

# **DRAFT FOUR**

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**BILL**

**ENTITLED**

## **THE LANDS ACT, 2016**

The objective of the Bill is to revise and consolidate the laws on land, with the view to harmonizing those laws to ensure sustainable land administration and management, effective land tenure and efficient surveying and mapping regimes and to provide for related matters.

DATE OF ASSENT:

Passed by Parliament and Assented to by President.

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## ***PART ONE – IMPLEMENTATION AND INTERESTS IN LAND***

### **1. Implementation**

The Lands Commission shall be the lead agency responsible for the implementation of this Act.

### **2. Interests in Land**

The following are the interests in land:

- (a) allodial title;
- (b) customary law freehold;
- (c) common law freehold;
- (d) usufructuary interest;
- (e) leasehold interest; and
- (f) customary tenancies.

### **3. Allodial Title**

The allodial title is

- (a) the highest or ultimate interest in land;
- (b) held by a stool, skin, clan or family; and
- (c) usually acquired through conquest, pioneer discovery and settlement, gift, purchase or agreement.

### **4. Customary Law Freehold**

The customary freehold

- (a) is an absolute interest in land and it is not subject to any proprietary obligations except the jurisdictional and cultural rights of the stool, skin, clan or family which holds the allodial title;
- (b) is acquired when a person or group of persons purchase land outright from the stool, skin, clan or family which holds the allodial title; and
- (c) is of perpetual duration and is inheritable and alienable without the consent of or payment to the stool, skin, clan or family.

### **5. Common Law Freehold**

(1) A common law freehold arises from a transaction to which the rules of law generally known as common law are applicable and

- (a) is of perpetual duration or for any other uncertain period.

- (b) subject to the jurisdictional and cultural rights of the stool, skin, clan or family which holds the allodial title, is held free from obligations to any other person.
- (2) The holder of a common law freehold may create lesser interests in the land including leases in which case the holder of the freehold retains a reversionary interest.

## **6. Usufructuary Interest**

- (1) The usufruct is an interest in land
  - (a) acquired in the exercise of an inherent right by a subject or a member of a group which holds the allodial title through the development of an unappropriated portion of the group's land or by virtue of an express grant; or
  - (b) acquired through settlement by permission of the holder of an allodial title to a non-indigene or group of non-indigenes for a period of not less than fifty years; and
  - (c) which is inheritable and alienable.
- (2) Where alienation of the usufruct is to
  - (a) a person who is not a member of the stool, skin, clan or family which holds the allodial title, or
  - (b) a member of a group of non-indigenes or a non-indigene who is not an indigene granted permission to settle as provided in paragraph (b) of subsection (1),the alienation is subject to the consent of the stool, skin, clan or family and the performance of established customary obligations.

## **7. Leasehold Interest**

A lease

- (a) is an interest in land for a duration which is certain or capable of being made certain;
- (b) arises when a person who holds an allodial title, customary freehold, common law freehold or usufructuary interest conveys to another person an interest in land for a specified term subject to terms and conditions; and

- (c) does not exhaust the interest of the grantor in the land.

## **8. Customary Tenancies**

A customary tenancy

- (a) is a lesser interest in land which is created by contract;
- (b) arises where a stool, skin, clan or family which holds the allodial title or a person who holds a customary freehold or usufructuary interest enters into an agreement with another person to grant that other person an interest in land upon agreed terms and conditions; and
- (c) may involve the payment of rent, the sharing of the produce of a farm or the physical partition of the farm or land.

## **9. Incidents of Interests in Land**

Subject to sections 3, 4, 5, 6, 7, and 8 the bundle of rights and obligations that attach to any form of interest in land shall be determined by the applicable source of law which is the basis of that interest.

## **10. Stool, Skin, Clan and Family Lands**

- (1) A stool, skin, clan or family land shall vest in the appropriate stool, skin, clan or family on behalf of, and in trust for the subjects of the stool, skin, clan or family in accordance with customary law and usage.
- (2) A person shall not create an interest in, or right over any stool, skin, clan or family land which vests in that person, another person or a body of persons a freehold interest in that land howsoever described.
- (3) Sub-section (2) does not take away the inherent right of a subject of a stool or skin, or a member of a clan or family to the usufructuary interest in a vacant portion of the stool, skin, clan or family lands.

## **11. Application of Act 481 to Clan and Family Lands**

- (1) The provisions of the Office of the Administrator of Stool Lands Act, 1994 (Act 481), apply to lands where the allodial title is held by a clan or family.
- (2) Despite subsection (1), for the purposes of distribution of revenue to clan or family land, ten percent of the revenue accruing from the clan or family land shall be paid to the office of the administrator of stool lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions:
  - (a) forty-five percent to the clan or family; and

- (b) fifty-five percent to the District Assembly within the area where the clan or family land is situated.

## **12. Restrictions on Acquisition of Land by Non-Citizens**

- (1) An interest in, or right over, any land in Ghana shall not be created which vests in a person who is not a citizen of Ghana a freehold interest in any land in Ghana.
- (2) An agreement, deed or conveyance of whatever nature, which seeks, contrary to subsection (1), to confer on a person who is not a citizen of Ghana any freehold interest in, or right over, any land is void.
- (3) A freehold interest in or right over any land in Ghana, held on the twenty-second day of August, 1969 by a person who is not a citizen of Ghana is deemed to be a leasehold interest for a period of fifty years.
- (4) The leasehold interest under subsection (3) shall be at a peppercorn rent and commence from the twenty-second day of August, 1969.
- (5) The freehold reversionary interest in any land converted into a leasehold under subsection (3) shall vest in the President on behalf of, and in trust for, the people of Ghana.
- (6) An interest in, or right over, any land in Ghana shall not be created to vest in any person who is not a citizen of Ghana a leasehold for a term of more than fifty years at any one time.
- (7) A leasehold interest held on the twenty-second day of August, 1969 by a person who is not a citizen of Ghana is deemed to be an interest or right subsisting for a period of fifty years commencing from the twenty-second day of August, 1969.
- (8) The reversionary interest in a leasehold under subsection 7 shall vest in the original lessor.
- (9) Where land is jointly acquired by a citizen and a non-citizen, the restrictions on the non-citizen shall apply to the citizen.
- (10) For the purpose of this section, a company is not a citizen if more than forty percent of the equity share holding is held by non-citizens.

## **13. Prohibition of Discriminatory Practices**

A decision or practice in respect of land under customary tenure, whether the land is individually or communally held shall be in accordance with the customs, traditions and

practices of the community concerned and a decision or practice which discriminates on grounds of

- (a) gender, race, colour, religion, creed, and ethnic origin, except as provided for under Customary Law in relation to acquisition of interests in land, or
- (b) social or economic status

in contravention of Article 17 of the Constitution is void.

## ***PART TWO- LAND ADMINISTRATION AND LAND MANAGEMENT***

### ***CUSTOMARY LAND MANAGEMENT***

#### **14. Management of Stool, Skin, Clan and Family Lands**

Stool, skin, clan or family land shall be managed in accordance with this Part.

- (1) A chief, clan head, family head and or any other authority in charge of the management of stool, skin, clan or family land, is a fiduciary charged with the obligation to discharge the management function for the benefit of the people of the stool, skin, clan or family concerned and is accountable as a fiduciary.
- (2) A chief, clan head, family head or any other authority in charge of the management of stool, skin, clan or family land shall be transparent, open, fair and impartial in making decisions affecting the specified land.
- (3) A fiduciary under this section who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than twelve months or both.
- (4) The provisions of the Head of Family (Accountability) Act, 1985 (PNDCL 114) apply to this Part with the necessary modifications.

#### **15. Customary Land Secretariats**

- (1) A stool, skin, clan or family that owns land may in accordance with this Act establish a Customary Land Secretariat as prescribed by regulations made under this Act for the management of its land.
- (2) The Office of the Administrator of Stool Lands shall provide technical and advisory services in the establishment of a Customary Lands Secretariat.
- (3) A Customary Land Secretariat shall at the end of every three months submit to the Office of the Administrator of Stool Lands (OASL) records of each transactions recorded by the Customary Land Secretariat.
- (4) The records required under subsection (3) shall be in the form prescribed in Regulations made under this Act.

#### **16. Functions of the Customary Land Secretariat**

- (1) A Customary Land Secretariat shall
  - (a) record the rights and interests in land, keep and maintain accurate and up-to date records of land transactions in the Customary Land Secretariat area;
  - (b) provide a catalogue of existing customary rights and interests in land in the



Customary Land Secretariat area including indication of persons with the capacity to make grants of the interests and rights in the Customary Land Secretariat area;

- (c) provide relevant records on land, information on hierarchy of rights and interests in land and laid down processes for effective dispute resolution;
  - (d) facilitate the settlement of land disputes through alternative dispute resolution;
  - (e) facilitate the preparation of participatory local planning schemes;
  - (f) undertake community education, sensitization and awareness creation on land issues;
  - (g) prepare periodic accounts of all revenue received at the Customary Land Secretariats in accordance with Article 36(8) of the 1992 Constitution;
  - (h) perform any other functions as determined by the land owning authority.
- (2) A Stool Lands Officer responsible for a district shall within the district perform functions conferred under this Act and Regulations made under the Office of the Administrator of Stool Lands Act, 1994 (Act 481) and this Act relating to a Customary Land Secretariat.
- (3) A Stool Lands Officer responsible for a district shall
- (a) maintain a public register of Customary Land Secretariats in the applicable district as specified in the First Schedule; and
  - (b) shall oversee the administration of the Customary Land Secretariats within the district in order to ensure that they comply with their mandates.

### **17. Structure and Staffing of Customary Land Secretariats**

- (1) The Customary Land Secretariats may determine and appoint their required staff on merit and in accordance with best human resource practice and gender considerations.
- (2) Customary Land Secretariats may have a head and other staff that may be necessary for effective management of the secretariat.

### **18. Powers of the Customary Land Secretariats**

The Customary Land Secretariat may

- (a) charge and collect fees for the services they render to the public; or
- (b) enter into agreement with other bodies to perform specific tasks for a fee.

### **19. Funds of Customary Land Secretariats**

- (1) The sources of funds of a Customary Land Secretariat are

- (a) in respect of stool and skin land, a portion of the land revenue paid to the land owning stool or skin and the traditional authority by the office of the administrator of stool lands.
  - (b) in respect of clan or family land, a portion of the revenue paid to the clan or family by the office of the administrator of stool lands.
  - (c) a proportion of the revenue paid to the District Assembly by the office of the administrator of stool lands.
  - (d) fees for services rendered by the Customary Land Secretariats as prescribed by Regulations; and
  - (e) other sources approved by the Customary Land Secretariat or the land owning authority.
- (2) The proportions under subsection (1) shall be determined by the administrator of stool lands in consultation with the affected stool, skin, clan or family and District Assembly.

## **20. Areas Reserved for Common Use**

- (1) A community may set aside or recognise one or more areas of land and water resources within the community for common use by the members of that community.
- (2) The boundaries of any area of land which has been recognized or set aside for common use shall be marked out in the manner, including any manner as is customary among the persons who will use that land, so as to enable those persons to recognize and keep to those boundaries.
- (3) An area of land recognized or set aside for common use shall be
- (a) used and managed in accordance with customary law and usage; and
  - (b) consistent with the terms of a management plan and the overall local planning arrangement.
- (4) A management plan shall be prepared by the Customary Land Secretariat and in the absence of a Customary Land Secretariat the community may prepare the plan which may extend to cover the use and management of more than one area of common land.
- (5) A person who is not a member of the community may, with the agreement of the community, use common land in accordance with the terms of the customary law and usage and the management plan applicable to that land.

- (6) The basic rights and duties of the members of a community under a management plan include
- (a) the right to make reasonable use of common land, jointly with all other members of the community, in accordance with customary law and usage and the terms of the plan;
  - (b) the right to use the resources of the common land in accordance with customary law and usage and the terms of the plan;
  - (c) the right to exclude nonmembers of the community from the common land, other than those nonmembers who have been permitted to enter and use the common land;
  - (d) the duty to comply with and assist in the enforcement of the rules set out in the plan and laws relating to environmental protection;
  - (e) the duty to bear a reasonable and proportionate share of any expenses or losses arising from the management of the common land or from any natural disaster affecting the common land;
  - (f) the duty not to transfer any rights of occupation or use of the resources of the common land to any person whether for a fee or otherwise, except in accordance with customary law and usage and the terms of the plan;
  - (g) the duty to comply with decisions of the community or any dispute settlement body established by the community or other applicable laws to settle disputes arising from the management of the common land; and
  - (h) other basic rights and duties that may be prescribed by the community or other applicable law.
- (7) The community may prescribe sanctions for breach of the duties in subsection (6).
- (8) The community may make proposals regarding the sanctions under subsection (7) to the appropriate District Assembly for adoption and passage into bye-laws.

### ***SURVEY AND MAPPING***

#### **21. Power to Direct Survey**

The Lands Commission may subject to Article 18 of the Constitution, the Lands Commission Act, 2008 (Act 767) and the Survey Act, 1962 (Act 127) and Regulations made under Act

767 and Act 127 direct that the boundaries of any land be demarcated, or that a land survey be made of any land, or both.

## **22. Power of Entry and Survey**

- (1) The Lands Commission may in writing authorize any official surveyor or licenced surveyor, together with workmen, to enter upon any land to carry out survey work specified in the written authorization.
- (2) A person authorized under subsection (1) shall, on demand by the occupier of any land upon which the person enters, produce to that occupier a copy of the authority.
- (3) A person authorized under subsection (1) shall not enter into any building or upon any enclosed court or garden attached to a dwelling house unless that person
  - (a) has first sought and obtained the consent of the occupier, the building, enclosed court or garden, or
  - (b) failing the consent, has given the occupier 14 days notice in writing of the intention to enter.
- (4) A person authorized shall under subsection (1) carry and display an identification in a manner prescribed under this Act.

