission” means the acquirement of title to or interest in land consequent on the death or insolvency of an owner.

(2) A reference in this Act to a person as proprietor, transferor, transferee, mortgagor, mortgagee, chargor, chargee, encumbrancer, encumbrancee, lessor, lessee, trustee or person seised of or having an estate or interest in land includes the executors, administrators and assigns of that person.

(3) Unless the contrary intention appears, a reference in this Act—

(a) to land—means land the title to which, or an estate or interest in which, is, or may be, registered under this Act; and

(b) to a covenant implied by this Act—includes a covenant implied by virtue of a form of words in accordance with this Act; and

(c) to a person of unsound mind—is a reference to a person of unsound mind as that expression is used in the Public Health Act 1973.

3. DEFINITION OF LAND IN CERTAIN INSTRUMENTS.

(1) This section applies to certificates of title, transfers, leases, mortgages and charges.

(2) In an instrument to which this section applies, “land” includes all easements and appurtenances appertaining to the land described in the instrument or reputed to be part of the land or appurtenant to it.

(3) Subsection (2) does not limit, in an instrument, the meaning that “land” has apart from this section.

PART II. – ADMINISTRATION.

4. APPOINTMENT OF REGISTRAR AND DEPUTY REGISTRAR.

The Minister may, by notice in the National Gazette, appoint a Registrar of Titles and one or more Deputy Registrars of Titles.

5. DECLARATION OF OFFICE.

As soon as practicable after his appointment, the Registrar and a Deputy Registrar shall make the Declaration of Office set out in Schedule 3 to the Constitution.

6. SEAL.

(1) The Registrar shall have and use a seal of office in a form approved by the Minister.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the seal of the Registrar affixed to a document and shall presume that it was duly affixed.

7. PROOF OF DOCUMENTS.

All documents purporting–

(a) to be issued or written by or under the direction of the Registrar or a Deputy Registrar; and
(b) to be sealed with the seal of the Registrar or signed by the Registrar or a Deputy Registrar,

shall be received in evidence and unless the contrary is shown be presumed to have been issued or written by or under the direction of the Registrar or the Deputy Registrar, as the case may be.

PART III. – REGISTRATION GENERALLY.

Division 1.^[4]

Preparation of Certificates of Title and Register.

8. PREPARATION OF CERTIFICATES OF TITLE.

(1)^{[5] [6]} Where required for the purposes of this Act the Registrar shall execute a certificate of title in the prescribed form.

(2) A certificate of title shall be prepared in duplicate and the Registrar shall endorse on one duplicate a note to the effect that it is not to be taken out of his custody.

(2A)^{[7] [8]} A person, who removes a certificate of title which is a folio of the Register from the custody of the Registrar without the authorization of the Registrar, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00.

(3) When preparing a certificate of title the Registrar shall record on both duplicates the particulars, so as to preserve their priorities, of all encumbrances, instruments, dealings and matters affecting the land which are required by this Act to be registered or entered.

(4) Where a certificate of title is to be issued in respect of a person under disability the Registrar shall record in the same way—

(a) in the case of a minor—the date of his birth; and

(b) in any other case—the nature of the disability so far as it is known to the Registrar.

9. REGISTER.

^[9](1) The duplicates of certificates of title retained by the Registrar shall form a running series to be the Register.

(2) Each duplicate referred to in Subsection (1) is a separate folio.

(3) The Register may be kept in such form as the Registrar considers appropriate, in or upon any medium or combination of mediums which are suitable for the purposes of recording information concerning the registered interests in land.

(4) Without limiting the provisions of Subsection (3), the Registrar may change the form in which the Register or part of the Register is kept.

10. REGISTRATION OF CERTIFICATES OF TITLE.

(1) ^[10] ^[11]A certificate of title is registered under and for the purposes of this Act as soon as it has been—

(a) marked with the volume and folio in which it is entered in the Register Book; and

(a) marked with the volume and folio in which it is entered in the Register; and

(b) signed, sealed and dated,

by the Registrar.

(2) One duplicate of a certificate of title shall, on registration, be delivered by the Registrar to the person entitled to it.

11. CERTIFICATE OF TITLE TO BE EVIDENCE.

(1) The Registrar's duplicate of a certificate of title, when registered—

(a) is evidence of the particulars it specifies; and

(b) is conclusive evidence, in relation to the land it describes, that the person named in the certificate of title—

(i) as seised of an estate in land; or

(ii) as taking or otherwise entitled to an estate or interest in the land,

is seised of, possessed or entitled to that estate or interest, as the case may be; and

(c) is conclusive evidence that the property comprised in the certificate of title is under this Act.

(2)^{[12] [13]}The other duplicate of a certificate of title, when registered, is evidence of the particulars it specifies and of those particulars being entered in the Register.

Division 2.

Issue of Certificates of Title in Certain Cases.

12. NEW CERTIFICATES ON REGISTRATION OF PLAN.

The Registrar may require the proprietor of land in respect of which a plan has been registered to—

- (a) deliver for cancellation his duplicate of the relevant certificate of title; and
- (b) take out a new certificate of title for each of the allotments marked on the plan.

13. NEW CERTIFICATE FOLLOWING TRANSFER.

(1) Where the certificate of title of a registered proprietor (in this subsection called “the proprietor”) bears the name of the previous proprietor the Registrar shall, at the request of the proprietor, issue to him a new certificate of title in his name.

(2) Where a transfer relates to the whole of the land in a certificate of title, the Registrar shall, at the request of the transferee, issue to him, on registration of the transfer, a new certificate in the name of the transferee.

(3) Where a transfer relates to part of the land in a certificate of title the Registrar may, at the request of the transferor, issue to him, on registration of the transfer, a new certificate of title as to the residue of the land in the certificate of title in the name of the transferor.

(4) A transferee of part of the land in a certificate of title shall take out a new certificate in his own name.

14. NON-CONTIGUOUS LANDS.

(1) One certificate of title may be issued for several parcels of land, though they are not contiguous, if in the opinion of the Registrar, their relative positions can be sufficiently and conveniently shown on the plan on the certificate.

(2) Where it is inconvenient to draw the plan on the face of a certificate of title it may be drawn on the back or on a sheet annexed to the certificate.

(3) It is not necessary to mention the area of a parcel of land included in a certificate of title where the area of the parcel is less than 16.187 ha.

(4) The omission to refer to the area of the land comprised in a certificate of title does not invalidate the certificate.

15. NEW CERTIFICATE OF TITLE FOR DIFFERENT AREAS.

(1) In this section a reference to a registered proprietor includes a reference to a person who is entitled to become a registered proprietor.

(2) Subject to Section 14, where—

- (a) a person registered as proprietor of land under one or more certificates of title applies to the Registrar for the issue of—
- (i) a single certificate of title for the whole of that land; or
 - (ii) two or more certificates of title as to parts of that land; and
- (b) the applicant delivers up to the Registrar the applicant's duplicates of the relevant certificates of title; and
- (c) the Registrar is of the opinion that the certificate or certificates sought by the applicant can be issued conveniently and consistently with Section 14,

the Registrar may issue to him a single certificate or several certificates of title in accordance with the application.

(3) On registration of a certificate of title under this section the Registrar shall—

- (a) cancel the previous certificate or certificates; and
- (b) endorse on the cancelled certificate or certificates a memorandum—
 - (i) noting the cancellation; and
 - (ii) referring to the new certificate or certificates.

16. TENANTS IN COMMON.

Where two or more persons are entitled as tenants in common to an estate of freehold in land—

- (a) they may receive one certificate of title for the entirety describing them as tenants in common; or
- (b) each may receive a separate certificate for his undivided share.

Division 3.

Provisions Affecting Registration of Instruments.

17. STATUS OF UNREGISTERED INSTRUMENTS.

(1) Subject to Subsection (4), an instrument is not effective to pass or create an estate or interest until the instrument is registered in accordance with this Act.

(2) An instrument signed by a proprietor, purporting to pass an estate or interest for the registration of which provision is made in this Act shall, until registered, be deemed to confer on the person intended to take under the instrument a right to the registration of the estate or interest.

(3) The reference in Subsection (2) to—

- (a) a proprietor; or
- (b) a person intended to take under an instrument,

includes a reference to a person claiming through or under that proprietor or person, as the case may be.

(4) Subsection (1) does not apply to a lease for a term of three years or less.

18. INSTRUMENTS IN APPROVED FORM, ETC.

^[14](1) The Registrar may approve forms for use in connection with this Act.

(2) The approval or availability of a form approved under Subsection (1) or a new or revised version of a form shall be notified in the National Gazette and copies of the form shall be made available (by purchase or otherwise) by the Registrar.

(3) Where a form is approved for a transaction, the Registrar shall not register an instrument purporting to effect that transaction unless the instrument is in that form.

(4) An approved form may be varied as the character of the parties or the circumstances of the case require.

(5) An instrument in a form varied in accordance with Subsection (4) shall be deemed to be in the approved form.

19. ATTESTATION OF INSTRUMENTS.

(1) Subject to Subsection (4), instruments executed under this Act shall be attested by a witness who is not a party to the instrument.

(2) A witness attesting an instrument to which Subsection (1) applies, shall certify—

(a) in all cases—that the person executing the instrument is personally known to the witness; and

(b) in the case of an instrument executed by a person who signs by a mark—that the person executing the instrument appears to understand the nature of the instrument.

(3) Where an instrument lodged for registration is not properly attested, the Registrar may, in his discretion, register the instrument if the genuineness of the signature is proved to his satisfaction.

(4) This section does not apply to—

(a) State leases; or

(b) caveats or withdrawals of caveats; or

(c) powers of attorney or revocations of powers of attorney.

20. CERTIFICATE REQUIRED OF CORRECTNESS OF INSTRUMENTS.

(1) The Registrar shall not receive an instrument purporting to deal with or affect land unless there is endorsed on the instrument a certificate, signed by the party claiming under or in respect of the instrument, or by his lawyer, to the effect that the instrument is correct for the purposes of this Act.

(2)^{[15] [16]} A person who falsely or negligently certifies to the correctness of an instrument is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) The imposition of a penalty under Subsection (2) does not prevent a person who has sustained damage or loss in consequence of falsehood or mistake in a certified instrument from recovering damages against the person who certified the instrument.

21. INSTRUMENTS MAY BE LODGED IN DUPLICATE.

(1) Subject to Section 42(5) an instrument lodged for registration may be in duplicate.

(2) Where the Registrar receives documents which appear to be duplicates or triplicates of an instrument—

(a) he is not required to compare those documents to ensure that they are duplicates or triplicates, as the case may be; and

(b) he does not incur or become subject to any liability, action or other proceeding in consequence of any error, mistake or discrepancy relating to the instrument or an apparent duplicate or triplicate of the instrument.

22. INSTRUMENTS TO BE ACCOMPANIED BY TITLE.

(1) Subject to Section 158 and to Subsection (2), an instrument lodged for registration of a transaction relating to an estate or interest shall be accompanied by the instrument of title to that estate or interest.

(2) The Registrar may accept an instrument for registration subject to production of the instrument of title within the prescribed period.

Division 4.

The Registration Process.

23. REGISTRATION OF INSTRUMENTS.

Where the Registrar is satisfied that an instrument relating to a transaction is in registrable form he shall register that instrument in the manner provided by this Act.

24. PRIORITY FOR REGISTRATION.

(1) Subject to Subsection (2), all instruments—

(a) shall be registered in the order in which they are produced to the Registrar for that purpose; and

(b) purporting to affect the same estate, interest or security—shall, notwithstanding any express, implied or constructive notice, be entitled to priority according to the dates of the production of the instruments for registration, and not according to the dates of the instruments.

(2) Where—

(a) an instrument produced to the Registrar for registration cannot be registered because of the non-production of the instruments of title relating to the estate or interest or security proposed to be dealt with; and

(b) another instrument (in this subsection called “the subsequent instrument”) executed by the same proprietor and purporting to transfer or otherwise deal with the same estate or interest or the same security is produced to the Registrar for registration and is accompanied by the instruments of title,

the subsequent instrument shall be registered and the instrument referred to in Paragraph (a) shall be refused registration.

25. MANNER OF EFFECTING REGISTRATION.

(1) ^[171] ^[18] Subject to Section 158 and to Subsection (2), an instrument purporting to affect land is registered as soon as a memorial of the instrument is entered on the relevant folio of the Register.

(2)^{[191] [20]} Where an instrument referred to in Subsection (1) affects a registered dealing the instrument is registered as soon as a memorial of the instrument is entered in the Register on the instrument relating to that dealing.

(3) A memorial referred to in Subsections (1) and (2) shall—

- (a) state the day and hour of production for registration of the instrument to which it relates; and
- (b) contain such other particulars as the Registrar directs; and
- (c) be signed by the Registrar.

(4) Where a memorial of an instrument has been entered in the Register Book in accordance with Subsection (1) or (2), as the case may be, the Registrar shall record the same memorial on the instrument of title to the estate or interest intended to be dealt with or in any way affected.

(5)^{[21] [22]} An instrument registered under Subsection (1) or (2) shall be endorsed by the Registrar with a memorandum of the day and hour on which the memorial was entered in the Register, and the Registrar shall authenticate each endorsement by signing his name and affixing his seal to the endorsement.

(6) An instrument endorsed and authenticated under this section is conclusive evidence of—

- (a) the particulars set out in the instrument; and
- (b) the covenants, conditions and matters expressed in the instrument or implied under this Act; and
- (c) the fact that the instrument has been duly registered.

(7)^{[23] [24]} A person, who fraudulently—

- (a) registers or procures registration of a folio of the Register; or
- (b) makes, alters or deletes a recording in the Register; or
- (c) alters an instrument held by the Registrar,

is guilty of an offence.

Penalty: A fine not exceeding K4,000.00.

26. EFFECT OF REGISTRATION.

(1) On registration of an instrument—

- (a) the estate or interest specified in the instrument passes or ceases; or
- (b) the land becomes liable as security; or
- (c) the land is encumbered,

in the manner and subject to the covenants and conditions set out in the instrument or declared by this Act to be implied in instruments of that nature.

(2)^{[25] [26]} As soon as a memorial of an instrument has been entered on the appropriate folio of the Register, the instrument shall be deemed to be embodied in the Register.

27. EFFECTIVE DATE OF REGISTRATION.

(1) An instrument, when registered, takes effect from the date when it was produced to the Registrar for registration which date shall be specified in the certificate of title or other instrument issued by the Registrar.

(2) The date of production of an instrument to the Registrar for the purpose of registration shall be deemed to be the date of registration of the instrument.

28. STATUS OF REGISTERED INSTRUMENT.

(1) In this section—

“interest holder” means a purchaser of the reversion, lessee, mortgagee, chargee or encumbrancee;

“tenancy document” means—

- (a) an unregistered lease; or
- (b) an agreement for a lease; or
- (c) a lease for a term not exceeding three years.

(2) A registered dealing with land is subject to a prior tenancy document where a tenant is in actual occupation under the document.

(3) No right or covenant contained in a tenancy document—

- (a) to purchase the freehold the subject of that document; or
- (b) for the renewal of the tenancy, the subject of that document,

is valid against a subsequent interest holder, unless the tenancy document is registered or protected by caveat.

(4) An instrument referred to in Subsection (2) imposes the same obligations on the persons signing it, and for the same period of time, as if it had been sealed and delivered.

29. INSTRUMENTS OF TITLE TO BE RETURNED.

^[27] On registration of an instrument the Registrar shall file the original in the Register and return any duplicate or triplicate to the persons entitled.

30. PROCEDURE FOR REGISTRATION IN CERTAIN CASES.

(1) Where a person other than the person immediately claiming under or in respect of an instrument signed by a proprietor, applies to be registered as proprietor of any estate or interest, the Registrar may register the applicant—

- (a) immediately; or
- (b) at the expiration of a period determined by the Registrar,

and direct any other entries to be made which in his opinion are necessary.

(2) No registration or entry under Subsection (1) which would interfere with the right of a person claiming under an instrument previously registered under this Act shall be made except subject to that instrument.

31. REMAINDERMAN, ETC., MAY BE REGISTERED.

(1) In this section “limited estate” means an estate, less than an estate in fee simple, in respect of which a certificate of title has been issued.

(2) Where a certificate of title has been issued in respect of a limited estate, the person entitled in reversion or remainder may apply to be registered as so entitled.

(3) On an application under Subsection (2), the Registrar—

(a) shall cause the title of the applicant to be investigated; and

(b) may cause advertisements to be published in the manner provided in the case of transmission of estates of freehold.

(4) After an investigation under Subsection (3), the Registrar may, subject to Subsection (5), register the applicant for the estate or interest to which he appears to be entitled unless a caveat forbidding the registration is received within the time limited in the direction or by any order of the Court.

(5) ^[281] ^[291] The Registrar shall endorse on the certificate of title of the land, if produced to him for that purpose—

(a) a memorandum that the applicant has been entered in the Register Book as remainderman or reversioner, as the case may be; and

(a) a memorandum that the applicant has been entered in the Register as remainderman or reversioner, as the case may be; and

(b) the day and hour when the entry was made.

Division 5.

Status of Registered Proprietor.

32. DESCRIPTION OF CERTAIN PERSONS AS PROPRIETOR.

Where an instrument of title—

(a) describes a person as the proprietor of an estate or interest; or

(b) indicates, by any other form of words, that a named person is seised of, or entitled to, or has taken, an estate or interest,

that person is the registered proprietor of the estate or interest.

33. PROTECTION OF REGISTERED PROPRIETOR.

(1) The registered proprietor of an estate or interest holds it absolutely free from all encumbrances except—

(a) in the case of fraud; and

(b) ^[301] the encumbrances notified by entry or memorial on the relevant folio of the Register; and

(c) the estate or interest of a proprietor claiming the same land under a prior instrument of title; and

(d) in case of the omission or misdescription of any right-of-way or other easement created in or existing on the same land; and

(e) in case of the wrong description of the land or of its boundaries; and

(f) as to a tenancy from year to year or for a term not exceeding three years created either before or after the issue of the instrument of title of the registered proprietor; and

(g) as provided in Section 28; and

(h) a lease, licence or other authority granted by the Head of State or a Minister and in respect of which no provision for registration is made; and

(i) any unpaid rates, taxes, or other money which, without reference to registration under this Act, are expressly declared by a law to be a charge on land in favour of the State or of a Department or officer of the State or of a public corporate body.

(2) The operation of Subsection (1) is not affected by the existence in any other person of an estate or interest, whether derived by grant from the State or otherwise, which, but for this Act, might be held to be paramount or to have priority.

34. JOINT PROPRIETORS.

Where two or more persons are registered as joint proprietors of an estate or interest, they are entitled to that estate or interest as joint tenants.

PART IV. – STATE LEASES.

35. REGISTER TO BE MAINTAINED.

(1) One duplicate of each State lease shall be retained by the Registrar to form a running series to be the Register of State Leases.

(2)^{[31] [32]} Entries which in the case of a lease granted by a registered proprietor would require to be made in the Register shall in the case of a State lease be made in the Register of State Leases and on the folio constituted by the State lease.

(3) Notwithstanding this section and Section 36, in accordance with Section 42 a transfer of a State lease shall be made by separate instrument and not by endorsement.

(4)^{[33] [34]} The Registrar of Titles shall not register any dealing involving land the subject of a State lease unless—

(a) he is satisfied that the rent payable to the State under the State lease has been paid to date and the improvement covenants or conditions (if any) specified in the State lease have been performed; or

(b) special grounds of an urgent or exceptional character allow for the dispensation with the fulfilment of the requirements of Paragraph (a).

36. APPLICATION OF ACT TO STATE LEASES.

(1) Except where the contrary intention appears, this Act applies to the Register of State Leases and to State leases as if—

(a)^[35] the Register of State Leases were the Register; and

(b) a State lease were a certificate of title.

^[36](2) In particular, a State lease, on registration, is subject to the provisions of this Act, and may be dealt with for the same purposes and in the same manner, subject to the [Land Act 1996](#), as if it had been granted by a registered proprietor and registered in the Register.

(3) Notwithstanding Subsection (1)(b), a State lease may be dealt with in any manner applicable to any other form of lease.

37. ALTERATION OR VARIATION.

(1) Where—

(a) the purpose of a State lease is varied under Section 119(1) of the [Land Act 1996](#); or

(b) the covenants or conditions of a State lease are altered in any way under Section 40(2) of that Act,

the lessor and lessee may execute an instrument in the approved form notifying the Registrar of the variation or alteration.

(2) The Registrar shall enter the terms of any variation or alteration, referred to in Subsection (1), in the Register of State Leases.

(3) On the making of an entry under Subsection (2), the terms of the State lease shall be varied or altered accordingly.

38. SURRENDER OF STATE LEASE.

(1) In this section, “surrender” includes a partial surrender.

(2) Subject to this section, where a State lease has been surrendered—

(a) by an instrument in the prescribed form; or

(a)^[371] by an instrument in the approved form; or

(b) subject to Subsection (3), by endorsement on the State lease or its counterpart; or

(c) subject to Subsection (5), by operation of law,

an application may be made to the Registrar for registration under Subsection (5) in relation to that State lease.

(3) The endorsement made under Subsection (2) shall be—

(a) expressed in the word “surrendered” with the date of the surrender; and

(b) signed by the lessee and by the lessor as evidence of acceptance of the surrender; and

(c) attested in accordance with Section 19.

(4) An application under Subsection (2)(c) shall be accompanied by satisfactory evidence of facts amounting to a surrender.

(5) Where an application is made under Subsection (2), the Registrar shall register the surrender.

(6) Where registration is effected under Subsection (5), the estate of the lessee is extinguished.

(7) The production of—

(a) a State lease or counterpart endorsed in accordance with Subsection (3); or

(b) an instrument executed in accordance with the prescribed form,

(b)^[381] an instrument executed in accordance with the approved form,

is sufficient evidence that the State lease has been surrendered.

(8) A State lease subject to a mortgage or charge shall not be surrendered without the consent of the mortgagee or chargee, as the case may be.

39. REGISTRAR TO ENTER FORFEITURE.

Where a notification appears in the National Gazette that a State lease has been forfeited, the Registrar shall make an entry to that effect in the Register of State Leases.

40. REGISTRATION OF STATE LEASE NOT EXECUTED BY LESSEE.

(1) Where a State lease has been executed on behalf of the State but has not been executed by or on behalf of the lessee the Departmental Head may apply to the Registrar to have the lease registered.

(2) An application under Subsection (1) shall be accompanied by evidence that—

- (a) the State lease the subject of the application has been granted to the lessee; and
- (b) in all the circumstances of the case it is not practicable to obtain the signature of the lessee.

(3) Where the Registrar registers a State lease on an application under Subsection (1) he shall endorse a memorial on the lease to the effect that the lease was by virtue of this section, registered although not executed by the lessee.

(4) On registration of a State lease by virtue of this section the lease shall be deemed to have been duly executed by the lessee.

41. SURRENDER OF LAND SUBJECT TO RESTORATION ORDER.

(1) In this section “restoration order” means a final order that has not been implemented under the New Guinea Land Titles Restoration Act 1951 of the former Territory of New Guinea (Adopted).

(2) A registered lease over land the subject of a restoration order may be surrendered in accordance with an instrument referred to in Section 56(2) and the Registrar shall annex the instrument to the copy of the order held by him.

(3) When the instrument is annexed to the order under Subsection (2), the estate of the lessee is extinguished.

(4) Where an order referred to in Subsection (2) is implemented the Registrar shall register the surrender.

PART V. – TRANSFER OF LAND.

42. REQUIREMENTS FOR TRANSFER.

(1)^{[391 [40]} Where land is intended to be transferred, the proprietor shall execute a transfer in the approved form.

(2) The consideration for a transfer of land shall be specified in the transfer.

(3)^{[411 [42]} Where the consideration is not an amount of money the approved form of transfer shall be amended to state concisely the nature of the consideration.

(4)^{[431 [44]} A person who executes a transfer of land which does not specify the correct consideration for that transfer is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) A transfer of land shall be lodged for registration as a single original document.

(6) Subject to Sections 13 and 162, on completion of registration the Registrar shall—

- (a) in the case of a transfer which relates to the whole of the land in a certificate of title—issue to the transferee the duplicate of the certificate of title lodged with the transfer; and
- (b) in the case of a transfer which relates to a part of the land in a certificate of title—re-issue to the transferor his duplicate of the certificate of title cancelled as to the part transferred and issue in respect of the transferee a new certificate of title in his own name as to the part transferred.

43. SHORT FORM OF RIGHT-OF-WAY IN TRANSFER OF FREEHOLD.

In a transfer of freehold land the words “together with a right of carriage-way over the road delineated and coloured brown on the said map”, or words to a similar effect, have the same effect as if the words contained in Part I of Schedule 2 were set out fully in the transfer.

44. TRANSFEROR HAS NO LIEN FOR UNPAID PURCHASE MONEY.

No transferor of land has an equitable lien on the land by reason of the non-payment of the purchase money or part of the purchase money.

45. TRANSFEREE NOT AFFECTED BY NOTICE.

(1)^{[45] [46]} Subject to Section 28 notwithstanding any rule of law or equity to the contrary, a transferee, whether voluntary or not, of land is not, except in case of fraud, affected by actual or constructive notice of a registrable claim, right, title or interest other than those which have been notified or protected by entry in the Register according to this Act.

(2) Subsection (1) does not deprive creditors of rights or remedies given or provided by the Mercantile Act 1953.

46. TRANSFEREE OF MORTGAGED LAND TO INDEMNIFY TRANSFEROR.

Where an estate or interest is transferred subject to a mortgage or charge, the following covenant is, by virtue of this Act, implied in the instrument of transfer against the transferee:—

“that he will pay the interest or annuity secured by the mortgage or charge at the rate and times specified in the mortgage or charge and will indemnify the transferor against the principal sum or sums secured by the mortgage or charge, and against all liability in respect of covenants contained in the mortgage or charge or implied by the [Land Registration Act 1981](#) against the transferor.”

47. PURCHASE OF LAND BY MORTGAGEE, ETC.

Where land subject to an encumbrance has been transferred to the person entitled to the encumbrance, the Registrar shall, on application, issue to him a certificate of title to the land discharged from the encumbrance.

48. PROPRIETOR MAY TRANSFER TO HIMSELF, ETC.

(1) The registered proprietor of an estate or interest may—

(a) transfer that estate or interest or a part of that estate or interest—

- (i) to himself and any other person or persons as joint tenants or tenants in common; or
- (ii) jointly with any other person to himself alone; and

(b) create or limit an estate in remainder or otherwise without limiting a use or executing a re-assignment.

(2)^{[47] [48]} A dealing referred to in Subsection (1) may be effected by the appropriate approved form of transfer.

(3) On the registration of the transfer referred to in this section, the estate or interest the subject of the transfer vests according to the intent of the instrument of transfer.

PART VI. – LEASES.

49. CREATION OF LEASE.

(1)^{[49] [50]} Where a proprietor intends to lease land for a life or lives or for a term of years exceeding three years he shall execute a lease in the approved form, and the lease shall be registered.

(2)^{[51] [52]} Where a lease for a term of three years or less is executed in the approved form, the lease may be registered.

(3) Where land is subject to a mortgage or charge, no lease executed after the registration of the mortgage or charge is valid or binding against the mortgagee or the proprietor of the charge, as the case may be, unless he consents to the lease before it is registered.

(4) A lease may be lodged for registration in triplicate.

50. POWERS OF LESSOR.

The following powers are, by virtue of this Act, implied in a lease, in favour of the lessor:–

(a) that he may by himself or his agents at all reasonable times enter on the demised property and view the state of repair of the demised property, and may serve on the lessee or leave at his last or usual place of abode in the country or on the demised property a written notice of any defect, requiring him within a reasonable time, specified in the notice, to repair the property;

(b) that in case the rent or part of the rent is in arrear for a period of six calendar months, or in case default is made in the fulfilment of a covenant whether expressed or implied in the lease on the part of the lessee and is continued for a period of six calendar months, or in case the repairs required by the notice are not completed within the time specified in the notice, the lessor may re-enter on and take possession of the demised property.

51. COVENANTS IMPLIED AGAINST LESSEE.

(1) Subject to Subsection (2), the following covenants are, by virtue of this Act, implied in a lease against the lessee:–

(a) that he will pay the rent reserved by the lease at the times specified in the lease and will pay all rates and taxes which are payable in respect of the demised property during the continuance of the lease;

(b) that he will keep and yield up the demised property in good and tenantable repair.

(2) Where a building erected on demised property under this Act is destroyed by fire, storm, flood or tempest, or otherwise by the act of God and without default on the part of the lessee, then, unless the lease stipulates otherwise, the covenants implied by virtue of Subsection (1) are suspended until the lessor has reinstated the building in good and tenantable repair.

52. SHORT FORM COVENANTS BY LESSEE.

A covenant in a lease expressed in a short form of words specified in Column 2 of Schedule 3 implies against the lessee the covenant that is set out in Column 3 of that Schedule opposite the short form of words as fully and effectively as if the covenant was set out fully in the lease.

53. SHORT FORM OF RIGHT-OF-WAY IN LEASE.

In a lease the words “together with a right of carriage-way over the road delineated and coloured brown on the said map”, or words to a similar effect, have the same effect as if the words contained in Part 2 of Schedule 2 were set out fully in the lease.

54. LESSEE MAY SUBLET.

(1)^[53] ^[54]Where the proprietor of a lease under this Act sublets for a term of three years or more he may do so by executing a sub-lease in the approved form.

(2) Where a lease is subject to a mortgage or charge no sub-lease of that lease is valid or binding against the mortgagee or the chargee unless he consents to the sub-lease before it is registered.

(3) The provisions of this Act relating to leases, lessors and lessees apply to sub-leases, sub-lessors and sub-lessees respectively, with the necessary modifications and exceptions.

(4) In addition to the covenants declared by this Act to be implied in every lease, there shall be implied in every sub-lease the following covenant by the sub-lessor with the sub-lessee and his transferees:—

“that he will during the term hereby granted pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease, and on his part to be paid, performed and observed.”

(5) The covenant implied by Subsection (4) is binding on the sub-lessor, his executors, administrators and trustees.

(6) Where a lease is determined by—

- (a) forfeiture; or
- (b) operation of law; or
- (c) disclaimer by the trustee under the Insolvency Act 1951,

a sub-lease of that lease is determined at the same time.

55. TRANSFER OF LEASE.

(1)^[55] ^[56]A registered lease may be transferred by instrument in the approved form.

(2) The consideration for the transfer of a lease shall be specified in the transfer.

(3) Where the consideration is not an amount of money the approved form of transfer shall be amended to state concisely the nature of the consideration.

(4) On registration of a transfer of a lease—

- (a) the estate of the transferor, as specified in the transfer, with all rights, powers and privileges belonging to that estate passes to and vests in the transferee; and
- (b) the transferee becomes subject to and liable for the same requirements and liabilities to which he would have been subject and liable if he had been named originally in the lease as the lessee.

(5) The rights, powers and privileges passing to the transferee by virtue of Subsection (4) include—

- (a) the right to sue on the lease the subject of the transfer; and
- (b) all interest in and right to recover a debt, sum of money or damages under the lease.

(6) The operation of Subsection (5)(b) is not affected by reason only that the right of recovery is a chose in action.

(7) This section does not prevent a court of competent jurisdiction giving effect to a trust affecting the debt, sum of money or damages referred to in Subsection (5)(b) where the transferee is a trustee for any other person.

56. SURRENDER OF LEASE.

(1) In this section, “surrender” includes partial surrender.

(2) Subject to this section, where a lease has been surrendered—

- (a) ⁵⁷¹ by an instrument in the approved form; or
- (b) subject to Subsection (3), by endorsement on the lease or its counterpart; or
- (c) subject to Subsection (5), by operation of law,

an application may be made to the Registrar for an entry under Subsection (5) in relation to that lease.

(3) The endorsement under Subsection (2) shall be—

- (a) expressed in the word “surrendered” with the date of the surrender; and
- (b) signed by the lessee and by the lessor as evidence of acceptance of the surrender; and
- (c) attested in accordance with Section 19.

(4) An application under Subsection (2)(c) shall be accompanied by satisfactory evidence of facts amounting to a surrender.

(5) Where an application is made under Subsection (2), the Registrar shall register the surrender.

(6) When registration is effected under Subsection (5), the estate of the lessee is extinguished.

(7) The production of—

- (a) a lease or its counterpart endorsed in accordance with Subsection (3); or
- (b) an instrument executed in accordance with the approved form,

is sufficient evidence that the lease has been surrendered.

(8) A lease subject to a mortgage or charge shall not be surrendered without the consent of the mortgagee or chargee, as the case may be.