## **23. Compensation for Damage Caused**

- (1) Where compensation is claimed as a result of damage to land, in pursuance of the direction of the Lands Commission, a Valuer shall assess the value of damage caused.
- (2) The person who commissioned the demarcation shall pay to the claimant compensation commensurate with the assessed value of the damage.
- (3) A dispute on the sufficiency of the amount payable may be resolved through alternative dispute resolution.

## **24. Erection of Boundary Marks**

An official surveyor or Licensed Land Surveyor may, where the boundaries of a land under survey have not already been correctly marked in the prescribed manner, mark out the boundaries of the land in the manner prescribed by Regulations.

## **25. Penalty for Destroying Boundary Marks**

- (1) A person who willfully or unlawfully destroys, moves, or alters a boundary or survey mark, commits an offence and is liable on summary conviction to a fine not more than

five hundred penalty units or to imprisonment for a term of not more than one year or both.

- (2) Despite subsection (1), a person may destroy, move or alter a boundary or survey mark if that person has the authority of the Lands Commission for that purpose.

## **26. Penalty for Obstructing Survey**

A person who willfully obstructs or resists

- (a) an official surveyor or licenced land surveyor in the execution of that duty of that surveyor; or
  - (b) a workman or other person acting under the direction of that Land Surveyor,
- commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than twelve months or both.

## ***VALUATION OF LAND***

### **27. Power to Conduct Valuation**

The Lands Commission may subject to Article 18 of the Constitution, the Lands Commission Act, 2008 (Act 767), the Local Government Act, 1993 (Act 462) and Regulations made under Act 767 cause to be valued any land for any purpose.

### **28. Valuation Certification**

A valuation certified by the Lands Commission shall be deemed to be correct until proved otherwise upon objection or appeal.

### **29. Forms of Valuation**

- (1) For the purposes of this Act, valuation includes
  - (a) capital valuation;
  - (b) rental valuation except valuation of rented premises as defined in the Rent Act, 1963 (Act 220);
  - (c) valuation of the estate of deceased person;
  - (d) rating valuation;
  - (e) valuation ordered by courts of competent jurisdiction ;
  - (f) valuation for compensation under compulsory acquisition; and
  - (g) valuation for stamp duty assessment.
- (2) Rating valuation shall be conducted in accordance with the Local Government Act, 1993 (Act 462).
- (3) The Minister, in consultation with the Lands Commission, may by Legislative Instrument make Regulations to provide for the matters specified in subsection (1).

## ***TRANSFER OF INTERESTS IN LAND***

### **30. General Provisions on Transfers**

A holder of an interest in land may, by an instrument, transfer the land or interest in the land to any person with or without consideration.

### **31. Person Qualified to Prepare Conveyance**

A conveyance for a fee or reward, either directly or indirectly, shall only be prepared by a legal practitioner in terms of the Legal Profession Act, 1960 (Act 32).

### **32. Mode of Transfer**

- (1) A transfer of an interest in land other than the transfer in section 34, shall be in writing and signed by
  - (a) the person making the transfer or by that person's agent duly authorized in writing; and
  - (b) the person to whom the transfer is made,unless they are relieved against the need for writing.
- (2) A transfer of an interest in land made in a manner other than that provided in this section does not confer an interest on the person to whom the transfer was made.

### **33. Contracts for Transfer**

A contract for the transfer of an interest in land is not enforceable if it is not

- (a) evidenced in writing and signed by the person against whom the contract is to be proved or by a person who was authorized to sign on behalf of that person:  
or
- (b) exempt under section 34.

### **34. Transactions exempt from Sections 32 and 33**

- (1) Sections 32 and 33 do not apply to a transfer or contract for the transfer of an interest in land which takes effect
  - (a) by operation of law;
  - (b) by operation of the rules of equity relating to the creation or operation of resulting, implied or constructive trusts;
  - (c) by order of the court;
  - (d) by will or upon intestacy;
  - (e) by prescription;
  - (f) by a lease for a term not exceeding three years, whether or not the lessee is given power to extend the term;
  - (g) by a licence or profit other than a concession required by an enactment to be in writing; or
  - (h) by oral grant under customary law.

- (2) Sections 32 and 33 are subject to the rules of equity including the rules relating to unconscionability, fraud, duress and part performance.

### **35. Records of Customary Transfers**

- (1) An oral grant of an interest in land under customary law may be recorded as specified in the First Schedule, or as near to that Schedule as circumstances permit.
- (2) The record shall
  - (a) incorporate the essential features of the transaction sought to be effected;
  - (b) be signed by the person making the transfer or by the lawfully authorized agent of that person for that purpose; and
  - (c) certified by a Registrar of a Court having jurisdiction within any part of the area to which the transaction relates.
- (3) Where there is a functioning Customary Land Secretariat that Secretariat shall record and maintain a register of oral grants.
- (4) An adequate plan of the land to which the transfer relates shall, if available, be incorporated as provided in subsection (2).
- (5) The Customary Land Secretariat shall without delay and upon payment of a fee prepare seven copies of the record referred to in subsection (2).
- (6) The Customary Land Secretariat shall deliver to the person making the transfer and the person to whom the transfer is made copies of the record certified by the Secretariat and the other copies shall be dealt with as may be provided in Regulations made under this Act.
- (7) Customary Transactions recorded under this section are not subject to payment of stamp duty.

### **36. Parties to a Conveyance**

- (1) In every conveyance of an interest in land, the expressions used to denote the parties to the conveyance shall be deemed to include their heirs, successors, personal representatives and assigns, except insofar as a contrary intention is expressed in the conveyance or appears by necessary implication.
- (2) The persons expressed to be parties to a conveyance shall, until the contrary is proved, be presumed to be of full age and capacity at the date of the conveyance.



- (3) In a conveyance for valuable consideration of an interest in land by a spouse during marriage, the spouses shall be stated to be parties to the conveyance.
- (4) Where contrary to subsection (3) a conveyance is made to only one spouse that spouse shall be deemed to be holding the land or interest in land in trust for the spouses.

### **37. Subject-Matter of Conveyance**

- (1) Any word used in a conveyance indicating the intention of the person making the transfer to create or dispose of an interest in land is sufficient for that purpose.
- (2) A conveyance passes all interests and rights in the land which the person making the conveyance has power to convey, unless a contrary intention is expressed in the conveyance, or appears by necessary implication.
- (3) A conveyance shall not be construed to convey any title or right which the person making the transfer does not have the power to convey.

### **38. Interest Taken by Person to Whom Transfer is made**

- (1) A conveyance of an interest in land may operate to pass the possession or right of possession, without actual entry, but subject to prior rights to the conveyance.
- (2) A conveyance of an interest in land to a corporation sole by its corporate designation without words of limitation passes to the corporation the whole interest which the person making the transfer had power to convey, unless a contrary intention appears in the conveyance.
- (3) A conveyance of an interest in land to two or more persons, except a conveyance in trust, creates an interest in common and not in joint tenancy, unless it is expressed in the conveyance that
  - (a) the person to whom the conveyance is made takes jointly, or as joint tenant; or
  - (b) the conveyance is made to them and the survivor of them, or unless it manifestly appears from the tenor of the conveyance that was intended to create an interest in joint tenancy.

### **39. Person not party to a conveyance**

A person who is not a party to a conveyance may take an interest in land, or the benefit of any condition, right of entry, covenant or agreement which is the subject of the conveyance.

### **40. Effect of Extinction of Reversion**

Where a reversion expectant on a lease of land is surrendered or merged, the immediately following reversion shall as against the lessee be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger of that reversion.

### **41. Voidable Conveyances**

- (1) A conveyance of land or an interest in land which is made with intent to defraud is voidable at the instance of a person who is prejudiced by the conveyance.
- (2) Subsection (1) does not apply to the law of insolvency, and does not extend to a conveyance of an interest in land where the transferee took the interest in good faith and for valuable consideration.
- (3) A disposition for no consideration of an interest in land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser, except that a conveyance shall not be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made.

### **42. Unconscionability**

The court may set aside or modify an agreement to convey or a conveyance of an interest in land on the ground of unconscionability where it is satisfied after considering all the circumstances, including

- (a) the bargaining conduct of the parties,
- (b) their relative bargaining positions,
- (c) the value to each party of the agreement reached, and
- (d) evidence as to the commercial setting, purpose and effect of their agreement, that the transaction is unconscionable.

### **43. Other Grounds for Varying or Setting Aside Conveyance**

The court may set aside or modify an agreement to convey or a conveyance of an interest in land on grounds which include

- (a) mistake;
- (b) fraud;
- (c) illegality;
- (d) duress;
- (e) misrepresentation; and
- (f) undue influence.

### **44. Conveyance to Persons Jointly, or to Person making Transfer**

- (1) An interest in land may be conveyed by a person to be held jointly by that person with another person in the same manner as it may be conveyed by that person to another person.
- (2) A person may in one capacity convey an interest in land to be held in a different capacity by the same person.
- (3) Two or more persons may convey property vested in them to any one or more of themselves in the same manner that they could convey that property to a third party.
- (4) Notwithstanding subsections (1) to (3), the court may set aside a conveyance in order to prevent the commission or continuance of a breach of a fiduciary duty.

### **45. Restrictions on Transfer of land by spouse**

- (1) In the absence of a written agreement by the spouses in a marriage to the contrary, a person shall not, in respect of land or interest in land acquired for valuable consideration during marriage,
  - (a) sell, exchange, transfer, mortgage or lease any land;
  - (b) enter into a contract for the sale, exchange, transfer, mortgage or lease of land; or
  - (c) give away land inter vivos, or enter into any other transactionwithout the written consent of the spouse of that person.

- (2) Despite subsection (1) consent is not required for vesting assents pursuant to the grant of probate or letters of administration.

#### **46. Agreement with Two or more Persons**

- (1) An agreement with two or more persons jointly to pay money or to make a conveyance, or to do any other act relating to land, to those persons, or for the benefit of those persons, implies an obligation to do the act to or for the benefit of the survivor or survivors of those persons.
- (2) Subsection (1) applies only so far as a contrary intention is not expressed in the agreement and has effect subject to the provisions contained in the agreement.
- (3) Any such agreement, whether express or implied, entered into by a person with one or more other persons, shall be construed and be capable of being enforced in the same manner as if it had been entered into with the other person or persons separately.

#### **47. Apportionment of Conditions on Severance**

- (1) Where the reversionary interest in land comprised in a lease is severed, or where the term granted by a lease is avoided or ceases in respect of part of the land comprised in the lease, a condition contained in the lease shall be apportioned and shall continue to apply to the severed parts of the reversionary interest as severed.
- (2) A condition referred to in subsection (1) applies to the term in respect of which each severed part is reversionary, or the term in the part of the land in respect of which the term has not been surrendered, avoided or otherwise ceased, in the same manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, had alone originally been comprised in the lease.

#### **48. Implied Covenants by Transferor**

- (1) In a conveyance for valuable consideration there are implied the covenants for right to convey, quiet enjoyment, freedom from encumbrances and further assurance, in the terms set out in Part I of the Second Schedule.

- (2) In a conveyance by way of assignment or sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to validity and past observance of the head lease, in the terms set out in Part II of the Second Schedule.
- (3) In a conveyance by way of sublease of leasehold property for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and production of title deeds and delivery of copies, in the terms set out in Part III of the Second Schedule.
- (4) In a conveyance there shall be implied a covenant by the person who conveys as trustee or under an order of the court that that person has not encumbered the subject-matter of the conveyance, in the terms set out in Part IV of the Second Schedule, which covenant shall be deemed to extend only to that person's own act.
- (5) The covenants referred to in subsection (1) are deemed to be made by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed, with the person or each of the persons to whom the conveyance is made, or, where the conveyance is made to joint tenants, to the tenants jointly.
- (6) Where a conveyance states that a person is conveying by the direction of another person, then for the purposes of this section the person giving the direction is deemed to be the person conveying the subject-matter and to observe the covenants.
- (7) Except as otherwise provided in subsection (8) to (18) a covenant implied under this section may be varied or extended by the conveyance and the variation or extension, shall operate in the same manner and with the same consequences as if they were implied under this section.
- (8) A lease in respect of bare land in which the lessee is an indigene of the area where the land is situated is subject to automatic renewal; where the lessee has developed
  - (a) the land for residential purposes;
  - (b) a farm of perennial crops on the land; or
  - (c) a commercial or industrial property on the land,for the same duration as the original lease when the lease expires.
- (9) A lessee under subsection (8) shall discharge the established customary duties to the lessor.
- (10) Unless otherwise expressly provided in the lease, where bare land is leased to a citizen of Ghana who is not an indigene of the area where the land is situated, there

shall be an implied term in the lease that the lessee is entitled to a renewal of the lease.

- (11) The renewal in subsection (10) are subject to terms agreed by the parties to the lease and their successors, agents or assignees, taking into consideration any improvement of the land by the lessee.
- (12) Where the parties fail to agree on terms for the renewal of the lease, the dispute shall be resolved by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).
- (13) If the parties fail to resolve the dispute under Act 798, they may settle the dispute in court.
- (14) For the purpose of subsection (13), the jurisdiction shall be determined by the value of the land in dispute.
- (15) Subject to section 12(6), a lease for a fixed term between a Ghanaian and a non-Ghanaian is not subject to renewal unless otherwise expressly provided.
- (16) Where a non-Ghanaian exercises an option to renew a lease, the renewal is subject to the terms specified in the original lease and any new terms agreed on with the lessor.
- (17) Subject to the customs and traditions of the area where the land is situated, a conveyance of a usufructuary interest shall not specify any duration of the interest.
- (18) A holder of a usufructuary interest under section 48 (17) shall not alienate any interest in the land which is the subject of that interest to a person who is not entitled to that interest without the consent of and adequate payment to the allodial owner, which consent shall not be unreasonably withheld
- (19) A holder of an allodial title shall not alienate land which is the subject of a usufructuary interest without
  - (a) the consent of; and
  - (b) prompt payment of fair and adequate compensation which in any case shall not be less than 25% of the plots or the market value of the plots being disposed of.
- (20) A variation or extension under subsection (7) which wholly removes the personal liability of the person who bears responsibility under the covenant, is void.