57. DISCLAIMER ON INSOLVENCY.

Where a lease is disclaimed by the trustee under the Insolvency Act 1951, the Registrar, on proof to his satisfaction that the trustee has declined to accept the lease, shall register the disclaimer.

58. RIGHT TO PURCHASE FREEHOLD.

(1) Under a lease, other than a State lease, the lessee, in relation to the land demised to him—

- (a) may be granted the right to purchase the fee simple; or
- (b) may covenant to purchase the fee simple.

(2) A lease referred to in Subsection (1) shall state—

- (a) the amount of the purchase money to be paid; and
- (b) the period within which the right may be exercised or the covenant performed; and
- (c) other particulars necessary to explain the terms of the right or covenant.

(3) Where the lessee pays the purchase money stipulated and otherwise observes his covenants expressed and implied in the lease, the lessor is bound to transfer the land to the lessee.

59. LESSORS' RIGHTS PRESERVED.

Where a lease is noted by memorial on a certificate of title the person named in the certificate of title as seised of the land described in the certificate—

- (a) is seised of the reversion expectant on the lease; and
- (b) has all powers, rights and remedies to which a reversioner is by law entitled; and
- (c) is subject to all the covenants and conditions in the lease to be performed and observed by or on the part of the lessor.

60. RE-ENTRY BY LESSOR.

(1) The Registrar, on proof to his satisfaction of—

- (a) re-entry by the lessor under a power implied by this Act; or
- (b) recovery of possession by the lessor by proceeding in law,

shall register the re-entry.

(2) When registration is effected the estate of the lessee in the land is extinguished.

(3) The determination of the lessee's estate by virtue of Subsection (2) does not release him from his liability in respect of the breach of a covenant expressed or implied in the lease.

PART VII. – MORTGAGES AND CHARGES.

61. INTERPRETATION OF PART VII.

(1) In this Part, unless the contrary intention appears—

- “creditor” means a mortgagee or chargee;
- “debtor” means a mortgagor or chargor;
- “purchaser” means a purchaser under a sale authorized by Section 68.

(2) A reference in this Part to secured money is a reference to money secured by a mortgage or charge.

62. CREATION OF MORTGAGE OR CHARGE.

(1)^{[581 [59]} Where an estate or interest is intended to be made security in favour of a mortgagee the proprietor shall execute a mortgage in the approved form.

(2)^{[60] [61]} Where an estate or interest is intended to be made security for the payment of an annuity, rent charge or sum of money in favour of a chargee the proprietor shall execute a charge in the approved form.

63. EFFECT OF MORTGAGE OR CHARGE.

A mortgage or charge—

- (a) charges the estate or interest specified in the instrument with the sum of money, interest, annuity or rent charge intended to be secured by the instrument; and
- (b) does not operate as a transfer of the secured estate or interest.

64. COVENANTS IMPLIED AGAINST MORTGAGOR.

The following covenants are, by virtue of this Act, implied in a mortgage against the mortgagor:—

- (a) that he will pay the principal money and interest secured by the mortgage at the rate and times specified in the mortgage without deduction;
- (b) that he will repair and keep in repair all buildings or other improvements erected and made on the land, and that the mortgagee may at all convenient times until the mortgage is redeemed be at liberty with or without surveyors or other persons to enter on the land to view and inspect the state of repair of the buildings or improvements.

65. SHORT FORM OF COVENANT BY MORTGAGOR.

A covenant in a mortgage expressed in a short form of words specified in Column 2 of Schedule 4 implies against the mortgagor the covenant set out in Column 3 of that Schedule as fully and effectively as if that covenant were set out fully in the mortgage.

66. TRANSFER OF MORTGAGE OR CHARGE.

(1)^[62] ^[63]A mortgage or charge may be transferred by instrument in the approved form.

(2) The consideration for a transfer of a mortgage or charge shall be specified in the transfer.

(3) Where the consideration is not an amount of money the approved form of transfer shall be amended to state concisely the nature of the consideration.

(4) On registration of a transfer of a mortgage or charge—

- (a) the interest of the transferor, as specified in the transfer, with all rights, powers and privileges belonging to that interest passes to and vests in the transferee; and
- (b) the transferee becomes subject to and liable for the same requirements and liabilities to which he would have been subject and liable if he had been named originally in the mortgage or charge as the mortgagee or chargee, as the case may be.

(5) The rights, powers and privileges passing to the transferee by virtue of Subsection (4) include—

- (a) the right to sue on the mortgage, charge or other instrument the subject of the transfer; and
- (b) all interest in and right to recover a debt, sum of money, annuity or damages under the mortgage, charge or other instrument.

(6) The operation of Subsection (5)(b) is not affected by reason only that the right of recovery is a chose in action.

(7) This section does not prevent a court of competent jurisdiction giving effect to a trust affecting the debt, sum of money, annuity or damages referred to in Subsection (5)(b) where the transferee is a trustee for any other person.

67. NOTICE OF DEFAULT.

(1) Where default is made—

(a) for the period of one month in payment of any secured money the creditor may give to the debtor written notice to pay the money then due or owing; or
(b) in the observance of a covenant binding on the debtor by virtue of a provision expressed or implied in a mortgage or charge the creditor may give to the debtor written notice to observe the covenant.

(2) The notice referred to in Subsection (1) may be given to the debtor—

(a) in person; or
(b) by leaving the notice on the land subject to the mortgage or charge; or
(c) by leaving the notice at the usual or last-known address in the country of the debtor or other person claiming to be entitled to the secured land.

68. SALE OF PROPERTY BY MORTGAGEE, ETC.

(1) Subject to Section 72, where the default referred to—

(a) in Section 67(1)(a), continues for a further month from the date of the notice referred to in that subsection; or
(b) in Section 67(1)(b), continues for a month from the date of the notice referred to in that subsection,

the creditor may sell the land the subject of the mortgage or charge or a part of that land.

(2) For the purpose of effecting a sale under this section the creditor may execute any document.

(3) The land may be sold in the following ways:—

(a) altogether or in lots;
(b) by public auction or by private contract or partly by public auction and partly by private contract.

(4) The creditor may sell the land subject to any conditions of sale which he thinks fit.

(5) On a sale under this section the creditor may buy in and resell without being liable for loss occasioned by that purchase or resale.

(6) The purchase money arising from a sale under this section shall be applied—

(a) firstly, in payment of the expenses occasioned by the sale; and
(b) secondly, to the extent that money remains after the payment specified in Paragraph (a)—in payment of a registered mortgage or charge taking precedence to the mortgage or charge to which the power of sale was exercised and to which the sale was not subject; and
(c) thirdly, to the extent that money remains after the payment specified in Paragraph (b)—in payment of the creditor; and
(d) fourthly, to the extent that money remains after the payment specified in Paragraph (c)—in payment in order of priority, of registered mortgages or charges that are subsequent to the mortgage or charge in relation to which the power of sale was exercised; and
(e) finally, to the extent that money remains after the payment specified in Paragraph (d)—in payment to the debtor.

69. PROTECTION OF PURCHASER.

(1) All sales, contracts, matters and things authorized by Section 68 are as valid and effectual as if made, done or executed by the debtor, and in particular the written receipt of the

creditor is a sufficient discharge to a purchaser for the amount of the purchase money specified in the receipt.

(2) No purchaser under a sale authorized by Section 68—

(a) is answerable for the loss, misapplication or non-application of the purchase money paid by him; or

(b) is obliged to see to the application of the purchase money paid by him; or

(c) is concerned to enquire as to the fact of any default or notice under Section 67 or 68.

70. PRINCIPAL BECOMES DUE ON NON-PAYMENT OF INTEREST, ETC.

Where a sale takes place under Section 68 by reason of default in the payment of—

(a) interest; or

(b) an instalment,

the creditor may retain out of the purchase money received all principal money intended to be secured by the mortgage or charge whether or not the money was actually due.

71. ESTATE OF MORTGAGOR, ETC., PASSES TO PURCHASER.

On registration of a transfer executed by a creditor for the purpose of a sale under Section 68, the estate or interest of the debtor specified in the transfer passes to and vests in the purchaser freed and discharged from all liability on account of all registered mortgages or charges to which the sale was not subject.

72. PAYMENT BY INSTALMENTS.

(1)^[64] ^[65] The payment of a sum of money by weekly instalments or other periodical payments may be secured on an estate or interest by a mortgage or charge in the approved form.

(2)^[66] ^[67] The appropriate approved form shall be varied so as to express fully the terms and modes of payment of the sum of money.

73. POWER TO VARY PERIOD BEFORE MORTGAGEE SALE.

(1) A mortgage or charge may provide that the period specified in Section 68(1)(a) or (b) shall be extended or reduced and the period shall be varied accordingly.

(2) Subject to the express provisions of a variation referred to in Subsection (1), the same covenants, rights, powers and obligations are implied under the mortgage or charge against the debtor and against the creditor as if no variation had been made.

74. MORTGAGEE MAY ENTER AND TAKE POSSESSION, ETC.

(1) Where default is made in payment of any secured money, a creditor may—

(a) enter into possession of the mortgaged or charged land by receiving the rents and profits of the land; or

(b) distrain on the occupier or tenant of the land under the power to distrain conferred by Section 75; or

(c) bring an action of ejectment to obtain possession of the land.

(2) The creditor may bring an action under Subsection (1)(c) before or after exercising a remedy—

- (a) referred to in this section; or
- (b) conferred by Section 68.

(3) A creditor is entitled by action or other proceedings in the Court to foreclose the right of the debtor to redeem the mortgaged or charged land.

75. POWER OF DISTRAINT.

(1) Where—

- (a) any secured money has been in arrears for 21 days; and
- (b) the creditor has made written application to the occupier or tenant of that land for payment of the money,

the creditor may, in addition to his other remedies—

- (c) subject to Subsection (2), enter on the land subject to the mortgage or charge and distrain and sell the goods and chattels of the occupier or tenant; and
- (d) detain out of the proceeds of that sale the money in arrears and all costs and expenses occasioned by the distress and sale.

(2) An occupier or tenant referred to in Subsection (1) shall not be liable to pay to the creditor a sum greater than the amount of rent which at the time of making the distress is due from him to the debtor or to the person claiming the land under the debtor.

(3) An amount paid by the occupier or tenant to the creditor on written application or realized by distress under this section is, to that extent, a satisfaction of the rent.

76. MORTGAGEE, ETC., IN POSSESSION LIABLE TO LESSOR.

A creditor of a leasehold estate (in this section called “the land”) or a person claiming through the creditor becomes, on entering into possession of the land or the rents and profits of the land, liable to the lessor of the land for—

- (a) the payment of rent; and
- (b) the performance and observance of the covenants contained in the lease or implied under this Act,

to the same extent as the lessee or tenant was liable.

77. DISCHARGE OF MORTGAGE OR CHARGE.

(1)^[68] ^[69] On production to the Registrar of an instrument in the approved form purporting to discharge mortgaged or charged land—

- (a) in respect of all or part of the estate or interest secured; or
- (b) in respect of part of the land,

the Registrar shall register the discharge.

(2) On registration under Subsection (1)—

- (a) the estate or interest in whole or part; or
- (b) the part of the land,

as the case may be, ceases to be subject to or liable for the money secured by the mortgage or charge.

(3) This section does not apply to a charge to which Section 78 applies.

78. SATISFACTION OF ANNUITY.

(1) This section applies to a registered charge which secures an annuity or sum of money contingently on the occurrence of an event.

(2) Where—

(a) application is made to the Registrar to cancel a charge to which this section applies; and

(b) the charge and proof of the occurrence of the event on which the annuity or sum ceases to be payable are produced to the Registrar; and

(c) arrears of the annuity or sum of money and of interest on those arrears are proved to have been paid,

the Registrar shall register the satisfaction of the charge.

(3) On registration under Subsection (2), the estate or interest which was pledged or subjected as security for the payment of the annuity or sum of money ceases to be subject to or liable for that payment or for charges relating to that payment.

79. PAYMENT OF MORTGAGE MONEY WHERE MORTGAGEE ABSENT.

(1) Where—

(a) a mortgagee of land is absent from the country; and

(b) there is no person in the country authorized to give a receipt to the mortgagor for the mortgage money at or after the date appointed for the redemption of the mortgage,

the Head of the Department responsible for financial matters—

(c) may receive the mortgage money, with any arrears of interest then due, in trust for the mortgagee or other person entitled to the money; and

(d) shall give a receipt for the money received by him.

(2) On receipt of the mortgage money under Subsection (1) interest payable under the mortgage ceases to run or accrue.

(3) On production of a receipt under this section the Registrar shall register and discharge.

(4) The registration under Subsection (3) is a valid discharge of the mortgage, and has the same force and effect as the corresponding entry made under Section 77.

80. MONEY LENT ON JOINT ACCOUNT.

(1) Subject to Subsection (2), where a mortgage or charge contains a provision in or to the following effect:—

“the money to be secured belongs to the mortgagees (or chargees, as the case may be) on joint account,”

the survivors from time to time of the creditors have the joint right, and the last survivor has the right, both at law and in equity—

(a) to recover and receive and give discharges for the money and interest on the money or the annuity or rent charge secured by the mortgage or charge; and

(b) to exercise and enjoy in respect of the mortgage or charge all the powers and privileges vested in creditors by this Act.

(2) On the death of a creditor the rights referred to in Subsection (1) are not transmitted until a transmission of the mortgage or charge is registered under Section 118 or 120 in respect of that creditor.

81. EQUITABLE MORTGAGES.

(1) An equitable mortgage or lien may, by deposit of the instrument of title, be created in respect of—

(a) a security on an estate or interest; or

(b) an instrument affecting an estate or interest.

(2) An equitable mortgagee may lodge a caveat forbidding dealings with the estate, interest or security except dealings subject to the mortgage or lien.

(3) A caveat under Subsection (2) shall state the amount and nature of the charge or lien.

PART VIII. – CAVEATS.

82. ENTITLEMENT TO LODGE CAVEAT.

Subject to Section 92, a person claiming an estate or interest may, by a caveat lodged in accordance with the requirements of this Part, forbid—

(a) the registration of instruments affecting that estate or interest; or

(b) the amendment of a certificate of title under Section 153.

83. SCOPE OF CAVEAT.

A caveat under Section 82 may be expressed to operate—

(a) absolutely or until after notice of intention to register the instrument has been served in accordance with Section 94; or

(b) to forbid one or more instruments or classes of instruments.

84. REQUIREMENTS FOR CAVEAT.

A caveat—

(a) shall be in the approved form; and

(b) shall be signed by the person by whom or on whose behalf the caveat is lodged or by his lawyer or agent.

85. COMMENCEMENT.

(1) A caveat does not come into force until it is accepted by the Registrar.

(2) For the purposes of Subsection (1), a caveat is accepted when the Registrar makes a note to that effect on the caveat.

(3) Notwithstanding acceptance of a caveat, where the Registrar considers that the caveat does not comply with a provision of this Act he may raise a requisition in relation to that caveat.

(4) Where a requisition under Subsection (3) is not complied with within the prescribed period the Registrar may annul his acceptance of the caveat.

86. RESTRICTION ON DEALINGS.

(1) Subject to Subsection (2), while a caveat under Section 82(a) remains in force, the Registrar shall not register an instrument the registration of which is forbidden by the caveat.

(2) Where an instrument otherwise affected by Subsection (1) is endorsed with the consent of the caveator, that instrument may be registered.

(3) While a caveat under Section 82(b) remains in force the Registrar shall not amend the certificate of title to which the caveat relates.

87. NOTICE TO PERSONS AFFECTED.

(1) On receipt of a caveat under Section 82(a) the Registrar shall notify the receipt to the person against whose right to deal with land the caveat is lodged.

(2) On receipt of a caveat under Section 82(b) the Registrar shall notify the receipt to the person who made the application under Section 153.

(3) Notification by the Registrar under Subsection (1) or (2) may be sent by post in a prepaid registered letter, addressed to the person entitled to the notice at his last known address.

88. COURT ORDER RELATING TO CAVEAT.

(1) In this section "affected proprietor", in the case of a caveat—

(a) under Section 82(a)—means the proprietor against whose title to deal with an estate or interest a caveat has been lodged and includes a person claiming under a transfer or other instrument signed by the proprietor; and

(b) under Section 82(b)—means the person who has made an application under Section 153.

(2) Where a caveat has been lodged the affected proprietor may summon the caveator to attend before the Court to show cause why the caveat should not be removed.

(3) The Court may, on proof that the caveator has been summoned, make such order in the matter and as to costs, either ex parte or otherwise, as it deems just.

(4) Without limiting the powers of the Court under Subsection (3) the Court under that subsection, may order that the caveat—

(a) continue in force; or

(b) be removed.

(5) The Registrar may make such entries and endorsements as are necessary to give effect to the order of the Court.

89. CANCELLATION BY REGISTRAR.

(1) Where it is proved to the Registrar's satisfaction—

- (a) that the estate, interest or claim of the caveator has ceased or been abandoned or withdrawn; or
- (b) that the caveator's rights are satisfied or arranged; or
- (c) subject to Subsection (2), that the nature of the caveator's estate, interest or claim does not entitle him to forbid the sale or mortgage or other dealing with the land, estate or interest referred to in the caveat,

the Registrar may cancel the caveat.

(2) At least seven days before cancelling a caveat on the ground specified in Subsection (1)(c), the Registrar shall cause notice to be served, in accordance with Section 94, on the person who lodged the caveat.

90. LODGEMENT OF CAVEAT WITHOUT REASONABLE CAUSE.

Where a caveat is lodged with the Registrar without reasonable cause a person aggrieved by the lodgement of the caveat may bring an action to recover damages against the person who lodged the caveat.

91. LAPSE OF CAVEAT.

(1) Subject to Subsection (2), a caveat lapses after the expiration of three months from the time it came into force.

(2) Where—

(a) a caveat is lodged with the written consent of—

- (i) an equitable mortgagee; or
- (ii) the registered proprietor of the land affected by the caveat; or

(b) the caveator has, within the period specified in Subsection (1), taken proceedings in the Court to establish his title to the estate or interest specified in the caveat and has given written notice of those proceedings to the Registrar,

the caveat does not lapse in accordance with Subsection (1).

92. PROHIBITION AGAINST FURTHER CAVEAT.

Where—

- (a) a caveat has been lodged by or on behalf of a person; and
- (b) the caveat has lapsed or the Court has ordered its removal,

that person shall not lodge another caveat on substantially the same grounds.

93. WITHDRAWAL OF CAVEAT.

(1) A person who has lodged a caveat, or his lawyer or agent, may withdraw the caveat at any time before commencement of proceedings in the Court in relation to that caveat.

(2)^[71] ^[72] A caveat shall be withdrawn under Subsection (1) by giving notice to the Registrar in the approved form.

94. SERVICE OF NOTICES ON CAVEATOR.

All notices relating to a caveat or to proceedings in respect of a caveat may be served on the caveator by being left at the address specified in the caveat or, where the caveat has been signed by a lawyer or agent, at the office of the lawyer or agent, as the case may be.

PART IX. – EASEMENTS AND SIMILAR INTERESTS.

95. REGISTRATION OF EASEMENTS.

(1) Where an easement affecting land (in this section called “the servient land”) is created for the purpose of being annexed to or used and enjoyed together with other land (in this section called the “dominant land”) the Registrar shall—

- (a)^[73] in relation to the dominant land—enter a memorial of the instrument creating the easement on the folio of the Register constituted by the certificate of title for that land; and
- (b) in relation to the servient land—register the easement.

(2) Subsection (1)(b) does not affect the operation of Section 33(1)(d).

96. CERTIFICATE OF TITLE EVIDENCE AS TO EASEMENTS.

Where a certificate of title contains the words “together with a right of carriage-way over the road delineated and coloured brown on the said map” or words to a similar effect, those words have the same effect as if the words contained in Part I of Schedule 2 were set out fully in the certificate of title.

97. REGISTRATION OF OTHER RIGHTS.

(1) In this section “incorporeal right” does not include an annuity, rent charge or easement.

(2)^{[74] [75]} Where an incorporeal right affecting land (in this section called “the servient land”) is created for the purpose of being annexed to or used and enjoyed together with other land (in this section called “the dominant land”) the Registrar shall enter a memorial of the instrument creating the right on the folios of the Register constituted by the certificate of title for the dominant and servient land.

98. REGISTRATION OF CUSTOMARY RIGHTS.

(1) Notwithstanding any law to the contrary, a right, privilege or advantage over or affecting land may, with the consent of the Custodian, be created by the registered proprietor by instrument in the name of the Custodian as a trustee for customary owners.

(2) Where a right, privilege or advantage is created under Subsection (1), the Registrar shall register the instrument.

PART X. – IMPLIED COVENANTS AND POWERS.

99. IMPLIED COVENANTS OPERATE AS IF SET OUT FULLY.

(1) A covenant implied by this Act has the same force and effect and may be enforced in the same manner as if it had been set out fully in the instrument in which it is implied.

(2) Notwithstanding any law or practice to the contrary in an action for breach of a covenant implied by this Act in an instrument it may be alleged that the party against whom the action is

brought did so covenant precisely in the same manner as if the covenant had been set out fully in the instrument.

100. COVENANTS MAY BE NEGATIVED OR MODIFIED.

A covenant or power implied by this Act may be negatived or modified by express declaration contained in the instrument or endorsed on the instrument.

101. PARTIES BOUND SEVERALLY.

Where an instrument under this Act is executed by more than one party, the covenants (if any) implied by this Act against those parties—

- (a) bind the parties severally; and
- (b) do not bind the parties jointly.

102. DOING OF ACTS, ETC., TO GIVE EFFECT TO COVENANTS.

The following covenant is, by virtue of this Act implied in an instrument creating or transferring an estate or interest for valuable consideration:—

“that the transferor will, at the cost of the person requiring the acts to be done or the instruments to be executed, do all acts and execute all instruments which are necessary to give effect to the covenants, conditions and purposes expressed in the instrument or implied in the instrument by the [Land Registration Act](#).”

PART XI. – TRUSTS.

103. INTERPRETATION OF [PART XI](#).

In this Part, unless the contrary intention appears—

“instrument of nomination” means an instrument referred to in Section 105;

“the trustee”—

(a) in relation to an estate or interest, where the instrument of nomination relating to that estate or interest nominated one trustee, means—

(i) that trustee; or

(ii) his legal personal representative; and

(b) in relation to an estate or interest where the instrument of nomination relating to that estate or interest nominated two or more trustees without the words “no survivorship”, means—

(i) all of those trustees; or

(ii) all of the survivors, for the time being, of those trustees; or

(iii) the last remaining survivor of those trustees; or

(iv) the legal personal representative of the last survivor of those trustees; and

(c) in relation to an estate or interest where the instrument of nomination relating to that land, estate or interest nominated two or more trustees with the words “no survivorship”, means—

(i) all of those trustees; or

(ii) all of the survivors (if any) of those trustees and all new trustees appointed from time to time under Section 109.

104. NO ENTRY OF TRUSTS IN REGISTER.

(1)^[76] ^[77]The Registrar shall not enter in the Register a memorial or entry of a trust, whether express, implied or constructive except as provided in Sections 98 and 166.

(2) Subsection (1) does not prevent the Registrar describing a proprietor as trustee, executor or administrator.

105. INSTRUMENT OF NOMINATION.

^[78]Where a registered proprietor of an estate or interest intends to make that estate or interest the subject of a trust he may, by instrument in the approved form—

(a) nominate a person to be the trustee in whom the estate or interest shall vest; or

(b) nominate two or more persons to be the trustees in whom the estate or interest shall vest jointly,

on registration.

106. TERMS OF TRUSTS MAY BE DECLARED BY SEPARATE INSTRUMENT.

(1) The trusts which are intended to be declared relating to any estate or interest vested in trustees in accordance with Section 105 may be declared by a separate instrument.

(2) Subject to Subsection (3), an instrument referred to in Subsection (1) may relate to land under this Act and to land not under this Act.

(3) An instrument referred to in Subsection (2) shall describe the land to which it relates so as to distinguish sufficiently the land under this Act from the land not under this Act.

(4) A duplicate or attested copy of an instrument referred to in this section shall be deposited with the Registrar for the purpose of safe custody and reference but shall not be registered.

107. TRUSTEES MAY DEAL AS BENEFICIAL OWNERS.

(1)^[79] ^[80]Notwithstanding any trust affecting an estate or interest, after an instrument of nomination has been entered in the Register in respect of that estate or interest the trustee of that estate or interest is entitled to sell, transfer, mortgage or otherwise deal with the estate or interest in the same manner as if the trustee were the beneficial owner of that estate or interest.

(2) Where an estate of freehold in land is the subject of an instrument of nomination, the trustee specified in the instrument may receive a certificate of title for that estate.

(3) Where a purchaser or mortgagee of an estate or interest pays an amount of money to the trustee of that estate or interest, the receipt of the trustee is a sufficient discharge to that purchaser or mortgagee for the amount specified in the receipt, whether or not the purchaser or mortgagee has or had notice of the trust.

(4) A purchaser or mortgagee dealing with the trustee is not bound to see to the application of the purchase money or mortgage money paid by him.

108. SAVING OF JURISDICTION.

(1) This Act does not take away or affect the legal or equitable jurisdiction of a court to grant relief—

- (a) on the ground of fraud; or
- (b) over contracts or agreements for the sale or other disposition of land; or
- (c) over equitable interests generally.

(2) Notwithstanding—

- (a) the provisions of Section 104; or
- (b) the powers of disposition or other powers conferred by this Act on proprietors of an estate, interest or security,

but subject to Subsection (3), the intention of this Act is that equities may be enforced against proprietors in respect of their estate, interest or security in the same manner as if this Act had not been passed.

(3) Subject to Section 33 no unregistered estate, interest, security, contract or agreement prevails against the title of a subsequent purchaser for valuable consideration duly registered under this Act.

109. NO SURVIVORSHIP OF TRUSTEES.

(1) Notwithstanding Section 105(b), where the registered proprietor of an estate or interest inserts the words “no survivorship” in an instrument of nomination, no less number of trustees than the number named in the instrument may sell, transfer, mortgage or otherwise deal with the estate or interest without obtaining an order of the Court.

(2) An order under Subsection (1) may be granted in a summary way on motion or petition by or on behalf of a person beneficially interested in the estate or interest.

(3) The Court may, by order—

- (a) give such directions for the investment or application of the purchase money or mortgage money as it thinks fit; or
- (b) direct the appointment of a new trustee in the place of a former trustee.

(4)^{[811 [82]}The Registrar shall, on being served with a copy of an order under Subsection (1), enter a memorial of the order in the Register and, on receipt of a transfer or other instrument executed in accordance with the order, he shall register the instrument in the manner provided in this Act.

(5) This section does not prevent the surviving trustees or trustee, as the case may be, filling a vacancy which arises by nominating a person to be a co-trustee.

(6) A nomination under Subsection (5) may be by instrument in the approved form.

(7)^{[831 [84]}Where—

- (a) an instrument under Subsection (5) is registered; or
- (b) a memorial of an order under Subsection (1) appointing a new trustee is entered in the Register,

the new trustee has the same estate, interest, power and authority as if he had been originally nominated a trustee by the registered proprietor.

110. NO SURVIVORSHIP TO BE SHOWN ON CERTIFICATE.

Where the words “no survivorship” are written on the instrument of nomination, the Registrar shall, during the existence of the trust, cause the words “no survivorship” to be written on every relevant certificate of title.

111. VESTING ORDER TO BE REGISTERED.

(1) Where the Court makes an order to the effect that an estate, interest or security shall vest in a person, the Registrar shall, on being served with an office copy of the order—

(a) register the order; and
(b) issue all certificates of title and other instruments which are necessary to give full effect to the order.

(2) On registration under Subsection (1)—

(a) the order operates to transfer or otherwise vest the estate, interest or security; and
(b) the person named in the order as the person in whom the estate, interest or security is to vest becomes the registered proprietor of that estate, interest or security.

112. ORDER FOR SALE TO BE REGISTERED.

(1) Where an estate or interest is sold under an order of the Court, the Registrar shall, on being served with an office copy of the order, register the order.

(2) On registration under Subsection (1)—

(a) a sale or transfer may be made under the order; and
(b) the person authorized for the purpose by the order may do all acts and execute all instruments which are necessary under this Act to transfer the estate or interest.

113. ACTIONS IN TRUSTEE’S NAME.

Where a trustee would be entitled to bring or defend an action of ejectment in his own name for recovering the possession of land, he is bound to allow his name to be used as a plaintiff or defendant in that action by a beneficiary or person claiming an estate or interest in the land.

PART XII. – TRANSMISSIONS.

Division 1.

Insolvency.

114. INTERPRETATION OF DIVISION 1.

In this Division, unless the contrary intention appears—

“elected trustee”, in relation to an insolvent, means the person for the time being elected to the office of trustee of the property of the insolvent under the Insolvency Act 1951;

“insolvent” means a person adjudged insolvent under the Insolvency Act 1951;

“official trustee” means the official trustee appointed under the Insolvency Act 1951;

“property” means property of an insolvent as that expression is used in the Insolvency Act 1951;

“trustee”, in relation to an insolvent, means—

(a) where a person holds office as elected trustee in respect of the property of the insolvent—the elected trustee; or

(b) in any other case—the official trustee.

115. TRANSMISSION ON INSOLVENCY.

(1) Where the registered proprietor of an estate or interest is adjudged insolvent, the trustee of the insolvent is entitled to be registered as proprietor in respect of that property.

(2) On receipt of—

(a) an office copy of the order of the Court adjudging the registered proprietor to be insolvent the Registrar shall register the order; and

(b) a duly certified copy of the appointment of an elected trustee, or other evidence of the appointment which the Registrar requires, he shall register the appointment.

(3) Subject to Subsection (6), where—

(a) registration under Subsection (2)(a) has been effected in relation to the property; and

(b) registration has not been effected under Subsection (2)(b) in relation to the property,

the official trustee may transfer the estate or interest of the insolvent in that property.

(4) Subject to Subsection (6), where an entry has been made under Subsection (2)(a) and (b) in relation to property, the elected trustee may transfer the estate or interest of the insolvent in that property.

(5) An instrument executed for the purpose of Subsection (3) or (4) by the trustee of an insolvent has the same validity and effect as that instrument would have had if it had been executed by the insolvent before the commencement of his insolvency.

(6) Notwithstanding the insolvency of a registered proprietor who is a trustee of an estate or interest—

(a) this section does not affect the rights of a person beneficially interested in that estate or interest; and

(b) the insolvent may do and execute all acts that are necessary for nominating a new trustee of the estate or interest or for carrying into effect any trust affecting the estate or interest at the commencement of his insolvency.

116. ANNULMENT OF INSOLVENCY ADJUDICATION.

(1)^{[85] [86]} Where an office copy or other duly certified copy of an order annulling an insolvency adjudication is received by the Registrar he shall enter a memorandum of the particulars of the order in the Register against property undisposed of under an entry made by virtue of Section 115(2).

(2) On the making of an entry under Subsection (1)—

(a) the person named for that purpose in the order annulling the adjudication; or

(b) if no person is so named—the person who is adjudged insolvent,

shall be the proprietor of the undisposed property referred to in Subsection (1).

Division 2.

Death.

117. INTERPRETATION OF DIVISION 2.

In this Division, unless the contrary intention appears—

“letters of administration”, in relation to a deceased person, means the letters of administration of the estate of that person;

“order to administer”, in relation to a deceased person, means an order under Section 10 of the [Public Curator Act 1951](#), to administer the estate of that person;

“personal representative”, in relation to a deceased person, means—

(a) the executor of the will of the deceased; or

(b) the administrator of the estate of the deceased; or

(c) subject to the granting of an order to administer—the Public Curator;

“probate”, in relation to a deceased person, means the probate of the will of that person.

118. TRANSMISSION OF MORTGAGE, ETC.

(1) Subject to Section 120, where a mortgage, charge or lease, other than a State lease (in this section called “the subject property”) is transmitted in consequence of the death of the registered proprietor of the subject property the personal representative of the deceased shall lodge with the Registrar—

(a) a written application from the personal representative to be registered as proprietor of the subject property; and

(b) an office copy of the probate, letters of administration or order to administer, as the case may be.

(2) Where an application is made under Subsection (1), the Registrar shall register it.

(3) On registration under Subsection (2), the personal representative becomes the registered proprietor of the subject property.

(4) A person registered under this section as proprietor of a subject property—

(a) holds the property in trust for the persons and purposes to which it is applicable by law; and

(b) shall, for the purposes of a dealing with the property under this Act, be deemed to be the absolute owner.

(5) Where on an application under Subsection (1), more than one person is registered as proprietor of the same subject property, they are entitled to the property as joint tenants.