#### **49. Implied Covenants by person to whom transfer is made**

- (1) In a conveyance by way of lease for valuable consideration there are implied the covenants relating to payment of rent, repair to adjoining premises, alterations and additions, injury to walls, assignment and subletting, illegal or immoral user, nuisance or annoyance, and yielding up the premises, in the terms set out in Part V of the Second Schedule.
- (2) In a conveyance by way of sublease for valuable consideration there shall be implied the further covenants relating to future observance of the head lease and permission to carry out repair under the head lease, in the terms set out in Part VI of the Second Schedule.
- (3) In a conveyance by way of assignment for valuable consideration of land comprised in a lease, there are implied the covenants relating to payment of rent, future observance of the head lease, and indemnity, in the terms set out in Part VII of the Second Schedule.
- (4) Where rent is apportioned in respect of a land, with the consent of the lessor, the covenants in subsection (3) are implied in the conveyance of that land in the same manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land.
- (5) The covenants referred to in subsections (1) to (4) are deemed to be made by each person to whom transfer is made, as far as regards the subject-matter or share of the subject-matter expressed to be conveyed to the transferee, with each transferor, if more than one.
- (6) A covenant implied under this section may be varied or extended by the conveyance and after being varied or extended, shall operate as far as may be in the same manner and with the same consequences as if the variations or extensions were implied under this section.

#### **50. Persons to Take Benefit of Implied Covenant**

The benefit of a covenant implied under sections 48 or 49 are attached to the interest of the implied covenantee, and are capable of being enforced by a person in whom that interest or any part of the interest is vested.

### **51. Benefit of Covenants Relating to Land**

- (1) A covenant that relates to an interest in land of the covenantee is deemed to be made with the covenantee and the covenantee successors in title and the persons deriving title under the covenantee or the successors of the covenantee, and are enforceable by the successors of the covenantee to the same extent as by the covenantee.
- (2) For the purpose of subsection (1), in connection with covenants restrictive of the user of land, “successors in title” are deemed to include the owners and occupiers of the land of which the covenantee is intended to be benefited.
- (3) The benefit of a covenant relating to an interest in land may be made to run with the land without the use of any technical expression if the covenant is of a nature that enables the benefit to be made to run with the land.
- (4) For the purposes of this section, a covenant runs with the land when the benefit or burden of the covenant, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

### **52. Burden of Covenants Relating to Land**

- (1) A covenant relating to an interest in land of a covenantor or land capable of being bound by the covenantor is, unless a contrary intention is expressed, deemed to be made by the covenantor on behalf of the covenantor or the successors of the covenantor and a person deriving title under that covenantor, and is enforceable against the successors to the same extent as against the covenantor.
- (2) This section extends to a covenant to do some act in relation to the land, although the subject-matter may not be in existence when the covenant is made.
- (3) For the purposes of this Section, in connection with covenants restrictive of the user of land, “successors in title” include the owners and occupiers of the land.

### **53. Benefit of Covenants to Run with Reversion**

- (1) Rent reserved by a lease, and the benefit of a covenant or provision contained in the lease which makes reference to the subject matter of the covenant or provision, and required to be observed or performed on the part of the lessee, and every condition of re-entry and other condition contained in the lease, shall be attached to the reversionary interest in the land, or in any part of the land, immediately expectant on the term granted by the lease, despite severance of that reversionary interest.
- (2) A rent, covenant, right of re-entry or provision contained in the covenant referred to in subsection (1), may be recovered, received, enforced and taken advantage of by the



person entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

- (3) A person who by conveyance or otherwise becomes entitled under subsection (1) to rent, covenant, right of re-entry or provision may recover or receive the rent, enforce the covenant and rights or take advantage of the provision although that person becomes entitled to the rent, covenant, right of re-entry or provision after the condition of re-entry or forfeiture has become enforceable.
- (4) Subsection (3) does not render enforceable a condition of re-entry or any other condition waived or released before that person becomes entitled as provided in this Act.
- (5) This section has effect without prejudice to any liability affecting a covenantor or the covenantor's estate on the covenantor's death.

#### **54. Burden of Covenants to Run with Reversion**

- (1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease
  - (a) shall, to the extent that the lessor has power to bind the reversionary interest, immediately expectant on the term granted by the lease, be attached to that reversionary interest, or a part of that reversionary interest, despite severance of that reversionary interest, and
  - (b) may be taken advantage of or enforced by the person in whom the term is vested, and to the extent that the lessor has power to bind the person entitled to that reversionary interest that obligation may be taken advantage of and enforced against the person entitled.
- (2) Subsection (1) has effect without prejudice to any liability affecting a covenantor or the estate of the covenantor on the death of the covenantor.

#### **55. Restriction on re-entry and forfeiture**

- (1) A right of re-entry or forfeiture under a provision in a lease for a breach of a covenant, condition or agreement in the lease is not enforceable by action or otherwise, unless
  - (a) the lessor has served on the lessee a notice
    - (i) specifying the particular breach complained of;
    - (ii) requiring the lessee to remedy the breach, if the breach is capable of remedy; and

- (iii) requiring the lessee to make reasonable compensation in money for the breach, except where the breach consist of a non-payment of rent;
  - (b) the lessee has knowledge of the fact that the notice has been served, and
  - (c) the lessee fails, within a reasonable time after the service of the notice under paragraph (a), to remedy the breach, if it is capable of remedy, or to pay compensation, to the satisfaction of the lessor, for the breach or in the case of non-payment of rent, to pay interest at the prevailing bank rate in addition to the rent.
- (2) Where a notice is
  - (a) sent by registered mail addressed to a person at the last known address of the person in the Republic or by electronic mail where that is the normal mode of communication between the parties; and
  - (b) posted on the land which is the subject of re-entry.then for the purposes of subsection (1), that person shall be deemed, unless the contrary is proved, to have had knowledge of the fact that the notice had been served as from the time at which the letter would have been delivered in the ordinary course of post or the notice was posted on the land.
- (3) This section applies despite any provision to the contrary in the lease.

## **56. Relief against Forfeiture**

- (1) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any provision in a lease, or for non-payment of rent, the lessee of the property and also a sublessee of the property comprised in the lease or any part of the lease may, either in the lessor's action or in any action brought by the person for that purpose, apply to the Court for relief.
- (2) Subject to subsection (1), where a lessee applies to the Court for a relief, the Court may grant or refuse the relief having regard to the proceedings and conduct of the parties and to other circumstances.
- (3) A relief granted under subsection (2) may be on the terms as to costs, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain a similar breach in the future, that the Court in the circumstances of each case thinks fit.
- (4) Where a sublessee applies to the Court for relief, the Court may make an order vesting, the whole term of the lease or a lesser term of the property comprised in the

lease or a part of the lease in that sublessee on conditions as to the execution of a deed or other document, payment of rent, costs, damages, compensation, giving security or otherwise that the Court in the circumstances of each case thinks fit,

- (5) Despite subsection (4) a sublessee is not entitled to require a lease to be granted to that sublessee for any longer term than that sublessee had under the original sublease.

#### **57. Covenants to Repair**

- (1) Damages or compensation for a breach of a covenant or an agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether the covenant or agreement is express or implied, and whether general or specific, shall not exceed the amount by which the value of the reversion, whether immediate or not, in the premises is diminished owing to that breach.
- (2) Damages or compensation shall not be recovered for a breach of a covenant or agreement to leave or put premises in good state of repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, would at or shortly after the termination of the tenancy have been pulled down, or the structural alterations made in the premises would render valueless the repairs covered by the covenant or agreement.

#### **58. Waiver of Covenant in a Lease**

Where a lessor or a person deriving title under the lessor waives the benefit of a covenant or condition in a lease, the waiver shall extend only to a breach of the covenant or condition to which the waiver specifically relates and shall not operate as a general waiver of the benefit of that covenant or condition, unless a contrary intention appears.

#### **59. Effect of Licence Granted to Lessee**

- (1) A licence granted to a lessee shall, unless a contrary intention is expressed, extend only
  - (a) to a matter specifically authorized to be done or not to be done; or
  - (b) to the specific breach of any provision expressly referred to, and shall not bar any proceeding for a subsequent breach of the lease.
- (2) Despite the licence
  - (a) the rights under the covenants and the power of re-entry contained in the lease remain in force and are available as against a subsequent breach of a covenant,

condition or other matter not specifically authorized or waived, in the same manner as if the licence had not been granted; and

- (b) the condition or right of entry remains in force as if the licence had not been granted, except in respect of the particular matter authorized to be done.

#### **60. No Payment to be Exacted for Consent to Assign**

- (1) The payment of money for or in respect of a licence or consent to assign, sublet, or part with possession of, or dispose of, a land or property leased, shall not be required, unless the lease contains an express provision requiring that payment.
- (2) The prohibition imposed by subsection (1) shall not preclude the right to require the payment of a reasonable sum in respect of legal expenses incurred in relation to the licence or consent.
- (3) Despite subsection (1), in relation to stool, skin, clan and family lands, the Minister shall in consultation with the Lands Commission and the Administrator of Stool Lands make Regulations prescribing fees that are payable for or in respect of consent to assign, sublet, part with possession of, dispose of, mortgage, change of use, renewal of lease, surrender of lease and any other transaction relating to stool, skin, clan or family lands.

#### **61. Production and Safe Custody of Document**

- (1) A person in possession or control of documents of title is not entitled to retain them on conveying the whole interest in the subject-matter of the conveyance, but shall deliver them at the time of the conveyance to the transferee.
- (2) Where a person lawfully retains possession or control of documents and gives to another a written undertaking for production, delivery of copies or safe custody of those documents, then for the period of the possession or control of the documents that person and any other person having possession or control from to time are under an obligation, except for good cause shown,
  - (a) to produce the documents or any of them
    - (i) at a reasonable time for inspection or comparison with abstracts or copies by the person entitled to request production or by any other person authorized in writing by the person entitled;
    - (ii) in any proceeding of a Court or Commission of Inquiry, or on an occasion on which production may reasonably be required, for providing or supporting the title or claim of the person entitled to

request production, or for any other purpose relative to that title or claim;

- (b) to deliver to the person entitled to request them true copies or extracts, attested or unattested, of or from the documents or any of them; and
  - (c) to keep the documents safe, whole, uncanceled and undefaced.
- (3) A written undertaking for production or delivery of copies shall be performed at the written request of the person to whom the undertaking is given, or of a person, other than a lessee at a rent, who has or claims an interest or a right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of the documents to which that undertaking relates.
- (4) The costs and expenses of or incidental to the specific performance of an obligation imposed under subsection (2) for production or delivery of copies shall be paid by the person requesting performance, except where the person requesting performance apart from the undertaking would be entitled to possession of the documents.
- (5) A written undertaking for production or delivery of copies does not confer a right to damages for loss or destruction of, or damage to documents to which undertaking relates, from whatever cause arising.
- (6) A person who claims to be entitled to the benefit of a written undertaking for production or delivery of copies may apply to the Court for an order directing production of the documents to which the undertaking relates, or delivery of copies or extract, to that person or some other person on behalf of that person.
- (7) For the purposes of sub-section 6, the court may make an order
- (a) to give directions respecting the time, place, terms and manner of production or delivery, and
  - (b) as to costs or any other matter connected with the application.
- (8) A person who claims to be entitled to the benefit of a written undertaking for safe custody of a document may apply to the court to assess damages for any loss or destruction of document, and the court may
- (a) direct an inquiry into the amount of damages, and order payment of the damages by the person liable; and
  - (b) make an order as to costs or any other matter connected with the application.

- (9) A person who gives a written undertaking for production, delivery of copies or safe custody of documents shall satisfy any liability to give a covenant for production, delivery of copies or extracts, or safe custody of documents.
- (10) This section applies only so far as a contrary intention is not expressed in the written undertaking.
- (11) The rights conferred by the undertaking under this section are in addition to any other rights regarding
  - (a) the production or inspection; or
  - (b) the obtaining of copies of document,that are not satisfied by the giving of the undertaking, and have effect subject to the terms of the undertaking and to a provision in the document.

## **62. Good Title**

- (1) Good title consists of or commences with
  - (a) an enactment,
  - (b) a grant, vesting assent or conveyance from the Republic,
  - (c) a final judgment of a court of competent jurisdiction,
  - (d) a grant, conveyance, assignment or mortgage which is at least thirty years old and establishes that a person is entitled to convey an interest in the land.
- (2) Subsection 1(c) does not apply where there are conflicting judgments of courts of coordinate jurisdiction in respect of the same subject matter.
- (3) An intending assignee of a term of years may require the instruments creating the term, however old.
- (4) The intending purchaser of a reversion may require the instrument under which the reversionary interest arises, however old.
- (5) A purchaser shall not be deemed to be or ever to have been affected with notice of a matter or thing of which the purchaser might have had notice if the purchaser had investigated the title or made inquiries in regard to matters prior to the period of commencement of title ascertained in accordance with subsection (1), (2) or (3) unless the purchaser actually makes the investigation or inquiries.
- (6) Under a contract to grant or assign a term whether derived or to be derived out of freehold or leasehold interest in land, the intended lessee or assignee is entitled to call for the title to the freehold or for the lease,

- (7) Under a contract to sell and assign a term derived out of a leasehold interest in land, the intended assignee shall have the right to call for the title to the leasehold reversion.
- (8) Where a lease is made under a power contained in a will, enactment or any other instrument, a preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assignee, form part of the title, or evidence of the title, to the lease.
- (9) This section applies to contracts for exchange in the same manner as to contracts for sale.
- (10) This section applies only so far as a contrary intention is not expressed in the contract.

### **63. Other Statutory Conditions of Sale**

- (1) A purchaser of an interest in land shall not
  - (a) require the production, or an abstract or a copy, of any deed, will or any other document, dated or made before thirty (30) years, for the commencement of the title: or
  - (b) require information or make a requisition, an objection or inquiry, with respect to that deed, will or document, or the title prior to that time, although the deed, will or other document, or that prior title, is recited, agreed to be produced, or noticed.

and the purchaser shall assume, unless the contrary appears, that the recitals contained in the abstracted instruments, of any deed, will or any other document, forming part of that prior title, are correct and give the material contents of the deed, will or other document so recited, and that the document so recited was duly executed by the necessary parties.

- (2) Subsection (1) does not deprive a purchaser of the right to require the production or an abstract or copy of
  - (a) a power of attorney under which an abstracted document is executed;
  - (b) a document creating or disposing of an interest, power or an obligation which is not shown to have ceased or expired, and subject to which a part of the property is disposed of by an abstracted document;
  - (c) a document creating a limitation or trust by reference to which a part of the property is disposed of by an abstracted document.
- (3) Where an interest in land which is sold is held by a lease which is not a sublease, the purchaser shall assume, unless the contrary appears,

- (a) that the lease was duly granted, and
  - (b) that the covenants and provisions of the lease have been duly performed and observed up to the date of the actual completion of the purchase, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase.
- (4) Where an interest in land which is sold derives from a sublease, the purchaser shall assume, unless the contrary appears,
  - (a) that the sublease and every superior lease were duly granted;
  - (b) that the covenants and provisions of the sublease have been duly performed and observed up to the date of actual completion of the purchase, on production of the receipt for the last payment due for rent under the sublease before the date of actual completion of the purchase, and
  - (c) that the rent due under every superior lease, and the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.
- (5) Recitals, statements, and descriptions of fact, matters and parties contained in a deed, an instrument or a statutory declaration, twenty years old at the date of the contract, are, except so far as they may be proved to be inaccurate, sufficient evidence of the truth of those facts, matters and descriptions.
- (6) The inability of a vendor to give a purchaser a covenant or any other undertaking to produce and deliver copies of documents of title shall not be the basis of an objection to title if the purchaser will, on the completion of the contract, have an equitable right to the production of those documents.
- (7) The undertakings and covenants to produce and for safe custody of documents that the purchaser can require or requires shall be given at the expense of the purchaser, and the vendor shall bear the expense of perusal and execution on behalf of and by the vendor, and on behalf of and by necessary parties other than the purchaser.
- (8) A vendor is entitled to retain documents of title where
  - (a) the vendor retains a part of the land to which the documents relate; or
  - (b) the document consists of
    - (i) a trust instrument or other instrument creating a trust which is still subsisting; or
    - (ii) an instrument relating to the appointment or discharge of a trustee of a subsisting trust.



- (9) This section applies
  - (a) to contracts for exchange in the same manner as it applies to contracts for sale, and
  - (b) subject to a contrary intention expressed in the contract.
- (10) This Section shall not be construed as binding on a purchaser to complete the purchase where, on a contract made independently of this section, and containing provisions similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against the purchaser by a Court.

#### **64. Supplemental Instruments**

- (1) An instrument expressed to be supplemental to a previous instrument shall be read and have effect, as far as may be, as if it contained a full recital of the previous instrument.
- (2) Subsection (1) does not give a right to an abstract or production of the previous instruments, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

#### **65. Giving of Notices**

Unless otherwise provided in a conveyance, a notice required to be given under the conveyance shall be in writing and

- (a) a notice to the transferee is sufficiently served if
  - (i) left addressed to the transferee on the premises conveyed; or
  - (ii) sent to the transferee by registered post; or
  - (iii) left at the last known address of the transferee in the Republic; or
  - (iv) sent by secure electronic communication where that is the mode of communication between the transferee and transferor; or
  - (v) in the case of a company to its registered office in the Republic and
- (b) a notice to the transferor is sufficiently served if
  - (i) delivered to the transferor personally; or
  - (ii) sent to the transferor by registered post; or
  - (iii) left at the last known address of the transferor in the Republic; or
  - (iv) sent by secure electronic communication where that is the mode of communication between the transferee and transferor; or
  - (v) in the case of a company to its registered office in the Republic.

## **66. Execution of Conveyances**

- (1) A conveyance shall be executed by the grantor and the grantee each of whom must sign in the presence of the other and be attested by at least one witness.
- (2) Subsection (1) does not apply to a vesting assent.
- (3) Where an individual executes a conveyance, that individual shall sign or place the mark of the individual on the conveyance and sealing shall not be necessary.
- (4) Where a company to which the Companies Act, 1963 (Act 179) applies executes a conveyance, that conveyance shall be executed in accordance with Act 179
- (5) A conveyance is in favour of a purchaser, is duly executed by a corporation aggregate, other than a company referred to in subsection (3), if the seal of the corporation is affixed to the conveyance in the presence of and attested by a secretary or any other permanent officer or the deputy of the secretary, and a member of the board of directors or other governing body of the corporation or otherwise in accordance with the terms of the conveyance or enactment establishing or regulating that corporation.
- (6) The transferee under a conveyance is entitled to have that conveyance delivered to the transferee by the transferor as soon as practicable after execution of the conveyance by the transferor and the persons whose consent or concurrence is required.
- (7) A conveyance is executed by an individual who cannot read and write, if
  - (a) the conveyance is marked by that individual with that individual's mark or right thumb-print at the foot of the conveyance; and that individual's mark or thumb-print is attested by a witness who has clearly written that witness' name and address on the instrument and endorsed on the conveyance a statement to the effect that the conveyance was clearly and correctly read over and explained to that individual in a language that the individual appears to understand and approved of the contents of the conveyance; and
  - (b) in the case of an individual who is unable to make a mark, the conveyance is signed by some other person whom that individual has authorised in that behalf, and who endorses on the conveyance a signed notice to that effect.
- (8) A conveyance is deemed to have been executed by a body of persons not required by law to have a common seal, if the conveyance
  - (a) is signed by the persons who are authorised by any relevant enactment to sign the conveyance; or

- (b) is signed, in the absence of an express provision in any enactment, by the persons duly appointed in writing by that body of persons, evidence of which appointment shall be produced to the satisfaction of the Land Registrar; and
  - (c) has attached to it a plan endorsed at the back by both the grantor and grantee.
- (9) A conveyance is deemed to have been executed by a stool, skin, clan or family if the instrument is executed by all the individuals whose consent is by customary law a necessary condition for the conveyance to bind the stool, skin, clan or family;
  - (10) A conveyance is deemed to have been executed under a duly registered power of attorney if the conveyance is executed by the donee of the power either in the donee's name or in the name of the donor of the power.
  - (11) A conveyance is deemed to have been executed by an infant or person of unsound mind or any other disability, if the conveyance is executed by the person duly appointed in accordance with any law to represent that infant or person of unsound mind or other disability.

#### **67. Receipt in Conveyance and Customary Obligations**

- (1) A receipt for consideration, money or securities in the body of a conveyance is a sufficient discharge for the consideration, money or securities to the person paying or delivering them, without a further receipt for them being endorsed on the conveyance.
- (2) A receipt for consideration, money or any other consideration in the body of a conveyance or endorsed on the conveyance is sufficient evidence in favour of a subsequent purchaser, not having notice that the money or other consideration acknowledged to have been received was not in fact paid or given, wholly or in part, of the payment or giving of the whole of the money or other consideration.
- (3) In a conveyance of stool, skin, clan or family land, payment made for customary obligations shall be stated and the statement is sufficient evidence of the performance of customary obligation.

#### **68. Rules for Conveyances**

- (1) A conveyance may be described, at its commencement or otherwise, as a conveyance, an assignment, a lease, a sublease, a trust instrument, an appointment or otherwise, according to the nature of the transaction intended to be effected.
- (2) A conveyance shall be expressed in clear terms and in plain language, and in particular the words "lease", "conveys to", "interest", "land", "all" and "at" may be

used in preference to the words “demise”, “grants and conveys unto”, “estate”, “piece or parcel of land”, “all and singular” and “situate lying and being at” respectively.

- (3) In a conveyance, so far as practicable,
  - (a) months shall be written in words without abbreviation and years shall be written in figures;
  - (b) the names of the parties to the conveyance shall be written in full without abbreviation followed by their full residential and postal address or, in the case of a body corporate, its registered office or principal place of business;
  - (c) where any other registered conveyance is recited, its registered number shall be stated;
  - (d) sums of money shall be written fully in words without abbreviation, followed by the same amount expressed in figures within brackets.
- (4) A conveyance shall, unless otherwise provided for under this Act, be made on durable paper.
- (5) Failure to observe a provision of this section does not invalidate a conveyance or provision of a conveyance.
- (6) Where a date or sum of money is expressed both in words and in figures, and there is discrepancy between the words and the figures, the words shall prevail over the figures unless a contrary intention appears in the conveyance.

### **69. Model Precedents**

Instruments in the form of the model precedents contained in the Part VIII of the Second Schedule, or in similar form or using expressions to a similar effect, are sufficient, in regard to form and expression.

### **70. Damages and Penalty for Fraudulent Concealment**

- (1) A person disposing of property or an interest in property for valuable consideration to a purchaser, or an agent of that person, who with intent to defraud conceals from the purchaser an instrument, or encumbrance material to the titles, or falsifies the instrument, is liable to an action for damages by the purchaser or the person deriving title under the purchaser for a loss sustained by reason of the concealment or falsification of the instrument or the encumbrance.
- (2) In estimating damages, where the property or an interest in the property is recovered from the purchaser or the persons deriving title under the purchaser, the court shall

take into account any expenditure made by the purchaser or those persons in the improvement of the land.

- (3) Without prejudice to subsections (1) and (2), a public officer or any other person disposing of property or an interest in the property for valuable consideration to a purchaser, or an agent of that public officer or that person, who with intent to defraud conceals from the purchaser an instrument or an encumbrance material to the title, or falsifies that instrument, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or to a term of imprisonment of not more than two years or to both.

### ***ELECTRONIC CONVEYANCING***

#### **71. Transfer by Electronic Conveyancing**

- (1) Where in this Act, a transfer of land or an interest in land is required to be made by a conveyance that transfer is lawfully made if the transfer is by an electronic conveyance.
- (2) Except as otherwise provided in this Act and subject to modifications that are necessary, the provisions on conveyancing in this Act apply to an electronic conveyance.

#### **72. Structures for Electronic Conveyancing**

For the purpose of facilitating electronic conveyancing, the Commission shall as far as is practicable

- (a) establish a land information system equipped with the requisite information technology infrastructure;
- (b) train and equip selected staff with the appropriate knowledge and skills to manage the land information system; and
- (c) provide education generally on the land information system and particularly on electronic conveyancing for staff of the Commission, professionals who provide services in relation to land and the general public.

#### **73. Qualification for Electronic Conveyancing**

An electronic conveyance shall only be made by a qualified legal practitioner who has been granted access to the information system by the Commission.

#### **74. Conditions for Access to Electronic Conveyancing**

A legal practitioner may be granted access to provide electronic conveyancing service if the Commission is satisfied that the applicant has the facilities and equipment required to provide the service.

#### **75. Non-transferability of Access**

Access granted under section 74 is not transferable and is subject to conditions that the Commission determines are necessary.

#### **76. Mandatory Contents of an Electronic Conveyance**

An electronic conveyance made under this Act shall, without limiting any requirement for a conveyance under this Act

- (a) make provision for the time and date on which that conveyance takes effect;
- (b) the electronic signature of each person who authenticates the conveyance; and
- (c) have each electronic signature on the conveyance certified in accordance with the Electronic Transactions Act, 2008 (Act 772).

#### **77. Additional Requirements**

The Commission may, by Regulations made under this Act, prescribe additional requirements for electronic conveyancing.

### ***LAND REGISTRATION***

#### **78. Registrable Interests**

- (1) The interests in land which are registrable include:
  - (a) allodial;
  - (b) freehold;
  - (c) usufructuary;
  - (d) leasehold; and
  - (e) customary tenancies.
- (2) Condominiums, apartments and flats shall be registered in accordance with Regulations made under this Act.

#### **79. Registrable Rights**

The following rights in relation to land are registrable under this Act:

- (a) mortgages;

- (b) easements;
- (c) restrictive agreements;
- (d) profits *a prendre*;
- (e) power of attorney;
- (f) contractual licences; and
- (g) user rights under Certificate of Allocation

## ***TITLE REGISTRATION***

### **80. Qualification for Title Registration**

- (1) A person qualifies to register land in the name of that person if that person
  - (a) is the allodial owner;
  - (b) holds a usufructuary interest;
  - (c) holds a common law freehold;
  - (d) holds a customary law freehold;
  - (e) holds a leasehold interest, of which more than two years are unexpired; or
  - (f) holds a customary tenancy.
- (2) The Land Registrar shall register the Republic as
  - (a) proprietor of public lands;
  - (b) trustee of lands held by the Republic in trust; and
  - (c) proprietor of land that by operation of law become the property of the Republic .
- (3) Subject to subsections (4) and (5), an interest appertaining to or affecting land may be registered under this Act.
- (4) Where an interest will according to its terms expire without notice of termination within less than two years after the date on which an application for the registration of that interest is made, that interest shall not be registered under this Act although it may be renewable on notice.
- (5) Despite subsection (4), a licence in respect of minerals granted under the Minerals and Mining Act, 2006 (Act 703) or timber rights under the Timber Resources Management Act, 1998 (Act 547) or any other enactment shall be registered under this Act.