119. TRANSMISSION OF FREEHOLD AND STATE LEASES.

(1) Subject to Section 121, where an estate of freehold or a State lease (in this section called “the subject estate”) is transmitted in consequence of the death of the registered proprietor of that estate, the personal representative of the deceased shall make written application to the Registrar to be registered as proprietor of the subject estate.

(2) The application referred to in Subsection (1)—

(a) shall state—

(i) the estate that the applicant claims; and

(ii) the nature of every estate or interest in the land to which the subject estate relates which is held by other persons at law or in equity within the applicant’s knowledge; and

(iii) that the applicant truly believes himself to be entitled to the subject estate; and

(b) shall be verified by the statutory declaration of the applicant; and

(c) shall be lodged with the Registrar together with the original or an office copy of—

(i) subject to Section 127—the certificate of death; and

(ii) the probate, letters of administration or order to administer, as the case may be.

- (3) The Registrar shall consider an application under this section and may—
- (a) register it; or
 - (b) cause notice of the application to be published in the National Gazette, and give the application any further publicity that he thinks fit, whether by advertisement or by the serving or posting of notices; or
 - (c) if he thinks fit to do so, dispense with the publication of any notices.
- (4) Subject to Subsections (6) and (7), a notice given or published in accordance with Subsection (3) shall fix a time, not less than two months after the date of the publication in the National Gazette, after which the Registrar may register the applicant as proprietor of the subject estate.
- (5) Subject to Subsections (6) and (7) where notice is dispensed with under Subsection (3), the Registrar shall register the applicant as proprietor of the subject estate at the expiration of such time, not being more than one month, as he thinks fit.
- (6) Where the Registrar receives a caveat forbidding registration of the applicant as proprietor, the Registrar shall not, while the caveat remains in force, register the applicant as proprietor of the subject estate.
- (7) Before registration is effected the applicant shall produce the certificate of title to the Registrar.
- (8) A person registered under this section as proprietor of a subject estate—
- (a) holds the estate in trust for the persons and purposes to which it is applicable by law; and
 - (b) shall, for the purposes of any dealing with the estate under this Act, be deemed to be the absolute owner.
- (9) Where on an application under Subsection (1) more than one person is registered as proprietor of the same subject estate, they are entitled to that estate as joint tenants.

120. DEVISE OF MORTGAGE, LEASE, ETC.

- (1) Where a mortgage, charge or lease, not being a State lease (in this section called “the subject property”) is devised, the devisee may, with the consent of the personal representative of the deceased, lodge with the Registrar—
- (a) a written application from the devisee to be registered as proprietor of the subject property; and
 - (b) evidence of consent by the personal representative to the application; and
 - (c) an office copy of the probate, letters of administration or order to administer, as the case may be.
- (2) Where an application is made under Subsection (1) the Registrar shall register it.
- (3) On registration under Subsection (2) the devisee becomes the registered proprietor of the subject property.

121. DEVISE OF FREEHOLD.

- (1) Where an estate of freehold or a State lease (in this section called “the subject estate”) is devised, the devisee may, with the consent of the personal representative of the deceased, make written application to the Registrar to be registered as proprietor of the subject estate.
- (2) The application referred to in Subsection (1)—

- (a) shall state—
 - (i) the estate which the devisee claims; and
 - (ii) the nature of every estate or interest in the land to which the subject estate relates which is held by other persons at law or in equity within the devisee's knowledge; and
 - (iii) that the devisee truly believes himself to be entitled to the subject estate; and
- (b) shall be verified by the statutory declaration of the applicant; and
- (c) shall be lodged with the Registrar together with the original or an office copy of—
 - (i) subject to Section 127—the certificate of death; and
 - (ii) the probate, letters of administration or order to administer, as the case may be.

(3) The Registrar shall consider an application under this section and may—

- (a) register it; or
- (b) cause notice of the application to be published in the National Gazette, and give the application any further publicity which he thinks fit, whether by advertisement or by the serving or posting of notices; or
- (c) if he thinks fit to do so, dispense with the publication of any notice.

(4) Subject to Subsections (6) and (7), a notice given or published in accordance with Subsection (3) shall fix a time, not less than two months after the date of the publication in the National Gazette, after which the Registrar may register the applicant as proprietor of the subject estate.

(5) Subject to Subsections (6) and (7), where notice is dispensed with under Subsection (3), the Registrar shall register the applicant as proprietor of the subject estate at the expiration of such time, not being more than one month, as he thinks fit.

(6) Where the Registrar receives a caveat forbidding registration of the devisee as proprietor, the Registrar shall not, while the caveat remains in force, register the devisee as proprietor of the subject estate.

(7) Before registration is effected under Subsection (3)(a) the devisee shall produce the certificate or other instrument of title to the Registrar.

122. REGISTRATION OF SURVIVING JOINT TENANT.

(1) Where two or more persons are registered as joint proprietors of the same estate or interest and one of them dies the surviving proprietor or proprietors, as the case may be, may apply to the Registrar to be registered in respect of the estate or interest.

(2) Where the Registrar receives an application under Subsection (1) he may, on proof to his satisfaction, of the death, register the applicant or applicants as proprietor or joint proprietors, as the case may be, of the estate or interest.

123. DETERMINATION OF LIFE ESTATE.

(1) In this section "limited estate" means an estate, less than an estate in fee simple, in respect of which a certificate of title has been issued.

(2) Subject to Subsection (3), where the Registrar is satisfied—

- (a) that a limited estate has determined; or
- (b) that a limited estate has become vested in the person entitled to the land for the estate next in remainder; or

(c) that the proprietor of a limited estate or a purchaser is absolutely entitled to the land the subject of that estate for a present estate in fee simple in possession,

the Registrar may, on the application of the person entitled, register him as the proprietor of the appropriate estate or interest in the manner prescribed for the registration of the estate or interest on a transfer or transmission.

(3) Before registration the Registrar—

(a) may require the title of the applicant to be investigated; and

(b) may cause advertisements to be published as provided in the case of applications for registration on the transmission of an estate of freehold in land; and

(c) shall require the same fees and payments including the sum payable to the Assurance Fund as are required to be paid on those applications.

124. TRANSMISSION WHERE DECEASED NOT REGISTERED AS PROPRIETOR.

(1) Where—

(a) by virtue of unregistered instruments or other documents a person would have been entitled, had he survived, to registration as proprietor of an estate or interest; and

(b) that person dies before becoming registered,

that estate or interest shall be transmitted in the same manner as if the deceased had been registered as the proprietor.

(2) Subject to Subsection (3), where the Registrar receives an application to register an estate or interest by virtue of Subsection (1) he may register the applicant as proprietor of the estate or interest—

(a) as soon as practicable; or

(b) at the expiration of a period of time fixed by the Registrar,

and may direct any further entries to be made and notices to be published which in his opinion are necessary.

(3) Where a registration or entry under Subsection (2) would, but for this subsection, interfere with the right of a person claiming under an instrument previously registered under this Act, the registration or entry under Subsection (2) shall be made subject to the instrument.

125. TRANSMISSION TO PERSON ENTITLED BY CUSTOM.

^{187]}Notwithstanding Section 118 or 119, where—

(a) a registered proprietor of an estate, interest or security dies intestate; and

(b) the estate, interest or security is transmitted to a person entitled to it by custom,

the Registrar shall, on production of a certificate in the approved form signed by the Custodian, register the person so entitled as proprietor of the estate, interest or security.

126. ORDER FOR EXECUTOR, ETC., TO TRANSFER.

(1) Where the personal representative of a deceased person—

- (a) is registered as the proprietor of land; and
- (b) refuses, or, after tender of a transfer, unnecessarily delays the transfer of the land to the devisee, next of kin or other person entitled to that land,

the person entitled to the land may by motion or summons before the Court apply for an order that the personal representative transfer the land to him.

(2) On an application under Subsection (1) the Court may—

- (a) refuse the application, with or without costs to be paid by the applicant; or
- (b) make an order for the transfer.

(3) For the purpose of making an order under Subsection (2), the Court may—

- (a) decide questions relating to the title of a person who is a party to the application or proceeding and generally may decide a question which it is necessary or expedient to decide for the purpose of ordering the land to be transferred; or
- (b) direct an action to be brought in which the rights of the parties may be decided or a question of law settled.

(4) Where the Court makes an order under Subsection (2)(b), it may direct—

- (a) that the transferor pay all the costs of the application and any damages the person aggrieved has sustained; or
- (b) that the costs be paid out of the estate of the deceased; or
- (c) that the costs be paid in such other manner as the Court thinks proper.

127. REGISTRAR MAY DISPENSE WITH DEATH CERTIFICATE IN CERTAIN CASES.

The Registrar may dispense with lodgment of the certificate of death under Sections 119(2) and 121(2) on production of such other evidence of death as appears to him sufficient.

PART XIII. – POWERS OF ATTORNEY.

128. INTERPRETATION OF PART XIII.

In this Part, unless the contrary intention appears—

“attorney”, in relation to a power of attorney, means the person authorized and appointed by virtue of the power of attorney;

“donor”, in relation to a power of attorney, means the person who executed the power of attorney;

“power of attorney” means a power of attorney referred to in Section 129(1);

“register” means the register referred to in Section 129(3).

129. ATTORNEY MAY DEAL IN LAND, ETC.

(1) The proprietor of an estate or interest may, by power of attorney—

- (a) in a form used for that purpose before the commencement date; or
- (b) ^[881] in the approved form,

authorize and appoint a person to deal with the estate or interest in accordance with this Act.

(2) A person who executes a power of attorney or his attorney shall deposit an original or an attested copy of the instrument with the Registrar.

(3) The Registrar shall keep a register of powers of attorney affecting lands under this Act.

(4) Where a power of attorney is deposited with the Registrar he shall enter a memorial of the power in the register.

(5) Subject to Section 135(2), after the making of the entry referred to in Subsection (4), all acts lawfully done or performed by the attorney under the authority of, and within the limits prescribed by, the power of attorney have the same force and effect and are equally binding on the proprietor as if the acts had been done or performed by him.

130. INSTRUMENT TO BE EVIDENCE.

A power of attorney bearing an endorsement signed by the Registrar that a memorial of the power has been entered in the register, shall be received in evidence as sufficient proof that the person to whom the power has been granted is duly authorized to make all contracts, to sign all instruments, and to perform all other lawful acts in accordance with the powers limited and appointed in the power of attorney.

131. REGISTRAR MAY PRESUME POWER UNREVOKED.

Where an instrument executed under a power of attorney is tendered to the Registrar for registration it is not necessary for the Registrar to require proof that at the time of registration of that instrument the power of attorney was unrevoked.

132. DIRECTIONS TO BE OBSERVED.

The power of attorney shall be exercised in accordance with the directions contained in the power.

133. CERTAIN DEALINGS PROTECTED.

No transfer, mortgage, lease or charge made under a power of attorney in good faith—

(a) is affected by the death of the donor occurring before the making of the transfer, mortgage, lease or charge, as the case may be; and

(b) to a purchaser, mortgagee, lessee or chargee, as the case may be, without notice, is affected by the insolvency of the donor.

134. LOSS, ETC., OF POWER.

On proof to the satisfaction of the Registrar that—

(a) a power of attorney is lost or is so defaced as to be useless; and

(b) the powers given by the power of attorney have never been exercised, or, if they have been exercised, on proof of the several matters and things that have been done under those powers,

the Registrar may, as circumstances require—

(c) issue a new power of attorney; or

(d) ^[89] direct such entries to be made in the Register or such other matter or thing to be done as might have been made or done if no such loss or defacing had taken place.

135. REVOCATION.

^[90](1) The registered proprietor for the time being of land in respect of which a power of attorney has been issued may, for the purpose of revoking the power, execute an instrument in the approved form and the Registrar shall—

- (a) enter the particulars of the instrument of revocation in the register; and
- (b) record on the instrument of revocation, the day and hour on which the entry was made; and
- (c) file the instrument in his office.

(2) From and after the date of the entry referred to in Subsection (1) the Registrar shall not give effect to an instrument executed under the power of attorney after that date.

136. OFFENCE.

(1)^[911 192]The holder of a power of attorney who neglects or refuses to surrender it to the proprietor or his agent exhibiting the instrument of revocation, is guilty of an offence.

Penalty: A fine not exceeding K400.00

(2) The court before which the case is tried shall not convict for an offence under Subsection (1) if it appears to the satisfaction of the court that the powers given in the power of attorney had been exercised before the presentation of the instrument of revocation.

PART XIV. – FEES AND ASSURANCE FUND.

137. FEES AND CONTRIBUTIONS.

(1) Subject to this section, the regulations may impose fees and contributions to be paid to the Registrar.

(2) A fee or contribution is not payable in respect of a final order under the New Guinea Land Titles Restoration Act 1951 of the former Territory of New Guinea (Adopted), except in so far as a fee or contribution is directed in the final order to be paid to the Registrar.

(3) A fee or contribution is not payable by the State or the Custodian.

138. ASSURANCE FUND.

There shall be a fund to be known as the Assurance Fund.

139. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995..

Except where this Act provides to the contrary, the provisions of the Public Finances (Management) Act 1995 relating to Trust Accounts within the meaning of that Act apply to and in relation to the Assurance Fund.

140. CONTRIBUTIONS PAYABLE TO ASSURANCE FUND.

All contributions shall be paid into the Assurance Fund.

141. PAYMENTS OUT OF THE ASSURANCE FUND.

(1) Payments shall be made out of the Assurance Fund to a person where a direction to that effect is given in accordance with this Act.

(2) Where the Assurance Fund is not sufficient to make a payment under Subsection (1), the full amount of an award shall be paid to the person entitled out of the Consolidated Revenue Fund which is, to the necessary extent, appropriated accordingly.

(3) Where an amount is paid under Subsection (2) an equivalent amount shall be paid to the Consolidated Revenue Fund out of the Assurance Fund as the latter fund accrues.

(4) The Assurance Fund is not liable for payment of damages or for any other amount except in accordance with Subsections (1) and (3).

(5) Where the Departmental Head is satisfied that an amount has been paid into the Assurance Fund through error he may direct payment of an equivalent amount out of the Fund.

142. FUND NOT LIABLE FOR BREACH OF TRUST.

A person is not entitled to be indemnified out of the Assurance Fund or the Consolidated Revenue Fund for loss occasioned by breach of trust or default committed by a trustee, guardian, committee of a person of unsound mind, executor, administrator or other person standing in the relation of trustee to any other person.

143. PROCEEDS OF INVESTMENT.

Where money forming part of the Assurance Fund is invested under Section 14 of the [Public Finances \(Management\) Act 1995](#) the interest arising from the investment forms part of the Assurance Fund and shall be paid into it.

144. RECOVERY OF MONEY PAID OUT OF ASSURANCE FUND.

(1) Where an amount has been paid out in accordance with Section 141 on account of a person—

(a) who is dead—the amount may be recovered from the estate of the deceased by action against his legal personal representative in the name of the Registrar; and

(b) who is insolvent—the amount paid shall be deemed to be a debt due from the insolvent's estate, and a certificate of the payment signed by the Departmental Head and delivered to the trustee of the insolvent's estate is sufficient proof of the debt; and

(c) who has absconded and left real or personal estate within the country—the Court, on the application of the Registrar and production of a certificate signed by the Departmental Head certifying that the amount has been paid in satisfaction of a judgement against the Registrar as nominal defendant, may allow judgement for the Registrar to be entered immediately against that person for the amount so paid together with the costs of the application.

(2) A judgement referred to in Subsection (1)(c)—

(a) is final; and

(b) shall be entered up in the same way as a judgement pronounced in court in an adverse action; and

(c) may be enforced immediately by the issue of execution.

(3) Where the person referred to in Subsection (1)(c) has not left real or personal estate within the country sufficient to satisfy the amount for which execution has been issued, the Registrar may at any time in the future recover the amount or the unrecovered balance of the amount by action against that person when he is within the jurisdiction.

PART XV. – REMEDIES.

Division 1.

Refusal or Direction of Registrar.

145. REGISTRAR MAY BE SUMMONED TO SHOW CAUSE.

(1) Where the Registrar, on the application of a proprietor—

- (a) refuses to register a dealing or transmission; or
- (b) refuses to issue an instrument; or
- (c) refuses to perform an act or duty which by this Act is provided to be done or performed by the Registrar; or
- (d) gives a direction with which the proprietor is dissatisfied,

the proprietor may—

- (e) require the Registrar to set out in writing the grounds for his refusal or the grounds on which the direction was given; and
- (f) at his own cost, summon the Registrar to appear before the Court to substantiate and uphold the grounds of his refusal or direction.