### **81. Demarcation and Survey of Boundaries**

- (1) Before an area is declared a registration district, the Lands Commission shall ensure that the boundaries of land which is likely to be affected by the declaration are demarcated or that a survey be made of the boundaries or both.
- (2) The Lands Commission shall direct an official surveyor or a licensed land surveyor or agents or workmen of the surveyor to enter upon land which the surveyor is appointed to demarcate and survey within the area likely to be affected by the declaration and may make the necessary enquiries or do anything necessary for effecting the demarcation of the boundaries and survey of that land.

### **82. Registry Map**

Prior to the declaration of an area as a registration district, the Lands Commission shall direct the Director of Survey and Mapping Division acting in consultation with the Director of the Land Registration Division to prepare a map or series of maps, to be called registry map, which shall be maintained in the Registry.

### **83. Alteration of Registry Map and Preparation of New Editions**

- (1) The Director of the Land Registration Division may require the Director of the Survey and Mapping Division to correct the line or position of a boundary shown on the registry map with the agreement of a person shown on the register to be affected by the correction, but a correction shall not be effected except on the instructions in writing of the Director of the Land Registration Division in the prescribed form.
- (2) Where the boundary of a parcel is altered on the registry map, the original number of that parcel shall be cancelled and a new parcel number allocated to it.
- (3) The Director of the Land Registration Division may require the Director of the Survey and Mapping Division to prepare a new edition of the registry map or a part of the registry map and there may be omitted from the new map a matter which the Director of the Land Registration Division considers obsolete.

### **84. Declaration of Registration Districts**

- (1) The Minister may, on the advice of the Commission, by legislative instrument declare any area specified in the instrument to be a title registration district.
- (2) Where an area of land is declared by the Minister to be a title registration district in accordance with this section, deeds registration and plotting in relation to deeds registration shall cease to be applicable in that designated title registration district.



### **85. Notice of Commencement of Demarcation**

The Director of the Survey and Mapping Division shall within a period of not less than seven days before the demarcation of lands in a title registration district begins, give notice of the demarcation and the time and place at which the demarcation will begin in the manner that the Director of Survey and Mapping Division consider appropriate to bring the notice of the demarcation to the attention of the persons likely to be affected by the demarcation.

### **86. Notice of Demarcation and Survey**

- (1) An official surveyor or licenced surveyor who is directed under section 81(2), to survey or demarcate land within a title registration district may cause a notice to be served on a person
  - (a) who owns, occupies or is otherwise interested in a land abutting the land to be surveyed or demarcated, or
  - (b) employed or connected with the management or cultivation of the land.
- (2) The surveyor may require any person referred to in subsection (1) to attend personally or by an agent before the surveyor at the time and place as may be stated in the notice for the purpose of identifying the boundaries of the land or providing information needed for purposes of the survey or demarcation.
- (3) The surveyor may by notice summon any person who in the opinion of the surveyor or in the opinion of the Land Registrar is in possession of information or document relating to the boundaries to attend before the surveyor and give the information or produce the document at the time and place specified in the notice.

### **87. Surveyor to Ensure Demarcation of Boundaries**

Subject to any general or particular directions issued by the Director of the Survey and Mapping Division, the official surveyor or licensed surveyor shall within each registration district

- (a) ensure that the boundaries of each parcel of land which is the subject of a claim are indicated or demarcated in accordance with the requirements of the notice given under section 93;
- (b) indicate the boundaries of
  - (i) any public roads, public rights of way and other public lands; and
  - (ii) any unclaimed land;

- (c) carry out any survey that may be required in the execution of a dispute settlement process;
- (d) prepare a demarcation index map of the registration district on which shall be shown every separate parcel of land identified by a distinguishing number, except that rivers and public roads are not required to be identified by a number.

### **88. General Boundaries**

- (1) The registry map and any plan filed in the Registry indicate the approximate boundaries and the approximate situation only of a parcel shown on the map and the plan.
- (2) Where an uncertainty or a dispute arises as to the position of a boundary, the Land Registrar shall advise the claimants to refer the dispute for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) for the purpose of the determination and indication of the position of the boundaries.
- (3) On the resolution of a dispute under subsection (2), the Land Registrar shall
  - (a) make a note to that effect on the registry map and in the land register; and
  - (b) file the plan or description as may be necessary to record the decision .
- (4) A court shall not entertain an action concerning a dispute as to the boundaries of a parcel until the process of settlement provided in this section has been exhausted.

### **89. Fixed Boundaries**

- (1) Where the Land Registrar considers it appropriate to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a registered parcel or a part of the registered parcel, or where an interested person makes an application to the Land Registrar, the Land Registrar shall give notice to the holders of interests in, and the occupiers of the parcels adjoining the boundaries in question of the intention to ascertain and fix the boundaries.
- (2) The Land Registrar shall, after giving the persons appearing from the register to be affected an opportunity of being heard,
  - (a) cause to be defined by survey the precise position of the boundaries in question;
  - (b) file a plan containing the necessary particulars; and
  - (c) note in the register that the boundaries have been fixed.

- (3) The plan filed under subsection (2) shall be deemed to define accurately the boundaries of the parcel.
- (4) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the Director of Survey and Mapping Division, a note shall be made in the register and the parcel shall be deemed to have its boundaries fixed under this section.

#### **90. Maintenance of Boundary Features**

- (1) A proprietor of land shall maintain in proper order and repair, in accordance with Regulations made under this Act, a beacon or mark defining the corner point of the proprietor's land.
- (2) Subject to subsection (3), where a beacon or mark is not maintained in proper order or repair, or is removed or obliterated, the Director of Survey and Mapping Division may serve on the proprietor of each parcel in relation to which the beacon or mark indicates a corner point, a notice in writing requesting the proprietor to restore the beacon or mark to its correct position, or to re-erect it in the prescribed manner.
- (3) The restoration or re-erection of a beacon or mark that is removed or obliterated shall be carried out by or under the immediate supervision of a licensed surveyor duly authorised by the Director of Survey and Mapping Division.
- (4) The Director of Survey and Mapping Division may, in writing, charge the proprietor of land adjoining a beacon with the responsibility of caring and maintaining, repairing, restoring or re-erecting any beacon or mark that is not in proper order or repair or is removed or obliterated.
- (5) Where it is established that the proprietor or a servant or agent of a proprietor of land adjoining a beacon or mark, has damaged, removed or obliterated a beacon or mark, the entire cost of repair, restoration or re-erection of that beacon or mark shall be borne by that proprietor.

#### **91. Registration Sections**

The Director of the Land Registration Division in consultation with the Director of Survey and Mapping Division may divide a Registration District into Registration Sections.

#### **92. Identification of Registration Sections**

- (1) For the purposes of the registry map, each registration section may be identified by a distinctive name and the registration section may be further divided into blocks which shall be given distinctive numbers or letters or combination of numbers and letters.

- (2) The Minister shall in consultation with the Lands Commission make regulations for the identification of registration sections, blocks and parcels.

### **93. Notice of Registration Districts**

- (1) The Director of the Land Registration Division shall, within fourteen days of the declaration of a registration district, issue in respect of that district a notice as in Form 1 of the Third Schedule which
  - (a) specifies the situation and limits of the registration district;
  - (b) requires a person who claims to be the proprietor of land or interest in land within the registration district to make a claim in respect of the land or the interest in person or by an agent within a period and at the place and in the manner specified in the notice;
  - (c) requires claimants to land or an interest in land within the registration district to mark or indicate the boundaries of the land in manner specified in the notice; and
  - (d) requires all persons claiming interest in land within the registration district or area to register their titles.
- (2) The notice shall require a claimant to indicate the boundaries of the land affected by the claim in the manner specified in the notice.

### **94. Application for Registration**

- (1) Subject to section 96, a person who claims to hold land or an interest in land situated in a registration district shall make an application setting forth that person's claim in the manner and within the period specified in the notice given under section 93.
- (2) The Land Registrar shall after the expiration of the notice given under section 93 proceed to examine the title of any person who has made a claim to any land or interest in land under subsection (1) or is deemed to have made a claim under subsection (2) and may for that purpose examine any instrument relating to that land or interest.
- (3) Where any land referred to in the claim is subject to an interest which is registrable, the Land Registrar shall record the particulars as shall enable the interest and the name of the holder of the interest to be registered.
- (4) An application for registration of land or an interest in land acquired for valuable consideration during marriage shall state the spouses in the marriage as the applicants.

- (5) Where only one of the spouses is stated as the applicant that spouse shall be deemed to have applied on behalf of that spouse and the other spouse.

#### **95. Resolution of Land Disputes**

- (1) An action concerning any land or interest in land in a registration district shall not be commenced in any Court until the procedures for resolution of disputes by alternative dispute resolution act under the Alternative Dispute Resolution Act, 2010 (Act 798) have been exhausted.
- (2) Where at the time of the publication of a notice under section 93 an action or proceeding concerning land or interest in land in the registration district referred to in the notice is pending in any Court, the Director of the Land Registration Division shall note any claim under this Act in respect of the same land or interest but no further action shall be taken on the claim until the matter is determined by the Court.

#### **96. Compilation of Registered Deeds**

- (1) On the declaration by the Minister of a title registration district the Director of the Land Registration Division shall, in relation to every land situated in that district, in respect of which an instrument has been registered before the date of the declaration
  - (a) prepare within one year a list in the prescribed form that shows all instances of proprietorship of any land or interest in land evidenced by instruments and in respect of which no conflicting claims either appear from any registered instrument or have been made in response to the notice issued under section 93.
  - (b) serve on a person named as proprietor of land or an interest in land in the list prepared under paragraph (a), a notice of the Director's intention to register that person as proprietor of the land or interest in land and require that person to submit a plan approved by the Director of the Survey and Mapping Division, in respect of the land to which the instrument relates; and
  - (c) upon the submission of the approved plan, register the person as the proprietor of the land.
- (2) The Minister may in consultation with the Lands Commission by Legislative Instrument make Regulations to provide for matters relating to the compilation of Deeds.

### **97. Functions of the Director of the Land Registration Division**

The Director of the Land Registration Division is the Chief Lands Registrar and is responsible for

- (a) the administration of the Land Registration Division under the Lands Commission Act, 2008 (Act 767); and
- (b) the compilation and maintenance of the Land Register and all other records kept in the Land Registration Division.

### **98. Land Registrars**

The Director of the Land Registration Division shall be assisted in the performance of the functions of the office by duly gazetted Land Registrars.

### **99. Powers and obligations of the Land Registrars**

- (1) A Land Registrar may in the performance of functions under this Act;
  - (a) require a person to produce an instrument, a land certificate or any other document or plan relating to the land or interest in land to be registered;
  - (b) summon a person to appear and give information or explanation in respect of an interest in land to be registered under this Act and that person shall appear and give the information or explanation;
  - (c) refuse to proceed with a registration if an instrument, a certificate or any other document, plan, information or explanation required to be produced or given is withheld or an act required to be done under this Act is not done;
  - (d) refuse to proceed with a registration where the Land Registrar has reasonable cause to believe that
    - (i) the Republic or a person who is a minor or of unsound mind or under any other disability or who is absent from the Republic will be adversely affected; or
    - (ii) there is fraud or an improper dealing with the land or an interest in the land.
- (2) Where a person fails to obey an order made under subsection (1), the Land Registrar shall, where there is no reasonable justification for the failure, certify the disobedience to the District Court, and that person may be dealt with by the District Court as if the order made under subsection (1) were the order of the Court.
- (3) The Land Registrar shall not register any large scale disposition of stool, skin, clan and family land unless the Regional Lands Commission has in furtherance of Articles

36(8) and 267(3) of the Constitution granted consent to the disposition taking into account the following:

- (a) unconscionability;
  - (b) capacity of the parties;
  - (c) adequacy of consideration;
  - (d) size of the land;
  - (e) duration of the grant;
  - (f) protection of indigenous land rights;
  - (g) previous transactions affecting the land; and
  - (h) fairness of the terms of the agreement.
- (4) For the purposes of subsection (3) large scale land disposition means disposition of land or interest in land which exceeds ten acres.
- (5) Where the Regional Lands Commission fails to grant or to give notice to the applicant of refusal to grant on stated grounds within three months from the date of presentation of a valid document the consent shall be deemed to have been granted and the Land Registrar shall proceed with the registration process.
- (6) A person dissatisfied with the decision of the Regional Lands Commission under subsection (3) or (5) may resort to alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) for resolution of the dispute.
- (7) The Minister may in consultation with the Lands Commission by Legislative Instrument provide for the details of subsection (3) which shall be complied with before registration.
- (8) A Land Registrar shall not register land contrary to the provisions of this Act.
- (9) A Land Registrar who contravenes sub-sections (3) and (5) commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units or imprisonment for a term of not more than three years or both.

#### **100. Application for First Registration**

- (1) A person may apply for first registration of land or an interest in land in a registration district in the terms set out in Form 2 of the Third Schedule.
- (2) An application for first registration under subsection (1) shall be accompanied with

- (a) the original deeds or other documents relating to the land or in the case of stool, skin, clan or family land where a document is not available, a statutory declaration indicating the interest of the applicant;
  - (b) a list in triplicate of all deeds and other documents referred to in paragraph (a);
  - (c) a statutory declaration, where the applicant, other than a stool, skin, clan or family, can establish to the satisfaction of the Land Registrar that the original deeds or other documents relating to the land cannot be found; and
  - (d) a plan in duplicate approved by the Director of Surveys to enable the land to be fully identified on the registry map.
- (3) Where a document recited in a root of title is dated thirty years or more and cannot be provided, the grantor or grantee shall provide evidence of proof of possession.
  - (4) Where a stool, skin, clan or family applies for registration of an allodial title, the instrument in respect of the land to which the application relates shall be exempt from stamp duty.