(2) A summons under Subsection (1) shall be served on the Registrar at least six clear days before the day appointed for the hearing.

(3) On the hearing of a summons under Subsection (1)—

- (a) the Registrar or his lawyer shall open and have the right of reply; and
- (b) if an issue or fact is involved the Court may direct the issue to be tried to decide the question; and
- (c) the Court may make any order which, in its opinion the circumstances of the case require.

(4) All expenses of and incidental to the proceedings shall be borne by the person instituting them, unless the Court certifies that there were no reasonable grounds for the refusal or direction by the Registrar.

(5) Where the Court gives a certificate under Subsection (4), it shall include in the certificate a statement—

- (a) that a specified amount represents the amount of the expenses of the proceedings under this section; and
- (b) that those expenses are payable out of the Assurance Fund.

(6) The Departmental Head shall, on receipt of a certificate under Subsection (4), direct payment from the Assurance Fund to the person who instituted the proceedings under this section.

Division 2.

Ejectment.

146. EJECTMENT AGAINST REGISTERED PROPRIETOR.

(1) Subject to Subsection (2), a certificate of title is an absolute bar and estoppel to an action of ejectment against the person named in the certificate of title as seised of or entitled to the land.

(2) Subsection (1) does not prevent an action of ejectment against a proprietor if the action is brought by—

- (a) a mortgagee against a mortgagor; or
- (b) a chargee against a chargor; or
- (c) a lessor against a lessee or tenant; or
- (d) a person deprived of land by fraud against a person registered as proprietor through fraud; or
- (e) a person deprived of land by fraud, subject to Subsection (3), against a person deriving from or through a person registered as proprietor through fraud; or
- (f) a person deprived of land by reason of a wrong description of land or of its boundaries; or
- (g) a registered proprietor claiming under a prior certificate of title where two certificates are registered under this Act in respect of the same land; or
- (h) a registered proprietor claiming under a prior State lease registered under this Act where two State leases are registered under this Act in respect of the same land.

(3) This Act does not subject to an action for ejectment a purchaser or a mortgagee, acting in good faith and for valuable consideration.

(4) The operation of Subsection (3) is not affected by the fact that the vendor or mortgagor, as the case may be—

- (a) was registered through fraud or error; or
- (b) derives from or through a person registered as proprietor through fraud or error, whether by wrong description of land or of its boundaries or otherwise.

(5) For the purpose of bringing an action of ejectment against a person registered as proprietor, the registration of that person is equivalent to possession by him of the land in respect of which the action is brought.

147. REGISTRAR TO BE CO-DEFENDANT IN CERTAIN CASES.

Where an action of ejectment is brought in a case referred to in Section 146(2) (f), (g) or (h), and in every case where payment may be made from the Assurance Fund the Registrar shall be made a co-defendant and may defend the action severally or jointly or may leave the defence wholly to his co-defendant, as he thinks fit.

148. IMPROVEMENTS.

(1) Subject to Subsection (2), where the defendant in an action of ejectment or a person through whom he claims has made improvements on the land since obtaining a certificate of title for the land he may, whether he admits or denies the plaintiff's title—

- (a) give notice to the plaintiff of the fact of the improvements being made; and
- (b) set a value on those improvements and also on the land as distinct from those improvements; and
- (c) give evidence relating to those improvements at the trial.

(2) Subsection (1) does not apply in the case of an action of ejectment against a fraudulent proprietor.

(3) Subject to Subsection (4), where—

- (a) a defendant gives notice in accordance with Subsection (1); and
- (b) a verdict is found for the plaintiff, or his title is admitted,

the Court shall assess the value of the improvements, and shall also separately assess the value which the land would have had if the improvements had not been made.

(4) Where the Court assesses the value of improvements under Subsection (3), a writ of possession shall not issue unless the plaintiff first pays into court for the use of the defendant the value of the improvements so assessed, deducting only the costs (if any) to which he is entitled in the action.

(5) Where the plaintiff fails to make the payment referred to in Subsection (4) within three months after verdict—

(a) the plaintiff is entitled to have judgement to recover only the sum separately assessed as the value of the land together with costs of suit; and

(b) the defendant is entitled, on satisfaction of that judgement, to retain the land and improvements.

149. ORDERS ON RECOVERY OF LAND.

(1) Where land is recovered by action of ejectment the Court may, in relation to that land, make an order for—

(a)¹⁹³¹ cancelling an instrument or an entry in the Register and substituting a new instrument or entry, as the case may be; or

(b) amending an instrument or entry; or

(c) directing such other acts to be done or instruments executed as the Court thinks just.

Division 3.

Damages.

150. DAMAGES FOR DEPRIVATION OF LAND.

(1) Subject to this section, where a person is deprived of an estate or interest in consequence of—

(a) fraud; or

(b) the issue of a certificate of title to another person; or

(c)¹⁹⁴¹ an entry, or an error or omission in an entry, in the Register; or

(d) an error or omission in a certificate of title,

he may bring an action in the Court for the recovery of damages against the person who derived benefit by the fraud or in consequence of a circumstance specified in Paragraph (b), (c) or (d).

(2) Where a person against whom an action may be brought under Subsection (1)—

(a) is dead; or

(b) has been adjudged insolvent; or

(c) has absconded from the jurisdiction of the Court,

that action may, subject to this section, be brought against the Registrar as nominal defendant.

(3) An action under Subsection (1) does not lie against—

(a) the Registrar; or

(b) the person who applied to be registered as proprietor in respect of the estate or interest; or

(c) the person certifying an instrument,

unless the action is commenced within the period of six years after the date of the deprivation.

(4) Subsection (1) does not subject to an action for damages a purchaser or a mortgagee, acting in good faith and for valuable consideration.

(5) The operation of Subsection (4) is not affected by the fact that the vendor or mortgagor, as the case may be—

(a) was registered as proprietor through fraud or error; or

(b) derives from or through a person registered as proprietor through fraud or error, whether by wrong description of land or of its boundaries or otherwise.

(6) For the purpose of bringing an action under Subsection (1) against a person registered as proprietor, the registration of that person is equivalent to possession by him of the estate or interest in respect of which the action is brought.

(7) Where damages are awarded in an action under this section against—

(a) the Registrar; or

(b) any other person,

and the Sheriff or an officer of the Sheriff—

(c) makes a return of nulla bona; or

(d) certifies that the full amount with costs awarded cannot be recovered from the judgement debtor,

the judgement creditor may apply to the Court for a certificate as to those matters.

(8) Where—

(a) an application is made under Subsection (7); and

(b) the Court is satisfied that the particulars specified in the application are accurate,

the Court shall certify—

(c) that judgement has been obtained; and

(d) that a specified amount represents the amount of the damages and costs awarded or the unrecovered balance of those damages and costs, as the case may be; and

(e) that that amount is payable out of the Assurance Fund.

(9) The Departmental Head shall, on receipt of a certificate under Subsection (8), direct payment from the Assurance Fund to the judgement creditor of the amount specified in the certificate.

151. DAMAGES FOR MISTAKES OF REGISTRAR, ETC.

(1) Subject to Subsection (2), an action to recover damages for or by reason of loss or damage occasioned by an omission, mistake or misfeasance of—

(a) the Registrar; or

(b) an officer in the office of the Registrar,

shall be brought against the Registrar as nominal defendant.

(2) Written notice of an action referred to in Subsection (1) and of the cause of that action shall be served on—

(a) the Departmental Head; and

(b) the Registrar,

at least one month before the action is commenced.

(3) Where, in an action referred to in Subsection (1),—

- (a) judgement is given in favour of the nominal defendant; or
- (b) the plaintiff discontinues or is non-suited,

the full costs of the action—

- (c) shall be paid by the plaintiff; and
- (d) shall be levied in the name of the nominal defendant by the same process of execution as in other actions on the case.

(4) Where the plaintiff obtains final judgement against the nominal defendant in an action referred to in Subsection (1), the plaintiff may apply to the Court for a certificate to that effect.

(5) Where—

- (a) an application is made under Subsection (4); and
- (b) the Court is satisfied that the particulars specified in the application are accurate,

the Court shall certify—

- (c) that judgement has been obtained; and
- (d) that a specified amount represents the amount of damages and costs awarded; and
- (e) that that amount is payable out of the Assurance Fund.

(6) The Departmental Head shall before the expiration of two months after receipt of a certificate under Subsection (5), direct payment from the Assurance Fund to the judgement creditor of the amount specified in the certificate.

152. DAMAGES TO BE LIMITED IN CERTAIN CASES.

Where a person brings an action under Section 150 or 151 in respect of the loss sustained by him as defendant to an ejectment action he is not entitled to greater damages than he actually sustained as the result of the ejectment action after using all reasonable diligence in the defence of that action.

PART XVI. – AMENDMENT OF DESCRIPTION OF LAND.

153. AMENDMENT OF CERTIFICATE OF TITLE.

(1) Where—

- (a) the description of the boundaries, area or position of land in a certificate of title differs from the boundaries, area or position of land—
 - (i) actually occupied in good faith by the proprietor named in the certificate of title; and
 - (ii) purporting to be so occupied under the title in respect of which the certificate issued; or
- (b) the certificate of title of a proprietor contains a description which is erroneous or imperfect on the face of it,

the proprietor may apply in the approved form for amendment of the certificate of title.

(2) Where the certificate of title of a person relates to land—

(a) part of which, by reason of an error in survey or mis-description is actually occupied in good faith by another person (in this subsection called “the occupant”) together with the land described in the occupant’s certificate of title; and

(b) the title to the land so occupied has not been determined against the occupant in a contested proceeding in which the right to that land was in question,

the occupant may apply in the approved form for amendment of the certificate of title.

(3) ^[951 196]Where the Registrar is satisfied that an application under Subsection (1) or (2) is in order, he shall serve by post on a person who appears by the Register to be affected by the application a notice and a plan showing the effect of the application.

(4) The notice referred to in Subsection (3) shall—

(a) indicate that an application has been made under this section; and

(b) appoint a time and indicate that after the expiration of that time the certificate of title may be amended unless a caveat is lodged forbidding the granting of the application.

(5) Where the Registrar is of the opinion that a certificate of title may require amendment under this section he may request production of the duplicate of that certificate of title not in his possession.

(6) The Registrar may publish such notices as he thinks fit of his intention to amend or correct a certificate of title under this section.

(7) Subject to Subsection (8), where the Registrar is satisfied that a certificate of title should be amended under this section he shall—

(a) make any necessary alteration; or

(b) prepare a new certificate of title.

(8) Where the Registrar is satisfied that a certificate of title should be amended under this section but in his opinion the production of the duplicate of that certificate of title not in his possession has been or may be delayed for any reason the Registrar—

(a) may amend the duplicate of the certificate of title in his possession; and

(b) shall make the same amendment to the other duplicate when it is produced to him.

(9) An amendment under Subsection (7) or (8)—

(a) shall, unless the Registrar otherwise directs, be deemed to have been made on the date when the relevant application was lodged with the Registrar; and

(b) shall bear that date accordingly.

(10) Where the Registrar amends a certificate of title under Subsection (8) he may require the proprietor to take out a new certificate of title.

154. ADJUSTMENT OF DISCREPANCIES IN BOUNDARIES.

(1) Where land the subject of a certificate of title or plan of survey deposited under Section 157 is found by reason of erroneous measurements in the original survey to exceed or fall short of the dimensions given in the certificate or plan, the Registrar may—

(a) issue a new certificate of title; or

(b) amend the certificate of title or plan,

to accord with the dimensions marked on the ground, or otherwise to adjust equitably the discrepancy.

(2) Where the Registrar exercises his powers under Subsection (1), he may—

- (a) in appropriate cases, make a distribution among the allotments concerned of any surplus area; or
- (b) where the proprietor of an allotment or his predecessor in title has for more than 15 years been in possession of the whole or part of any surplus area—include in the certificate of title of that proprietor so much of that surplus so held in possession as does not exceed the area attributable to his allotment; or
- (c) in any case, make such adjustments as he considers equitable and expedient.

PART XVII. – POWERS OF REGISTRAR AND DEPUTY REGISTRAR.

155. REGISTRAR MAY REFUSE TO RECEIVE CERTAIN INSTRUMENTS.

Where the Registrar is of the opinion that an instrument submitted to him for registration—

- (a) contains matter contrary to law; or
- (b) by reason of an omission or misdescription has not been duly completed; or
- (c) does not comply with a provision of this Act; or
- (d) contains an error, alteration or erasure,

the Registrar may—

- (e) refuse to receive the instrument; or
- (f) request that—
 - (i) the instrument be appropriately amended or completed and re-submitted; or
 - (ii) a fresh instrument be submitted in its place.

156. PRODUCTION OF INSTRUMENTS FOR REGISTRATION OF DEALING, ETC.

(1) Where a transaction is about to be effected the Registrar may—

- (a) require a person to produce all instruments in his possession or in his control which relate to the transaction; and
- (b) summon a person to appear and give evidence in relation to the transaction; and
- (c) administer an oath or require a person to make and subscribe a declaration of the truth of the statements made by him in his examination under Paragraph (b).

(2)^[97] ^[98] A person who, on a written requisition under Subsection (1)(a) or (b)—

- (a) refuses or neglects to produce an instrument or to allow it to be inspected; or
- (b) refuses or neglects to give evidence; or
- (c) knowingly misleads or deceives the Registrar,

is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(3) Where an instrument or information that is withheld appears to the Registrar to be material, he is not bound to proceed with the transaction.

157. SURVEY PLAN REQUIRED IN CERTAIN CASES.

(1) Subject to Subsection (2), where a registered proprietor desires to deal with land or amend a certificate of title relating to land the Registrar may require the proprietor to deposit at the office of the Registrar a plan and survey information in respect of that land.

(2) The plan and survey information required under Subsection (1) shall be—

- (a) prepared, at the cost of the proprietor, subject to the requirements of the Registrar; and
- (b) certified by such persons and authorities and in such manner as the Registrar directs; and
- (c) deposited at the office of the Registrar within such period as the Registrar directs.

(3) If a proprietor neglects or fails to comply with a requirement under Subsection (1), the Registrar is not obliged to proceed with the registration of the dealing.

(4) The Registrar shall retain and register a plan deposited in accordance with this section, and the numbers of the allotments marked on the plan may be used to describe the land for the purpose of dealings with an allotment according to the plan.

158. REGISTRAR MAY DISPENSE WITH PRODUCTION.

(1) Where the Registrar sees reasonable cause for so doing, he may dispense with production of an instrument of title for the purpose of Sections 22 and 25 and in that case may require proof to be made by statutory declaration or otherwise of the identity of the person dealing with the land with the person who is registered as the proprietor of the land.

(2) Where production has been dispensed with under Subsection (1), the Registrar shall notify in the memorial entered under Section 25(1) or (2) that no endorsement of the memorial has been made on the duplicate instrument, and the transaction shall then be as valid and effectual as if the endorsement had been made.

(3) The Registrar shall give, by advertisement in the National Gazette and in at least one newspaper circulating in the country at least 14 days' notice of his intention to dispense with production of an instrument under this section.

159. INFORMAL DOCUMENTS MAY BE REGISTERED.

(1) Notwithstanding anything in this Act but subject to Subsection (3), where in the opinion of the Registrar, significant loss or inconvenience would otherwise be likely to arise, he may register an instrument signed by a registered proprietor although the instrument is not—

- (a) ^[99] in the approved form; or
- (b) otherwise in accordance with the provisions of this Act,

and the instrument takes effect as if it were in registrable form.

(2) The reference in Subsection (1) to a registered proprietor includes a reference to a person claiming through or under that proprietor.

(3) A document referred to in Subsection (1) shall not be registered unless—

- (a) it purports to create an estate or interest provision for the registration of which is made in this Act; and
- (b) it would in equity, apart from the provisions of this Act, be regarded as vesting the estate, interest or encumbrance in the person intended to take under the document.

(4) Where an application is made to the Registrar for registration of a document referred to in Subsection (1), the Registrar may register the applicant as proprietor of the estate or interest—

- (a) immediately; or
- (b) at the expiration of a period determined by the Registrar,

and the Registrar may direct such other entries to be made in the Register, and such notices and advertisements to be published as he deems necessary.

160. PRODUCTION OF INSTRUMENTS WRONGLY ISSUED, ETC.

(1) Where it appears to the satisfaction of the Registrar that—

- (a) an instrument has been—
 - (i) issued to a person in error; or
 - (ii) fraudulently or wrongly obtained by a person; or
- (b) an instrument is fraudulently or wrongly retained by a person; or
- (c) an instrument held by a person contains a misdescription of the boundaries, area or position of land; or
- (d) an instrument held by a person contains an entry or endorsement—
 - (i) made in error; or
 - (ii) fraudulently or wrongly obtained; or
- (e) an instrument of title is held by a party to an ejectment action whose right to the land has been determined,

he may summon that person to deliver up the instrument.

(2) Where a person refuses or neglects to comply with a summons under Subsection (1), or cannot be found, the Registrar may apply to the Court to issue a summons for that person to appear before the Court and show cause why the instrument should not be delivered up.

(3) Where a person served with a summons issued under Subsection (2) refuses or neglects to attend before the Court at the time appointed by the summons, the Court may issue a warrant directing the person so summoned to be apprehended and brought before the Court for examination.

(4) On the appearance before the Court of a person summoned under Subsection (2), or apprehended by the warrant under Subsection (3), the Court may examine him on oath and order him to deliver up the instrument.

(5) Where a person refuses or neglects to comply with an order under Subsection (4), the Court may commit him to a corrective institution for a period not exceeding six months unless the instrument is sooner delivered up.

(6) Where a person—

- (a) has absconded or keeps out of the way so that a summons under Subsection (2) cannot be served on him; or
- (b) has refused or neglected to comply with an order under Subsection (4),

the Registrar shall, if the circumstances of the case so require—

- (c) issue to the proprietor of the land an instrument as provided in this Act in the case of a certificate of title lost or destroyed; and
- (d) ^[100] enter in the Register—

- (i) notice of the issue of an instrument and the circumstances under which it was issued; and
- (ii) such other particulars as he thinks necessary.

161. CANCELLATION AND CORRECTION OF INSTRUMENTS AND ENTRIES.

(1) Subject to Subsection (2), the Registrar may—

- (a) cancel or correct an instrument delivered up under Section 160; and
- (b)^[101] in any other case, on such evidence as appears to him sufficient, correct errors or omissions in—
 - (i) the Register or an entry in the Register; or
 - (ii) the other duplicate certificate of title or an entry on that duplicate.

(2) Where a correction is made under Subsection (1)—

- (a) the Registrar—
 - (i) shall not erase or render illegible any words; and
 - (ii) shall affix the date on which the correction was made together with his initials; and
- (b)^[102] the Register or other duplicate certificate of title so corrected has the same validity and effect as if the error had not been made except as regards an entry made in the Register before the time of correcting the error.

(3) Where the Registrar is satisfied that a matter in a certificate of title does not affect the land to which the certificate relates he may record on the title the cancellation of that matter in such manner as he considers proper.

162. REPLACEMENT OF INSTRUMENT OF TITLE.

(1) Where an instrument of title has been lost, destroyed or defaced, the registered proprietor or, if he is dead, his legal personal representative, may apply to the Registrar for a replacement instrument of title or official copy.

(2) An application under Subsection (1) shall be accompanied by—

- (a) such evidence as the Registrar considers sufficient of the loss, destruction or defacing; and
- (b) particulars of all mortgages, charges or other matters affecting the land or the title to the land.

(3) The Registrar may—

- (a) on receipt of an application made in accordance with Subsections (1) and (2), together with the prescribed fee; or
- (b) on his own volition,

if he considers it necessary, replace an instrument of title by making a new instrument of title or official copy, as the circumstances require.

(4) When an application under this section relates to a lost or destroyed instrument of title the Registrar shall give at least 14 days' notice of his intention to make a new instrument of title or official copy by advertisement in the National Gazette and in at least one newspaper circulating in the country.

(5) A new certificate of title or official copy made under this section shall be—

- (a) endorsed with a memorial stating the circumstances under which it is made; and
- (b) available for all purposes and uses for which the original instrument of title would have been available and be as valid for all purposes as the original.

163. CAVEATS BY REGISTRAR.

The Registrar may—

(a) lodge a caveat on behalf of the State to prohibit dealing with land belonging to or supposed to belong to the State; and

(b) lodge a caveat on behalf of—

(i) a person under the disability of infancy, unsoundness of mind, or absence from the country; or

(ii) a person whose rights in the Registrar's opinion are likely to be endangered by fraud or improper dealing,

to prohibit dealing with land belonging to or supposed to belong to the person; and

(c) lodge a caveat, on behalf of a person whose rights, in the Registrar's opinion, are likely to be endangered or affected by misdescription of land or its boundaries, to prohibit dealing with the land.

164. SPECIAL CASE.

The Registrar may, and on the order of the Court shall, state a question of law in a special case for the opinion of the Court.

165. POWERS AND FUNCTIONS OF DEPUTY REGISTRAR.

(1) Subject to direction of the Registrar, a Deputy Registrar has and may exercise all the powers and functions of the Registrar under this Act.

(2) Notwithstanding Subsection (1)—

(a) non-compliance with a direction of the Registrar does not affect the validity of an act of a Deputy Registrar; and

(b) a person dealing with a Deputy Registrar is not required to see and enquire whether a restriction or limitation has been imposed by the Registrar on the exercise of his powers or performance of his functions by a Deputy Registrar.

PART XVIII. – MISCELLANEOUS.

166. CUSTODIAN FOR TRUST LAND.

(1) In this section “land” means land, whether or not under this Act.

(2) An office of Custodian for Trust Land is hereby established.

(3) The Custodian is a corporation sole under the name Custodian for Trust Land and has capacity in that name—

(a) to sue and be sued; and

(b) with the written consent of the Minister, to take, purchase, hold, sell, lease or otherwise deal with estates or interests in land.

167. APPOINTMENT OF CUSTODIAN.

(1) The Minister shall, by notice in the National Gazette, appoint a person to be the Custodian.

(2) An appointment under Subsection (1) takes effect or shall be deemed to have taken effect, as the case may be—

- (a) in the case of the first appointment—on the commencement date; and
- (b) in the case of a subsequent appointment—at the time that the previous office holder ceases to hold office for any reason.

168. CERTAIN INSTRUMENTS NEED NOT REFER TO SUCCESSORS OF THE CUSTODIAN.

(1) In this section “officer” means a person referred to in Section 169.

(2) Subject to the requirements of this Act and of any other law which is applicable to the disposition of land, an instrument by which a person purports to dispose of land or an estate or interest in land in favour of the Custodian without the word “successors” passes to the Custodian the whole of the interest (whether fee simple or otherwise) which the person had power to dispose of in the land, estate or interest.

(3) An instrument—

- (a) by which a person purported at any time before the commencement date to dispose of land or an estate or interest in land in favour of an officer without the word “successor”; and
- (b) which was otherwise effective,

shall be deemed at all times to have had the effect of passing to the officer, subject to Subsection (1), the whole of the interest (whether fee simple or otherwise) which the person had power to dispose of in that land, estate or interest.

169. REFERENCES TO FIRST ASSISTANT SECRETARY, ETC.

(1) In this section “land” means land, whether or not under this Act.

(2) In relation to anything done or to be done on or after the commencement date in relation to land, a reference in a law or document to—

- (a) the Director of District Services and Native Affairs; or
- (b) the Director of Native Affairs; or
- (c) the Director of District Administration; or
- (d) the Director, Division of District Administration, Department of the Administrator; or
- (e) the First Assistant Secretary, Department of the Administrator; or
- (f) the First Assistant Secretary, Division of District Administration, Department of the Chief Minister and Development Administration; or
- (g) the First Assistant Secretary, Division of District Administration, Department of the Prime Minister and Development Administration; or
- (h) the First Assistant Secretary, Division of District Administration, Department of the Prime Minister; or
- (i) the First Assistant Secretary, Division of District Administration, Department of Provincial Affairs; or
- (j) the First Assistant Secretary, Division of District Administration, Department of Decentralization; or
- (k) the Trustee for Natives,

shall be read as a reference to the Custodian.

170. PARTITION.

Coparceners, joint tenants or tenants in common of an estate or interest may effect a partition by executing a transfer, lease or such other instrument as, in accordance with this Act, the nature of the estate or interest requires.

171. WRITS OF EXECUTION.

(1) No writ of execution issued under a judgement binds or affects as to purchasers, mortgagees or creditors, an estate or interest unless and until—

- (a) ^[103] a memorial of the writ is entered in the Register; and
- (b) within three months after the date of the entry, the writ is executed and put into force.

(2) The operation of Subsection (1) is not affected by the fact that a purchaser, mortgagee or creditor had actual or constructive notice of the writ.

(3) ^[104] ^[105] On proof to his satisfaction that a writ of execution the subject of an entry under Subsection (1) has been discharged or satisfied, the Registrar may enter in the Register a memorandum to that effect, and on the making of that entry the writ of execution shall be deemed to be discharged or satisfied.

(4) ^[106] ^[107] Where an estate, interest or security is sold under a writ of execution registered under this section, the officer or person appointed to execute the writ shall execute a transfer of the estate, interest or security to the purchaser in the approved form.

(5) A transfer referred to in Subsection (4) is subject to—

- (a) all equitable mortgages and liens notified by caveat lodged with the Registrar before the date of registration of the writ of execution; and
- (b) ^[108] all other encumbrances notified by memorandum in the relevant folio of the Register.

(6) ^[109] ^[110] The Registrar on receiving a transfer referred to in Subsection (4), shall make an entry of the receipt in the relevant folio of the Register, and the purchaser shall then, subject to this section, be the transferee or proprietor of the estate, interest or security the subject of that transfer.

172. CERTIFICATE OF TITLE CONCLUSIVE EVIDENCE IN ACTION FOR SPECIFIC PERFORMANCE.

In an action for specific performance brought by the registered proprietor against a person who has contracted to purchase the land, the certificate of title of the registered proprietor—

- (a) is conclusive evidence that he has a good and valid title to the land mentioned or described in that certificate of title; and
- (b) entitles him to a decree for the specific performance of the contract.

173. SEARCHES OF REGISTER AND COPIES OF INSTRUMENTS.

^[111] (1) ^[112] ^[113] A person may, on payment of the prescribed fee, have access to the Register for the purpose of search during the hours and on the days appointed by the Registrar or specified under the regulations.

(2) A person, on payment of the prescribed fee, may search for and obtain copies of an instrument affecting land which has been lodged or deposited in the office of the Registrar, whether the instrument has been cancelled or not.

174. CERTIFIED COPIES TO BE FURNISHED AND TO BE EVIDENCE.

(1) The Registrar, on payment of the prescribed fee, shall furnish to a person applying for it at a reasonable time a certified copy of a registered instrument affecting land.

(2) A certified copy, signed by the Registrar and sealed with his seal, shall be received in evidence in a court of justice or before a person having by law or by consent of parties authority to receive evidence, as prima facie proof of all the matters contained in or endorsed on the original instrument.

175. EXECUTION OF INSTRUMENTS BY THE STATE.

The Minister may, on behalf of the State, sign an instrument for the purpose of transferring or otherwise dealing with land.

176. EXECUTION OF INSTRUMENTS BY CORPORATION.

A requirement under this Act that an instrument be signed is sufficiently complied with, in the case of a corporation, if the common seal of the corporation is affixed to the instrument with a certificate, verified by the signature of the proper officer of the corporation, that the seal was affixed by that officer.

177. PERSONS MAY BE ACCOUNTED DEAD IN CERTAIN CASES.

(1) Where—

(a) a person (in this section called “the claimant”) alleges on motion or petition to the Court that he is entitled to registration of an estate or interest under this Act on the death of another person (in this section called “the prior interest holder”); and

(b) the claimant adduces evidence that the prior interest holder has died,

the Court may, in its discretion, order that unless the prior interest holder is produced in court or is otherwise shown to be living, the prior interest holder shall, for the purposes of this Act, be accounted as dead.

(2) If in consequence of an order under Subsection (1) a person has been deprived of an estate or interest under this Act and afterwards it appears that he is living or was living at the time of that deprivation, the Court may give such relief as is appropriate in the circumstances.

178. CONSENT, ETC., MAY BE ENDORSED.

(1) Where the consent or direction of a person is required in relation to a disposition of land or an estate or interest under this Act, that consent or direction may be given, subject to Subsection (2), by endorsing the instrument executed for the purpose of that disposition.

(2) The endorsement under Subsection (1) shall be—

(a) expressed in the words “I consent hereto”; and

(b) signed by the person giving the consent or direction; and

(c) attested in accordance with Section 19.

179. REPRESENTATION IN CASES OF INCAPACITY.

(1) In this section—

“incapable person” means an infant, person of unsound mind or a person under any other legal disability;

“representative” means—

- (a) in the case of an incapable person who is an infant—his guardian; and
- (b) in the case of an incapable person who is a person of unsound mind—his committee; and
- (c) in the case of an incapable person in respect of whom an application has been made under Subsection (4)—the representative so appointed.

(2) Where an incapable person is interested in an estate or interest, the representative of the person may, in the name and on behalf of the person, do anything required or permitted by this Act to be done in relation to that estate or interest.

(3) All things done by a representative under Subsection (1) are as effectual as if the incapable person had done those things himself with full legal capacity.

(4) Where—

- (a) an incapable person is interested in an estate or interest and does not have a representative; and
- (b) it is necessary or expedient that a thing, required or permitted by this Act, be done in relation to that estate or interest,

an application may be made to the Court for the appointment of a representative for the purpose of doing that thing.

(5) An application under Subsection (4) may be made on the petition of—

- (a) a person on behalf of the incapable person; or
- (b) any other person interested in the doing of the thing.

180. WITNESS EXPENSES.

A person summoned to attend before the Registrar as a witness in respect of—

- (a) an instrument required to be produced; or
- (b) an act, matter or thing authorized by this Act to be done, proceeded with or enquired into by or before the Registrar,

shall have his necessary expenses tendered to him as required by law on service of a subpoena to a witness in an action.

181. PROTECTION OF REGISTRAR.

The Registrar is not personally liable for anything done or omitted to be done by him in good faith in the exercise of his powers or the performance of his functions under this Act.

182. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters, that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for—

- (a) regulating the practice of the office of the Registrar under this Act; and
- (b) prescribing the fees and contributions including a minimum fee or contribution payable under this Act.

183. REPEAL.

The Acts specified in Schedule 1 are repealed.

PART XIX. – TRANSITIONAL.

184. RIGHTS AND LIABILITIES TO CONTINUE.

(1) The purpose of this section is to continue in existence, in accordance with this Act, all rights and liabilities, so far as they are consistent with this Act, which existed under the repealed Act immediately before the commencement date as if those rights and liabilities had been created under this Act.

(2) Subject to this Part, all things and circumstances, so far as they are consistent with this Act, created, made, commenced, done, issued, given, granted or continued under a provision of the repealed Act and existing immediately before the commencement date shall be deemed to have been created, made, commenced, done, issued, given, granted or continued, as the case may be, under the corresponding provision of this Act.

(3) A thing continued by this section is subject to the same incidents, so far as they are consistent with this Act, which applied immediately before the commencement date, in relation to that thing.

(4) Without in any way limiting the operation of Subsection (2)–

(a) all land which immediately before the commencement date was subject to the repealed Act is subject to this Act; and

(b) the reference in that subsection to things includes applications, caveats, certificates of correctness, certificates of title, certified copies, charges, consents, covenants and powers, Crown Leases, directions, discharges of mortgages and charges, easements, endorsements, exemptions, Government leases, instruments of nomination, leases and subleases, maps, memorials, mortgages, notices, orders, plans, powers of attorney and revocations, registers, requisitions, summonses, surrenders, transfers and transmission certificates.

(5)^{[114] [115]} An instrument registered under the repealed Act is not inconsistent with this Act by reason only that the instrument is not in the form approved under this Act.

(6) Subsection (2) does not apply to appointments under Section 6 of the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted) or to appointments under Section 7 of the Real Property Act, 1913 of the former Territory of Papua (Adopted).

185. FORMER REGISTER BOOKS.

^[116] The Register Book established under the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted) and the Register Book established under the Real Property Act 1913 of the former Territory of Papua (Adopted) are incorporated into and form part of the Register provided for under this Act.

186. REGISTER OF GOVERNMENT LEASES, ETC.

(1) The Register of Government Leases established under the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted) and the Register of Crown Leases established under the Real Property Act, 1913 of the former Territory of Papua (Adopted) are incorporated into and form part of the Register of State Leases.