#### **101. Time and Manner of First Registration**

- (1) First registration of a parcel shall be effected by a Land Registrar
  - (a) on the expiration of the period specified in the notice issued under section 93, of this Act in respect of the district in which the parcel of land is situate; or
  - (b) on the expiration of any notice which may be issued under paragraph (b) of subsection (1) of section 96 of this Act in respect of the parcel of land; or
  - (c) on the determination of any dispute referred for resolution under alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) concerning the claim of any person to be registered as proprietor of the land or interest in the land,whichever occurs last.
- (2) First registration shall consist of the Land Registrar entering in the Land Register the following particulars
  - (a) the name of a person who has been shown to be entitled to be registered as the proprietor of the parcel and the particulars of that person and the proprietorship as are prescribed to be entered,



- (b) the particulars of the plan to enable the parcel to be fully identified on the registry map, and
  - (c) the particulars as prescribed of the interests which have been shown to exist in the land.
- (3) Where after first registration a person who has not been registered as a holder of an interest in land, shows that that person is the proprietor of land registered in the name of the Republic as a trustee or not registered in the name of any other person, the Land Registrar shall register that person by making the necessary additions in the register.

### **102. Rejection of Application for First Registration**

- (1) Subject to this Act and to the Limitation Act, 1972 (NRCD 54), a Land Registrar may reject an application for first registration by a person claiming to be a proprietor of land and who bases the claim on an instrument, if
- (a) the instrument deals with the land or part of the land in a manner inconsistent with an instrument previously executed whether by the same grantor or a predecessor-in-title or by any other person; or
  - (b) on the face of the records, the grantor named in the instrument does not appear to a Land Registrar to have been entitled to deal with the land as the instrument purports to have done; or
  - (c) the instrument was made in contravention of, or is void by virtue of, an enactment; or
  - (d) the instrument contains an interlineation, a blank, an erasure or an alteration not verified by the signature or initials of the persons executing the instrument; or
  - (e) the Land Registrar is not satisfied with the statutory declaration submitted in support of the application; or
  - (f) the instrument was made in contravention of a prior registration.
- (2) The Land Registrar may within two months of the submission of an application inform the applicant of the decision of the Land Registrar to grant or reject the application.

### **103. Notification of Grounds of Refusal to Register**

- (1) Where the Land Registrar is of the opinion that there are grounds under section 102 to reject an application, the Land Registrar shall notify the applicant in writing of the

opinion and the grounds for the opinion, giving the applicant thirty days within which to make further representations.

- (2) Where the Land Registrar is of the opinion that an application should be rejected on the ground in paragraph (d) of subsection (1) of section 102 the Land Registrar shall notify the applicant.
- (3) An applicant dissatisfied with the rejection may first refer the matter for settlement by the Regional Lands Commission, and where the applicant is still dissatisfied the applicant may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).
- (4) Where the matter is referred to the Regional Lands Commission, the Regional Lands Commission shall determine the matter within sixty days.
- (5) The reference may be made as specified in Form 3 of the Third Schedule to this Act
- (6) The decision of a Regional Lands Commission or resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798) shall be communicated in writing to the applicant, the Director of the Land Registration Division and to any other person affected by the decision within fourteen days after the determination of the matter.
- (7) Where the rejection by the Land Registrar of an application is reversed by the Regional Lands Commission or resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798), the Land Registrar shall comply with the decision.

#### **104. Description of Lands Affected by Dealing**

- (1) Without prejudice to section 102 and except as otherwise provided in subsection (2), where land or an interest in land which is being registered is evidenced by an instrument, that land or interest in the land shall not be registered unless there is attached to that instrument a plan of the land which has been approved and duly signed by the Director of Survey and Mapping Division or an officer of the Survey and Mapping Division authorised by the Director.
- (2) Where a plan referred to in subsection (1) has already been filed in the Registry with an instrument relating to the same land it is sufficient, without attaching the plan to the instrument, if the land is described by reference to the instrument and plan already filed in the Registry.

- (3) Plans presented for registration shall be endorsed at the back by both the grantor and grantee.
- (4) Where the plan relates to an interest which does not arise out of a conveyance, the site plan shall be signed by the applicant.

#### **105. Form of Register**

- (1) The land register shall contain the following
  - (a) an entry of the description of each parcel with reference to the Registry Map and a plan approved by the Director of Survey and Mapping Division under sections 104 and 82;
  - (b) an entry in respect of each proprietor of a parcel, with the name, photograph or biometric details of the proprietor and the nature of the interest; and
  - (c) an entry in respect of every interest held in that parcel by any other person, stating the name of the holder of the interest and the nature of the interest.
- (2) Subject to subsection (1) the land register shall be in the prescribed form.
- (3) Without limiting subsection (1) and (2), the Register may be kept in electronic form.

#### **106. Conclusiveness of Register**

- (1) An entry in the land register shall be conclusive evidence of title of the holder of the interest specified in the land register.
- (2) Subsection (1) does not affect any right or interest in land acquired under the law relating to prescription or the Limitations Act, 1972 (NRCD 54) but where title to registered land has been acquired under the law relating to prescription or the Limitations Act, 1972 (NRCD 54), the registered holder of the right or interest shall hold the land in trust for the person entitled.
- (3) A person who claims to have acquired land or an interest in land under subsection (2) may apply to the Regional Lands Commission through the Regional Lands Officer for an appropriate amendment to be made to the land register upon the payment of a prescribed fee.
- (4) On receipt of an application under subsection (3), the Regional Lands Commission, after
  - (a) notice of the application to persons whose rights are likely to be affected; and

- (b) giving opportunity to persons whose rights are likely to be affected to make representations,  
publish the application in at least one newspaper of national circulation and as far as practicable in regard to the application, follow the provisions of section 107 of this Act.
- (5) The decision of the Regional Lands Commission shall be communicated to all persons affected by the decision and to the Land Registrar who shall act in accordance with the decision.

**107. Qualification for Provisional Registration**

- (1) Where as a result of the examination of an application submitted under section 100 the Land Registrar is satisfied that a person who claims to hold an interest in land
  - (a) is in possession of; or
  - (b) has a right of possession or right of occupation of the land referred to in the claim, but has not a sufficiently good title,the Land Registrar may instead of rejecting the application, after duly informing the applicant grant the applicant provisional title of the land.
- (2) The Land Registrar shall record
  - (a) the date on which the possession or occupation, if any, of that person began or is deemed to have begun;
  - (b) particulars of any instrument or other evidence under or by virtue of which some right or interest in the land adverse to or in derogation of the interest of that person might exist; or
  - (c) any qualification which affects the title.
- (3) Where the Registrar decides to grant a provisional title, the Registrar shall in writing
  - (a) notify the applicant of the decision
  - (b) state the reasons for the decision
  - (c) inform the applicant that the applicant may appeal against the decision to the Regional Lands Commission within 21 days of the notice.
- (4) Where an appeal is lodged with the Regional Lands Commission, the Commission shall commence the hearing of the appeal within 14 days and dispose of the appeal within 90 days.

### **108. Effect of Provisional Registration**

- (1) Subject to sections 116 and 117, registration of a person as holder of a provisional certificate to a parcel of land under subsection (1) of section 107 shall not affect or prejudice the enforcement of any right or interest in land which is adverse to or in derogation of the title of that holder and which has arisen
  - (a) before the date or under the instrument, or
  - (b) in the manner specified in the land register in relation to that parcel of land.
- (2) Except as otherwise provided in subsection (1) the provisional title registration has the same effect as the registration of a person as a holder with absolute title.

### **109. Conversion of Provisional Registration**

- (1) A person registered as a holder of an interest in land with a provisional title or any interested person may at any time apply to the Land Registrar to be registered as the holder of interest in that land with an absolute title.
- (2) If the applicant satisfies the Land Registrar that the condition to which the provisional title is subject has ceased to be of effect, the Land Registrar shall make an order for the registration of the applicant as a holder of that interest in land with absolute title after the Land Registrar has given notice in the manner specified in Form 4 of the Third Schedule.
- (3) On an application by any interested person after the expiry of twelve years from the date of first registration of a person as the holder of an interest in land with provisional title, or on the making of the order under subsection (2) the Land Registrar shall substitute in the land register the words "absolute title" for the words "provisional title" and the title of that holder of that land shall become absolute.
- (4) Subsection 3 does not apply where the Republic holds a provisional title in trust for an eventual holder.

### **110. Conflicting Claims**

- (1) Where there are two or more claimants of any interest in land situated in a title registration district and the Land Registrar is unable to arrive at an agreement among the claimants, the Land Registrar shall direct the claimants to seek resolution of the dispute by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

- (2) A court shall not entertain an action in respect of conflicting claims until the process for resolution referred to in this section has been exhausted.

### **111. Consolidation and Subdivision of Parcels**

- (1) Where contiguous parcels are registered in the name of the same proprietor and are subject to the same registered and overriding interests, the Land Registrar may, on an application by the proprietor of the parcels consolidate the parcels.
- (2) Subject to subsections (3) and (4), where an application is made by a proprietor of a parcel for the division of the parcel into two or more parcels, the Land Registrar shall effect the division. .
- (3) Before consolidating or subdividing a parcel under subsection (1) or (2),
  - (a) the Land Registrar shall give notice to all holders of interest in the parcel that is proposed to be consolidated or subdivided; and
  - (b) give the holders the opportunity to make representations in relation to the proposed action within the period specified in the notice.
- (4) The Land Registrar shall take into consideration any representations which have been duly made under subsection (3).

### **112. Registration and Planning Regulations**

- (1) The Land Registrar shall in the performance of the duties of the Office comply with any Development Plan or Scheme for the area in respect of which an application for registration has been made.
- (2) A District Assembly shall submit to the Lands Commission copies of development planning schemes in the case where
  - (a) an approved development plan already exists, within three months after the commencement of this Act.
  - (b) an approved development plan does not exist, within three months after the approval of the plan.
- (3) Registration of a parcel contrary to subsection (1) is void.
- (4) A Land Registrar who willfully registers land or an interest in land contrary to subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units or imprisonment to a term of not more than three years or both.

- (5) The requirement for compliance with the development plan for registration of land shall not apply to the registration of the allodial titles of stools, skins, clans and families.
- (6) Despite subsections (1), (2) and (3), the Lands Commission may for justifiable reasons authorise the Registrar in writing to register a parcel of land falling within a defined area which has no approved planning scheme.
- (7) The Lands Commission shall give notice to a District Assembly in which the land to be registered is located of its intention to register land in pursuance to subsections (2) and (5).

### **113. Cancellation of Entries**

The Director of the Land Registration Division may subject to guidelines to be prescribed in Regulations cancel any entry in the land register if the Director is satisfied that the entry has ceased to have any effect.

### **114. Indefeasibility of Registration**

- (1) Subject to subsections (2), (3) and (4) and to section 117 , the rights of a registered proprietor of a parcel whether acquired on first registration or subsequently or by an order of a Court, are indefeasible and shall be held by the proprietor together with the rights and privileges attaching to the parcel free from all other interests and claims.
- (2) The rights of a proprietor are subject to the interests or other encumbrances and conditions, shown in the land register.
- (3) This section does not relieve a proprietor from a duty or an obligation to which the proprietor is otherwise subject as a trustee.
- (4) The registration of a person as the proprietor of land or an interest in land does not confer on that person a right to minerals.

### **115. Interests Conferred by Registration**

The registration of a person as a proprietor of an interest in land

- (a) vests in that person the interest described in the acquisition or transaction by which the interest was created, together with the implied and expressed rights and privileges attaching or appertaining to that land and subject to the implied and express covenants, liabilities and any other incidents; and

- (b) shall not cause the benefit or burden of any rights, privileges or covenants to pass to a transferee of
  - (i) land; or
  - (ii) an interest in land,if they would not otherwise pass.

#### **116. Overriding Interests (Indefeasibility of Title)**

- (1) Unless the contrary is recorded in the land register, a land or an interest in land registered under this Act is subject to any of the following overriding interests whether or not those interests are entered in the land register:
  - (a) rights of way, rights of water, profits, or rights customarily exercised and enjoyed in relation to the parcel which are not recognised interests in land under customary law, that were subsisting at the time of first registration;
  - (b) customary rights in respect of concessions granted under the Concessions Ordinance, 1951 (Cap. 136) and the Forest Ordinance, 1937 (Cap. 157) which subsisted at the time of first registration;
  - (c) natural rights of water and support;
  - (d) rights of compulsory acquisition, resumption, entry, search and user conferred by any other enactment;
  - (e) leases for terms of less than two years and not capable of extension to terms of two years or more by the exercise of enforceable options for renewal;
  - (f) rights, whether acquired by customary law or otherwise, of a person in actual occupation of the land except where an enquiry is made of that person and the rights are not disclosed;
  - (g) rights acquired or in the course of acquisition by prescription or under the Limitations Act, 1972 (NRCD 54);
  - (h) charges for unpaid rates and any other moneys which without reference to registration under this Act, are expressly declared by any enactment to be a charge upon land;
  - (i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of a power conferred by an enactment; and



- (j) a licence in respect of minerals granted under the Minerals and Mining Act, 2006 (Act 703) or timber rights under the Timber Resources Management Act, 1998 (Act 547).
- (2) Despite subsection (1) but subject to subsection (4) of section 80, the Land Registrar may direct the registration of a liability, a right or an interest specified in subsection (1) in the manner that the Land Registrar considers appropriate.

#### **117. Transfer without Consideration**

- (1) A person who has acquired land or an interest in land without valuable consideration shall hold the land or interest subject to
  - (a) any unregistered rights, interests or any liabilities to which the land or interest was subject before the acquisition;
  - (b) the provisions of any enactment on bankruptcy or insolvency; and
  - (c) the winding up provisions of the Companies Act, 1963 (Act 179).
- (2) Subject to subsection (1) the transfer has the same effect as a transfer for valuable consideration.