(2) A reference in a law or document to the Register of Government Leases or the Register of Crown Leases shall, in relation to anything done or to be done after the commencement date, be read as a reference to the Register of State Leases.

187. REGISTER OF POWERS OF ATTORNEY.

The register of powers of attorney established under the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted) and the register of powers of attorney established under the Real Property Act, 1913 of the former Territory of Papua (Adopted) are incorporated into and form part of the register of powers of attorney provided for under this Act.

188. INSTRUMENT OF ENCUMBRANCE TO CONTINUE AS CHARGE.

An instrument executed under Section 46(2) of the Real Property Act, 1913 of the former Territory of Papua (Adopted) and registered before or after the commencement date shall continue in existence in accordance with Section 184 of this Act as if it were a charge executed under Section 62(2) of this Act.

189. REGISTRAR AND DEPUTY REGISTRAR TO CONTINUE.

The Registrar of Titles and each Deputy Registrar of Titles holding office under the repealed Act immediately before the commencement date continue in office as if appointed under Section 4 and are not required to make a declaration under Section 5.

190. CERTAIN DOCUMENTS MAY BE ACCEPTED.

(1) Subject to Subsection (2), the Registrar may accept for registration an instrument apparently prepared for registration under the repealed Act.

(2) The Registrar shall not accept an instrument under Subsection (1) if, in his opinion, that instrument—

(a) would not have been entitled to registration under the repealed Act; or

(b) differs significantly from the approved form and that it would not cause undue hardship to have an instrument executed in the approved form.

(3) An instrument referred to in this section takes effect on registration as if it were in registrable form.

191. LAND HELD BY DIRECTOR, ETC.

(1) Where, immediately before the commencement date, a person referred to in Section 169 was registered under the repealed Act as the owner or proprietor of an estate or interest, the Custodian is deemed to be registered as proprietor of that estate or interest.

(2) Where an estate or interest is affected by Subsection (1) and the Registrar considers it convenient to do so, he may record on the title to the estate or interest the Custodian as the proprietor.

192. REFERENCES TO “OWNER”.

In relation to anything done or to be done after the commencement date, a reference in an instrument under the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted) (whether registered before or after the commencement date) to “owner” shall be read as a reference to “proprietor”.

193. TRANSFER OF FUNDS.

All money standing to the credit of—

(a) the Assurance Fund established by Section 170 of the Lands Registration Act 1924 of the former Territory of New Guinea (Adopted); and
(b) the Assurance Fund established by Section 141 of the Real Property Act, 1913 of the former Territory of Papua (Adopted),

is, by virtue of this section, transferred to and stands to the credit of the Assurance Fund established by this Act.

SCHEDULE 1 – REPEALED ACTS.

Sec. 183.

Real Property Act, 1913 (P)

Lands Registration Act 1924 (TNG)

Land Registration (Insurance Fund) Act 1969.

SCHEDULE 2 – RIGHT OF CARRIAGE-WAY.

Sec., 43, 53.

PART 1 – TRANSFER OF FREEHOLD LAND.

Together with full and free right for–

(a) the transferee under this transfer; and
(b) the registered proprietor or proprietors for the time being of the land hereby transferred or a part of that land,

and his, her and their tenants, servants, agents workmen and visitors to go, pass and repass at all times and for all purposes with or without animals or vehicles or both to and from the land hereby transferred or a part of that land, through, over and along the road or way or roads or ways, as the case may be, delineated and coloured brown on the said map.

PART 2 – LEASE OF LAND.

Together with full and free right for–

(a) the lessee under this lease; and
(b) his transferees,

and his, her and their tenants, servants, agents, workmen and visitors to go, pass and repass at all times during the continuance of this lease and for all purposes with or without animals or vehicles or both to and from the land hereby demised or a part of that land, through, over and along the road or way or roads or ways, as the case may be, delineated and coloured brown on the said map.

SCHEDULE 3 – COVENANTS IMPLIED BY SHORT FORM IN LEASES.

Column 1. Item No.	Column 2. Short Form.	Column 3. Covenant Implied.
1.	“that he will insure”	<p>(a) he will insure, and so long as the term expressed in the lease has not expired will keep insured, in some public insurance office to be approved by the lessor, against loss or damage by fire to the full amount specified in the lease, or, if no amount is specified, to their full value, all buildings, tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire; and</p> <p>(b) he will at the request of the lessor hand over to and deposit with him the policy for the insurance referred to in Paragraph (a), and produce to him the receipts for the premiums payable on account of that insurance; and</p> <p>(c) all money received under or by virtue of the insurance referred to in Paragraph (a), shall, in the event of loss or damage by fire, be laid out and expended in making good the loss or damage; and</p> <p>(d) if default is made in observance or performance of the covenant specified in Paragraph (a)–</p> <p>(i) the lessor may without prejudice to and concurrently with the powers granted him by his lease under the Land Registration Act insure the buildings, tenements or premises; and</p> <p>(ii) the costs and charges of the insurance effected by virtue of Subparagraph (i) shall, until the lease expires, be a charge on the land;</p>
2.	“and paint outside every alternate year”	and also will in every alternate year during the currency of the lease paint all the outside woodwork and ironwork belonging to the premises specified in the lease with two coats of paint in a workmanlike manner;
3.	“and paint and paper inside every third year”	and will in every third year during the continuance of the lease paint inside the premises such parts as at present are painted with two coats of paint in a workmanlike manner, and repaper with paper of the same quality as at present, such parts of the premise as are now papered;
4.	“and will fence”	and also will during the continuance of the lease erect, put up and maintain a good and substantial fence on the boundaries of the land mentioned in the lease, or on the boundaries on which no substantial fence now exists;
5.	“and cultivate”	and also will at all times during the continuance of the lease cultivate, use and manage all such parts of the land specified in the lease as are or shall be broken up or converted into tillage in a proper and husbandlike manner and will not impoverish or waste the land;
6.	“that the lessee will not use the said premises as a shop”	and also that the lessee will not convert, use or occupy the said premises specified in the lease or a part of those premises into or as a shop, warehouse or other place for

- carrying on a trade or business, or permit or suffer the premises or a part of the premises to be used for any such purpose or otherwise than as a private dwelling-house without the written consent of the lessor;
7. “and will not carry on offensive trades” and also that no noxious, noisome or offensive act, trade, business, occupation or calling shall at any time during the term of the lease be used, exercised, carried on, or permitted, or suffered in or on the premises specified in the lease, and that no act, matter or thing shall at any time during the term of the lease be done in or on the premises or any part of the premises which shall or may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the occupiers or owners of the adjoining lands;
 8. “and will not without leave assign or sublet” and also that the lessee shall not, without the written consent of the lessor first had and obtained, during the term of the lease, assign, transfer, demise, sublet or set over or otherwise by any act or deed procure the lands or premises specified in the lease or any of them or a part of those lands or premises to be assigned, transferred, demised, sublet or set over to any person;
 9. “and will not cut timber” and also that the lessee shall not, without the written consent of the lessor, cut down, fell, injure or destroy growing or living timber or timber-like trees standing and being on the premises specified in the lease;
 10. “and will carry on the business of a publican and conduct the same in an orderly manner” and also that the lessee will at all times during the continuance of the lease use, exercise and carry on in and on the premises specified in the lease the trade or business of a licensed victualler or publican and keep open and use the inn and building, standing on the land, as and for an inn or public-house for the reception, accommodation and entertainment of travellers, guests and other persons resorting to the inn or public-house or frequenting it and manage and conduct the trade or business in a quiet and orderly manner and will not do or commit or permit or suffer to be done or committed an act, matter or thing whereby or by means of which a licence shall or may be forfeited or become void or liable to be taken away, suppressed or suspended in any manner;
 11. “and will apply for renewal of the licence” and also shall, from time to time during the continuance of the term of the lease, at the proper times for that purpose, apply for and endeavour to obtain at his own expense all such licences as are or may be necessary for carrying on the trade or business of a licensed victualler or publican in and on the premises the subject of the lease and for keeping the inn standing on the land open as and for an inn or public-house;
 12. “and will facilitate the transfer of” and also shall, and will, at the expiration or other sooner determination of the lease, sign and give such notice or

licence”

notices and allow such notice or notices of a renewal or transfer of a licence, as are required by law to be affixed to the inn standing on the land, to be affixed to that inn and remain so affixed during such time or times as are necessary or expedient in that behalf, and generally to do and perform all such further acts, matters and things as are necessary to enable the lessor or any other person authorized by him to obtain the renewal of a licence or a new licence or the transfer of a licence then existing and in force.

SCHEDULE 4 – COVENANT IMPLIED BY SHORT FORM IN MORTGAGES.

Sec. 65.

Column 1. Item No.	Column 2. Short Form.	Column 3. Covenant Implied.
1.	“that he will insure”	<p>(a) he will insure, and so long as the term expressed in the mortgage has not expired will keep insured, in some public insurance office to be approved by the mortgagee, against loss or damage by fire to the full amount specified, in the mortgage, or if no amount is specified, to their full value, all buildings, tenements or premises erected on the land which are of a nature or kind capable of being insured against loss or damage by fire; and</p> <p>(b) he will at the request of the mortgagee hand over to and deposit with him the policy for the insurance referred to in Paragraph (a) and produce to him the receipts for the premiums payable on account of the insurance; and</p> <p>(c) all money received under or by virtue of the insurance referred to in Paragraph (a) shall, in the event of loss or damage by fire, be laid out and expended in making good the loss or damage; and</p> <p>(d) if default is made in observance or performance of the covenant specified in Paragraph (a)–</p> <p>(i) the mortgagee may, without prejudice to and concurrently with the powers granted him by his mortgage under the Land Registration Act, insure the buildings, tenements or premises; and</p> <p>(ii) the costs and charges of the insurance effected by virtue of Subparagraph (i) shall, until the mortgage is redeemed, be a charge on the land.</p>

- ^[1] Section 2(1) (definition of “Register Book”) repealed and replaced by Act No. 46 of 1996, s1.
^[2] Section 2(1) (definition of “approved form”) inserted by Act No. 46 of 1996, s1.
^[3] Section 2(1) (definition of “Register Book”) repealed and replaced by Act No. 46 of 1996, s1.
- ^[4] Division III.1: heading amended by Act No. 46 of 1996, s10 and Schedule.
- ^[5] Section 8(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[6] Section 8(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[7] Section 8(2A) inserted by Act No. 46 of 1996, s2.
^[8] Section 8(2A) inserted by Act No. 46 of 1996, s2.
- ^[9] Section 9 repealed and replaced by Act No. 46 of 1996, s3.
- ^[10] Section 10(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[11] Section 10(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[12] Section 11(2) amended by Act No. 46 of 1996, s10 and Schedule.
^[13] Section 11(2) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[14] Section 18 repealed and replaced by Act No. 46 of 1996, s4.
- ^[15] Section 20(2) amended by Act No. 46 of 1996, s5.
^[16] Section 20(2) amended by Act No. 46 of 1996, s5.
- ^[17] Section 25(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[18] Section 25(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[19] Section 25(2) amended by Act No. 46 of 1996, s10 and Schedule.
^[20] Section 25(2) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[21] Section 25(5) amended by Act No. 46 of 1996, s10 and Schedule.
^[22] Section 25(5) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[23] Section 25(7) added by Act No. 46 of 1996, s6.
^[24] Section 25(7) added by Act No. 46 of 1996, s6.
- ^[25] Section 26(2) amended by Act No. 46 of 1996, s10 and Schedule.
^[26] Section 26(2) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[27] Section 29 amended by Act No. 46 of 1996, s10 and Schedule.
- ^[28] Section 31(5) amended by Act No. 46 of 1996, s10 and Schedule.
^[29] Section 31(5) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[30] Section 33(1)(b) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[31] Section 35(2) amended by Act No. 46 of 1996, s10 and Schedule.
^[32] Section 35(2) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[33] Section 35(4) added by the *Land Registration (Amendment) Act 1994* (No. 11 of 1994).
^[34] Section 35(4) added by the *Land Registration (Amendment) Act 1994* (No. 11 of 1994).
- ^[35] Section 36(1)(a) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[36] Section 36(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[37] Section 38(2)(a) amended by Act No. 46 of 1996, s10 and Schedule.

^[38] Section 38(7)(b) amended by Act No. 46 of 1996, s10 and Schedule.

^[39] Section 42(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[40] Section 42(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[41] Section 42(3) amended by Act No. 46 of 1996, s10 and Schedule.

^[42] Section 42(3) amended by Act No. 46 of 1996, s10 and Schedule.

^[43] Section 42(4) amended by Act No. 46 of 1996, s7.

^[44] Section 42(4) amended by Act No. 46 of 1996, s7.

^[45] Section 45(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[46] Section 45(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[47] Section 48(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[48] Section 48(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[49] Section 49(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[50] Section 49(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[51] Section 49(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[52] Section 49(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[53] Section 54(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[54] Section 54(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[55] Section 55(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[56] Section 55(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[57] Section 56(2)(a) amended by Act No. 46 of 1996, s10 and Schedule.

^[58] Section 62(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[59] Section 62(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[60] Section 62(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[61] Section 62(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[62] Section 66(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[63] Section 66(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[64] Section 72(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[65] Section 72(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[66] Section 72(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[67] Section 72(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[68] Section 77(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[69] Section 77(1) amended by Act No. 46 of 1996, s10 and Schedule.

^[70] Section 84(a) amended by Act No. 46 of 1996, s10 and Schedule.

^[71] Section 93(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[72] Section 93(2) amended by Act No. 46 of 1996, s10 and Schedule.

^[73] Section 95(1)(a) amended by Act No. 46 of 1996, s10 and Schedule.

- ^[74] Section 97(2) amended by Act No. 46 of 1996, s10 and Schedule.
^[75] Section 97(2) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[76] Section 104(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[77] Section 104(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[78] Section 105 amended by Act No. 46 of 1996, s10 and Schedule.
- ^[79] Section 107(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[80] Section 107(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[81] Section 109(4) amended by Act No. 46 of 1996, s10 and Schedule.
^[82] Section 109(4) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[83] Section 109(7) amended by Act No. 46 of 1996, s10 and Schedule.
^[84] Section 109(7) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[85] Section 116(1) amended by Act No. 46 of 1996, s10 and Schedule.
^[86] Section 116(1) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[87] Section 125 amended by Act No. 46 of 1996, s10 and Schedule.
- ^[88] Section 129(1)(b) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[89] Section 134(d) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[90] Section 135 amended by Act No. 46 of 1996, s10 and Schedule.
- ^[91] Section 136(1) was amended by Act No. 46 of 1996, s8.
^[92] Section 136(1) was amended by Act No. 46 of 1996, s8.
- ^[93] Section 149(a) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[94] Section 150(1)(c) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[95] Section 153(3) amended by Act No. 46 of 1996, s10 and Schedule.
^[96] Section 153(3) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[97] Section 156(2) was amended by Act No. 46 of 1996, s9.
^[98] Section 156(2) was amended by Act No. 46 of 1996, s9.
- ^[99] Section 159(1)(a) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[100] Section 160(6)(d) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[101] Section 161(1)(b) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[102] Section 161(2)(b) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[103] Section 171(1)(a) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[104] Section 171(3) amended by Act No. 46 of 1996, s10 and Schedule.
^[105] Section 171(3) amended by Act No. 46 of 1996, s10 and Schedule.
- ^[106] Section 171(4) amended by Act No. 46 of 1996, s10 and Schedule.
^[107] Section 171(4) amended by Act No. 46 of 1996, s10 and Schedule.

[\[108\]](#) Section 171(5)(b) amended by Act No. 46 of 1996, s10 and Schedule.

[\[109\]](#) Section 171(6) amended by Act No. 46 of 1996, s10 and Schedule.

[\[110\]](#) Section 171(6) amended by Act No. 46 of 1996, s10 and Schedule.

[\[111\]](#) Section 173: headnote amended by Act No. 46 of 1996, s10 and Schedule.

[\[112\]](#) Section 173(1) amended by Act No. 46 of 1996, s10 and Schedule.

[\[113\]](#) Section 173(1) amended by Act No. 46 of 1996, s10 and Schedule.

[\[114\]](#) Section 184(5) amended by Act No. 46 of 1996, s10 and Schedule.

[\[115\]](#) Section 184(5) amended by Act No. 46 of 1996, s10 and Schedule.

[\[116\]](#) Section 185 amended by Act No. 46 of 1996, s10 and Schedule.

© 1998 University of the South Pacific

PacLII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)

URL: http://www.pacii.org/pg/legis/consol_act/lra1981191