#### **118. Registration in the name of the Republic of Unregistered Land or Interest**

- (1) Where the holder of an interest in land has not put in an application for registration after the expiration of the period within which an application should be made, the Land Registrar shall record the Republic as the holder of the interest in trust for the eventual holder of the interest.
- (2) Where in respect of any land or interest in land there is no person entitled to be registered as the holder of the interest or with provisional title, the Land Registrar shall record the land as being held by the Republic in trust for the eventual holder of the interest.
- (3) The Republic shall not transfer land held in trust under this section.

#### **119. Entries as Actual Notice**

A person who acquires a land or interest in land shall be deemed to have had notice of every entry in the land register which that person was entitled to inspect at the time of acquisition.

#### **120. Priority of Registered Interests**

- (1) Rights derived from instruments recorded in the land register shall have priority according to the order in which the instruments were presented to the Registry

irrespective of the dates of the instruments and although the entry in the land register may have been delayed.

- (2) Subsection (1) does not apply where there is fraud, notice or mistake
- (3) An instrument sent by post addressed to the Land Registrar in the registration district where the land comprised in the instrument is situated and received on any day during the hours of business shall be deemed to have been presented at the time it was received.

### **121. Land Certificates**

- (1) The Land Registrar shall, on registration of a person as proprietor of land or an interest in land, issue a land certificate to that person.
- (2) A land certificate shall be as specified in Form 5 of the Third Schedule and shall show, by an extract from the registry map endorsed on or annexed to the certificate, the land to which it relates.
- (3) A land certificate issued in respect of land or an interest in land registered under this Act shall be signed and sealed by the Director of Land Registration Division or Land Registrar authorized by the Director and marked with the serial number relating to the land.
- (4) A separate land certificate may be issued to each proprietor in common of a land or interest in land and the certificate shall show the undivided share of the proprietor.
- (5) When two or more persons are registered as proprietors of the same land or interest in land, each proprietor shall be issued with a certificate.
- (6) A certificate issued under subsection (5) shall indicate the proprietors, the proportions of their interests and whether they hold the interest as joint tenants or tenants in common.
- (7) Where a certificate in respect of land or an interest in land is acquired for valuable consideration during marriage, the certificate shall have the names of the spouses to the marriage.
- (8) Where only one spouse is stated in the certificate as the proprietor of land or an interest in land referred to in subsection (7), that spouse shall be deemed to be holding the land or interest in land on behalf of that spouse and in trust for the other spouse.
- (9) The Land Registrar may make a new entry in the land register and prepare and issue a new land certificate where, the Land Registrar accepts an application for consolidation of parcels or subdivision of a parcel under section 111.

## **122. Issuance of New Land Certificates**

The Land Registrar shall prepare and issue a new land certificate where a transfer or transmission is registered and the transferee or applicant becomes the holder of an interest in part of a parcel of land in respect of which a certificate has previously been issued.

## **123. Substituted Land Certificates**

- (1) The Land Registrar may, after taking an indemnity as the Land Registrar considers appropriate, issue a substituted land certificate to replace a certificate which is satisfactorily proved to have been lost or destroyed.
- (2) A substituted land certificate shall be
  - (a) an exact copy of the original with an indication on the certificate that it is a substituted land certificate; and
  - (b) used for any purpose for which the original certificate can be used.
- (3) An application for a substituted land certificate may be made by the proprietor of an interest in land comprised in that certificate or by a person claiming through the proprietor, and shall be supported by evidence that the Land Registrar may require.
- (4) The Land Registrar shall, by publication in the Gazette and in one or more daily newspapers of national circulation, give fourteen days notice as specified in Form 6 of the Third Schedule, of the Land Registrar's intention to issue a substituted land certificate.
- (5) The Land Registrar shall enter in the land register a notification of the issue of any substituted land certificate.
- (6) The notification cancels the original certificate even though the certificate may subsequently be found or recovered.
- (7) A proprietor who is issued with a substituted land certificate shall give a written indemnity protecting the Registrar and the Lands Commission against any liability arising out of the issuance of the certificate.
- (8) The Land Registrar shall not issue a certified copy of a land certificate except where ordered by a court.
- (9) A person who unlawfully procures a substituted land certificate commits an offence and is liable on summary conviction to a fine of not more than ten thousand penalty units or a term of imprisonment of not more than ten years or to both.

#### **124. Provisional Certificates**

- (1) The Land Registrar shall issue a provisional land certificate to a person registered under paragraph (b) of subsection (1) of section 107 as proprietor with provisional title.
- (2) A provisional land certificate shall be as specified in Form 7 of the Third Schedule, signed and sealed by the Land Registrar authorized by the Director and marked with the serial number relating to the parcel in the land register.
- (3) On the issue of a provisional land certificate, the Land Registrar shall enter in the register notification of the issue of the provisional land certificate, the date of issue and the circumstances under which it was issued.

#### **125. Production of Land Certificate**

- (1) The proprietor of an interest in land in relation to which there is a land certificate or a provisional land certificate shall surrender the certificate to the Land Registrar
  - (a) on the entry in the land register of a disposition by that proprietor;
  - (b) on the transmission of the land or interest in land or part of the land to which the certificate relates; and
  - (c) where under this Act or otherwise, a notice of an interest in land, claim, restriction or encumbrance is entered in the land register which adversely affects the title of that proprietor.
- (2) A proprietor of an interest in land who contrary to subsection (1) fails to surrender the certificate to the Land Registrar, commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than three years or both.
- (3) A person who purports to transfer land or interest in land on the basis of a certificate required to be surrendered under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than ten thousand penalty unit or a term of imprisonment of not more than ten years or both.
- (3) Subsection 1(c) does not apply in the case of the lodgment of a caveat.
- (4) A note of each entry or transmission shall be entered on the land certificate or provisional land certificate.
- (5) Despite subsection (1), where a Land Certificate is subject to more than five entries or transmissions the Land Registrar shall on the making of the fifth entry or

transmission, insert a notice on the Land Certificate to the effect that further entries in respect of that Land Certificate will be entered in the Land Register only.

### **126. Searches and Copies**

- (1) A person seeking information concerning a parcel or an interest in land registered under this Part or matters incidental to the parcel or the interest may apply as specified in Form 8 of the Third Schedule to the Land Registrar to conduct an official search in the land register or on the registry map.
- (2) The Land Registrar shall issue to an applicant under subsection (1), the result of the search as specified in Form 9 of the Third Schedule which shall be presumed to be conclusive of the matters stated in the Form.
- (3) A person seeking information concerning a parcel or an interest in land registered under this Act or matters incidental to the parcel or the interest in land may apply to the Land Registrar to inspect a register, a sheet of the registry map, an instrument or a plan filed in the Registry that contains the information, subject to prescribed conditions.
- (4) A person who conducts a search under subsection (1) may be furnished with
  - (a) particulars of subsisting entries in the land register in relation to that parcel or interest; or
  - (b) certified copies of
    - (i) a document;
    - (ii) the registry map; or
    - (iii) an instrument or plan filed in the registry.

### **127. Evidence of contents of land register**

Despite the provisions of any enactment to the contrary, a certified copy or extract of the land register, the registry map or any filed instrument or plan is admissible to the same extent as the original to prove its contents.

### **128. Disposition of Registered Land and Interests in Land**

- (1) Despite the provisions of any enactment to the contrary, land or interest in land registered under this Act shall be disposed of in accordance with this Act, and a disposition of that land or interest in land otherwise than in accordance with this Act shall not create, extinguish, transfer, vary or affect a right or interest in the land.

- (2) The validity of an instrument disposing of land or an interest in land is not affected by the death of the person by or on whose behalf the disposal was made, and the instrument may be presented for registration as if the death had not occurred.

### **129. Time-limit for Registration of Instruments**

- (1) An instrument relating to a disposition under this Act shall be presented for registration within three months after the date of execution of the instrument.
- (2) Where an instrument is presented for registration later than three months after the date of the execution, an additional fee not exceeding five times the prescribed registration fee shall be charged.
- (3) The Land Registrar may waive the payment of the additional fee if the Land Registrar is satisfied that the circumstances of the case warrant the waiver.

### **130. Power to Compel Registration**

- (1) Where the Land Registrar is satisfied that a person has willfully failed to register an instrument registerable under this Act, the Land Registrar may by notice in writing order that person to present the instrument for registration.
- (2) A person who fails, without reasonable cause, to comply with an order made under subsection (1) within thirty days after the service of the notice on that person, commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than one hundred penalty units or to a term of imprisonment of not more than six months or both.

### **131. Stay of Registration**

- (1) Where a person proposing to deal with land or an interest in land registered under this Act has
  - (a) applied for an official search under section 126; and
  - (b) stated in the application, the particulars of the proposed dealing,the registration of an instrument affecting the land comprised in or affected by the proposed dealing shall be stayed for a period of fourteen days from the time when the application for the search was made, and a note shall be made in the land register accordingly.
- (2) Where within the period of stay, a properly executed instrument in relation to the proposed dealing is presented for registration, that instrument shall have priority over any other instrument which may be presented for registration during the period of

stay, and shall be registered despite a caveat or any other entry for which an application for registration may have been made during the period of stay.

- (3) Subject to subsection (2), an instrument for which an application for registration is made during the period of stay, other than a properly executed instrument giving effect to the proposed dealing
- (a) shall be dealt with in the same manner;
  - (b) have the same priority; and
  - (c) be as effectual as if a stay of registration has not been obtained.

### **132. Merger of Registered Interests**

Where on the registration of an instrument relating to a disposition under this Act, the interests of

- (a) a lessor and lessee; or
- (b) a mortgagor and mortgagee; or
- (c) the proprietor of a parcel which is burdened with an easement, a profit or restrictive agreement and the proprietor of a parcel which benefits from the easement, profit or agreement,

vest in the same person, the interests shall not merge unless a surrender or discharge is registered or the parcels are combined or there is a declaration of merger, contained in the instrument evidencing the disposition.

## ***CO-PROPRIETORSHIP AND PARTITION***

### **133. Registration of more than One Proprietor**

Where an instrument is made in favour of two or more persons, the entry in the register giving effect to the instrument shall show

- (a) whether the persons are joint proprietors or proprietors in common; and
- (b) where the persons are proprietors in common, the share of each proprietor.

### **134. Partition and Severance**

- (1) An application to the Land Registrar for the partition of land or an interest in land which is registered in the names of joint proprietors or proprietors in common shall be made to the Land Registrar as specified in Form 10 of the Third Schedule and may be made by

- (a) the parties interested individually or collectively;

- (b) a person in whose favour an order of a Court has been made for the sale of an undivided share in the land in execution of the Court order; or
- (c) a person affected by an order of a Court for partition of the land;
- (2) Where the Land Registrar is satisfied that the application is justified the Land Registrar shall effect the partition of the land or interest in the land.
- (3) A partition shall be effected by deleting the entry in the register for the parcel of land partitioned and making a new entry in the register in respect of the new parcels of land created by the partition.
- (4) Where the partition is as a result of a Court order the order shall be filed in the Registry in the manner determined by the Land Registrar.
- (5) Subject to subsections (6), (7) and (8), this Act shall not affect the right of a joint proprietor of land or any interest in land to be constituted as a tenant in common by effecting severance under any enactment.
- (6) An instrument executed for the purpose of severing a registered joint proprietorship shall
  - (a) be as specified in Form 11 of the Third Schedule, and
  - (b) not be effective until the instrument has been presented to the Land Registrar and the Land Registrar has made an appropriate entry in the land register.
- (7) A severance of joint proprietorship shall be entered in the land register by an entry in the prescribed manner and the entry shall state that the person effecting the severance is from the date and time of entry, a proprietor in common of the land or interest in the land.
- (8) An instrument relating to the severance shall be filed in the Registry.

## ***LEASES***

### **135. Lessor's Consent to Assignment of Lease**

- (1) On the registration of a lease containing an agreement, express or implied, by the lessee that the lessee shall not transfer, sublet, mortgage or otherwise assign the lease or a part of the lease without the written consent of the lessor, a transaction in respect of the lease shall not be registered until the consent of the lessor, verified in accordance with section 156, has been produced to the Land Registrar.
- (2) Where the consent of the lessor is sought the lessor shall, within three months, respond in writing stating whether or not the consent is granted.



- (3) Where the consent is not granted, the lessor shall state the reasons for the refusal in the response.
- (4) A lessee who is dissatisfied with the refusal, may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).
- (5) Despite subsection (2) where it is determined that the consent has been unreasonably withheld, the Land Registrar may proceed to register the interest.
- (6) Where the consent of the lessor is not granted within three months and the lessor does not provide written reasons for refusal, the lessor shall be deemed to have consented to the transaction.

### **136. Conveyance in Breach of an Obligation**

- (1) A conveyance shall not be registered if on the face of the instrument it has been made in breach of an obligation binding on the grantor.
- (2) Where an applicant for registration of a lease is dissatisfied with the decision of the Land Registrar not to register the lease, the applicant may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

### **137. Variation and Extension of Leases**

The agreement and conditions contained or implied in a registered lease may be varied, negated or added to, and the period of a registered lease may be varied, by an instrument which would be effective for the purpose as from the date on which the instrument is registered.

### **138. Substitution of Leases**

Where on the presentation of a lease for registration, the Land Registrar is satisfied that the lessee has been registered as a proprietor of a prior subsisting lease held from the same lessor in respect of the same land, the Land Registrar shall cancel the registration of the prior lease and register the new lease subject to the encumbrances registered against the prior lease.

### **139. Surrender of Leases**

- (1) Where a lessor and a lessee agree to surrender a lease, the lease shall be surrendered in the following manner:

- (a) an instrument shall be prepared as specified in Form 12 of the Third Schedule, or else the word, “surrendered” shall be endorsed on the lease or on the duplicate or triplicate of the lease;
  - (b) the instrument or endorsement shall then be executed by the lessee;
  - (c) the Land Registrar shall then cancel the registration of the lease;
  - (d) the instrument or endorsed lease shall then be filed and on the filing or at an earlier date that is expressed in the instrument or endorsement, the interest of the lessee shall cease; and
  - (e) the lessor’s name shall be entered in the register as the proprietor of the interest surrendered.
- (2) A surrender or purported surrender of a lease under subsection (1) shall not have an effect on the rights of a party or any other person which the surrender would not otherwise have.

#### **140. Determination of Leases**

- (1) Where a registered lease has expired, the lessor shall apply in writing to the Land Registrar to cancel the registration of the lease, and the Land Registrar shall on being satisfied of the matters set forth in the application cancel the registration of the lease.
- (2) The lessor shall give notice of the application referred to in subsection (1) to the lessee.

### ***MORTGAGES***

#### **141. Form and Effect of Mortgages**

- (1) A mortgage in respect of a registered parcel or interest in land shall be as specified in Form 13 of the Third Schedule and have no effect unless it is registered in accordance with this Act.
- (2) Where a mortgage is registered under subsection (1) as a charge over a registered parcel or interest in land, the instrument by which the mortgage is created shall be filed in the Registry.

#### **142. Consent of Mortgagee to Transfer**

Where a Mortgage in respect of a registered parcel or interest in land contains an agreement that the mortgagor shall not dispose of the land,

- (a) by a particular form of transfer, or

(b) by a transfer without the consent in writing of the mortgagee, the agreement shall be noted in the register and a transfer by the mortgagor contrary to the agreement, shall not be registered until the written consent of the mortgagee has been verified in accordance with section 156 and produced to the Land Registrar.

#### **143. Variation of Mortgage**

The amount secured, the method of repayment, the rate of interest or the other terms of the mortgage may be varied by the registration of an instrument of variation executed by the parties to the mortgage, but the variation shall not affect the subsisting rights of a third person unless that person has consented in writing to the variation of the instrument as specified in Form 14 of the Third Schedule.

#### **144. Further Advances**

- (1) A mortgage of any land or interest in land registered under this Act may make further advances in priority to any subsequent mortgage noted in the land register
  - (a) if the prior mortgage expressly provides for the making of further advances or for the giving of credit to the mortgagor on a current or continuing account; or
  - (b) if the prior mortgage imposes upon the mortgagee an obligation to make further advances and the obligation has been noted in the land register pursuant to an application made as specified in Form 15 of the Third Schedule and prior to the registration of the subsequent mortgage.
- (2) A mortgage created subsequently in respect of a parcel to which subsection (1) applies shall take effect subject to any further advance made or to be made pursuant to that provision or obligation.
- (3) Except as otherwise provided in this section there shall be no right of tacking.

#### **145. Discharge of Mortgage**

- (1) A discharge of mortgage as specified in Form 16 of the Third Schedule may be endorsed on the mortgage instrument or may be executed as a separate instrument.
- (2) Where the parties to a mortgage intend to discharge a part of the mortgaged land from the whole of the principal sum or other moneys secured by the mortgaged land, the form may be varied or altered accordingly.
- (3) On the production of the instrument of discharge, the Land Registrar shall register the instrument by endorsing a memorial of the instrument in the land register and on the land certificate noting that the mortgage is discharged wholly or partially, and on that

notification the land is freed from the mortgage and from the rights and powers of the mortgagee, as expressed in the discharge.

- (4) The Land Registrar shall cancel the instrument or part of the instrument creating the mortgage, as the case may be, unless the Land Registrar has reasonable cause to dispense with the cancellation.

## ***TRANSFERS***

### **146. Transfer**

- (1) A proprietor may, by an instrument as specified in Form 17 of the Third Schedule, transfer with or without consideration the land or interest in land of the proprietor to a person.
- (2) The transfer shall be effected by the registration of the transferee as proprietor of the land or the interest in the land specified in the instrument and the instrument shall be filed.
- (3) A transfer of a part of a parcel of land shall not be made unless the parcel has first been subdivided as provided in section 111, in conformity with planning regulations.

### **147. Conditions of Transfers not Registrable**

A transfer which is to take effect on the occurrence of an event or the fulfillment of a condition or at any time in the future is not registerable under this Act.

### **148. Entering Orders Transferring or Vesting Land or Interest**

- (1) Where an order of a Court of competent jurisdiction transfers or vests land or an interest in land in a person, the Land Registrar shall, when served with a certified true copy of that order, enter a memorandum of the order in the land register.
- (2) A beneficiary of a Court order under subsection (1) may apply to the Land Registrar to be registered as the proprietor of the parcel or the interest in land which is the subject of the order.
- (3) An applicant for registration under subsection (2) shall submit to the Land Registrar the plan accepted by the court as covering the land in respect of which the order was made.
- (4) The plan shall be endorsed by the Registrar of the Court where the original writ was filed to establish the exact identity of the land sought to be registered.

- (5) The Land Registrar shall not register the applicant as the proprietor of the land or interest in land unless the Land Registrar is satisfied that the plan submitted under subsection (3) is the same as the plan of the land to which the order relates.

### ***EASEMENTS, RESTRICTIVE AGREEMENTS, PROFITS AND LICENCES***

#### **149. Registration of Easements**

- (1) A grant or reservation of an easement created by an instrument does not have effect unless it is registered as an encumbrance relating to the land burdened by the easement in the manner prescribed by Regulation.
- (2) The instrument creating the easement shall clearly specify
  - (a) the nature of the easement, the period for which the easement is created and the conditions, limitations or restrictions intended to affect the enjoyment of the easement;
  - (b) the land burdened by the easement and the particular part of that land which is burdened; and
  - (c) the land which enjoys the benefit of the easement;
- (3) The instrument shall where practicable, include a plan which in the opinion of the Land Registrar is sufficient to define the easement.
- (4) This section does not affect the law relating to the acquisition of easements by prescription.

#### **150. Registration of Restrictive Agreements**

- (1) Where an instrument which contains an agreement by which one proprietor restricts the building on, or the user or other enjoyment of the land of the proprietor for the benefit of the proprietor of another land is presented to the Land Registrar, the Land Registrar shall
  - (a) enter a notification of the agreement of the land burdened by that restriction and of the land that benefits from that restriction in the register; and
  - (b) file the instrument.
- (2) Unless noted in the land register, a restrictive agreement in respect of land or interest in land registered under this Act is not binding on the proprietor of the land or the interest burdened by the agreement other than a party to the agreement.

- (3) Subject to section 119, the note of a restrictive agreement in the land register does not give the agreement a greater validity than it would have had independently of this Act.

### **151. Registration of Profits**

- (1) The grant of a profit has no effect unless
- (a) the profit is noted as an encumbrance relating to the land to which the profit affects in the register;
  - (b) where the profit is appurtenant to other land, the profit is noted in the register; and
  - (c) the instrument granting the profit is in the form set out in subsection (2) and is filed in the Registry.
- (2) An instrument granting a profit shall clearly specify
- (a) the nature of the profit, the period for which the profit is to be enjoyed and the conditions, limitations and restrictions intended to affect the enjoyment of the profit;
  - (b) the land burdened by the profit and the particular part of the land which is burdened;
  - (c) whether the profit is enjoyed in gross or as appurtenant to any other land, and the land to which the profit is appurtenant; and
  - (d) whether the profit is to be enjoyed by the grantee exclusively or by the grantee in common with the grantor.
- (3) This section does not affect the law relating to the acquisition of profits by prescription.

### **152. Release and Cancellation of Easements, Profits and Restrictive Agreements**

- (1) On the presentation of a duly executed release as specified in Form 18 of the Third Schedule, the registration of the easement, profit or restrictive agreement shall be cancelled and the easement, profit or restrictive agreement shall lapse.
- (2) On the application of a person affected by the easement, profit or restrictive agreement as specified in Form 19 of the Third Schedule, the Land Registrar may cancel the registration of the easement, profit or restrictive agreement on proof that
- (a) the period of time for which the easement, profit or restrictive agreement was intended to subsist has expired; or

- (b) the event upon which the easement, profit or restrictive agreement was intended to determine has occurred; or
- (c) the easement, profit or restrictive agreement has become permanently unenforceable by virtue of the Limitations Act, 1972 (NRCD 54).

**153. Licences**

- (1) With the exception of contractual licences provided for in this Act and without prejudice to section 174, a licence relating to the use or enjoyment of land
  - (a) shall not be registered under this Act; and
  - (b) is not enforceable against a bona fide purchaser for valuable consideration.

**154. Registration of Contractual Licences**

- (1) A contractual licence issued by the Lands Commission on behalf of the Republic is registrable under this Act.
- (2) A contractual licence issued by the Lands Commission for the use or enjoyment of public land does not have effect unless it is registered.
- (3) The instrument creating the licence shall
  - (a) clearly describe the location and boundaries of the land to which the licence relates;
  - (b) have attached to it an approved plan;
  - (c) specify the duration of the licence;
  - (d) state the name and address of the licensee;
  - (e) specify the use of the land; and
  - (f) state the length of notice required to terminate the licence.

***INSTRUMENTS AND AGENTS***

**155. Form of Instruments**

- (1) A disposition of registered land or an interest in registered land shall be effected by an instrument in the form prescribed for general use or in any other form prescribed for a particular case.

- (2) The instrument shall contain a true statement of the amount or value of the purchase price, loan or any other consideration and an acknowledgement of the receipt of the consideration or the part that has been paid.

#### **156. Verification of Execution of Instruments**

- (1) An instrument executed in accordance with section 66, shall be verified in the manner and form prescribed under this Act.
- (2) Where an instrument presented to the Land Registrar is in a language other than the English language the instrument shall be presented together with a translation of the instrument into the English language by a translator certified by the Director of Land Registration Division for that purpose.
- (3) The Land Registrar may, where the Land Registrar has reasonable grounds to suspect impropriety in the execution of any instrument, require any of the parties or their respective witnesses to appear before the Land Registrar or any person nominated by the Land Registrar, for the purpose of proving the due execution of the instrument

#### **157. Stamping**

An instrument required by an enactment to be stamped shall not be accepted for registration if the instrument is not duly stamped.

#### **158. Disposal of Instruments**

- (1) Subject to section 160 and 161, an instrument accepted by the Land Registrar shall be retained in the Registry for as long as the instrument supports a current entry in the land register and for six years after the instrument has ceased to support that entry.
- (2) Where a lease or mortgage is registered, particulars of the registration shall be noted on the duplicate and the triplicate of the lease or mortgage, and both the duplicate and triplicate shall be returned to the person who presented the lease or mortgage.
- (3) The Land Registrar may, at any time after the expiration of twenty years after an entry in the register has been superseded or has ceased to have effect, destroy the instrument which supported the entry in the register.

#### **159. Infants**

- (1) Where a purported disposition, including a disposition by the will of a deceased proprietor, of land or interest in land is made to an infant, the infant shall not be registered as proprietor of that land or interest until that infant attains the age of eighteen years.



- (2) A disposition under subsection (1) shall only operate as a declaration binding on the proprietor or the personal representative of the proprietor that the land or interest in the land is to be held in trust so as to give effect to the unregistered interest in favour of the infant corresponding with the interest which the disposition purports to transfer or create.
- (3) The disposition or a copy or extract of the disposition shall be deposited with the Land Registrar for safe custody and reference.
- (4) Despite subsections (2) and (3), where the disposition is made to the infant jointly with another person of not less than eighteen years, that person of not less than eighteen years shall, during the minority of the infant, be entitled to be registered as proprietor in trust for that person of not less than eighteen years and the infant, but the infant shall not be registered until that infant attains the age of eighteen years.
- (5) Where an infant becomes entitled under a will or on an intestacy to land or an interest in land, the land or interest shall not be transferred by the personal representative of the deceased testator or intestate to the infant until the infant attains the age of eighteen years.
- (6) Where the infant has a guardian or a parent the interest shall be transferred to the guardian or parent to be held in trust for the infant.
- (7) Where an infant becomes entitled to the benefit of a mortgage, the mortgage shall during the minority of the infant be registered in the names of the personal representatives or trustees and they shall have for the purposes of this Act the same powers in reference to the mortgage as the infant would have had if that infant were of the age of eighteen years.
- (8) A caveat may be lodged in the name or on behalf of the infant by the parent, trustee or guardian of the infant.

#### **160. Agents**

- (1) An instrument executed by a person as an agent for another person shall not be accepted by the Land Registrar if the person who executed the instrument was not authorised to execute that instrument by a power of attorney executed and verified in accordance with sections 66 and 156.
- (2) The original of the power of attorney, or with the consent of the Land Registrar a copy of the power of attorney certified by the Land Registrar, shall be filed in the Registry.

### **161. Persons under Disability**

- (1) Where a person is an infant, or of unsound mind, or is under any other disability, the guardian of that person, or if there is no guardian, a person appointed in accordance with an enactment to represent that person, may
  - (a) make an application;
  - (b) do any act; and
  - (c) be party to any proceeding on behalf of that person, and shall generally represent that person for the purposes of this Act.
- (2) The Land Registrar shall, before accepting a document which is purported to have been executed by a guardian or a person appointed to represent a person under disability,
  - (a) in the case of a person claiming to be a guardian, be satisfied that that person is entitled to execute the document, and shall state in writing the reasons for accepting the document;
  - (b) in the case of a person claiming to be appointed to represent a person under a disability, require the production of the appointment and file a copy of the appointment.

### **162. Registration of Powers of Attorney**

- (1) On an application made by a donor or donee of a power of attorney which contains a power to dispose of land or interest in land, the power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Land Registrar a certified copy of, the power of attorney shall be filed.
- (2) A power of attorney shall be as specified in Form 20 of the Third Schedule or in any other form that the Director of the Land Registration Division may, in any particular case specify, and shall be executed and verified in accordance with 66 (execution of conveyance) and 156 (verification of execution of instruments).and any other relevant enactment.
- (3) The donor of a power of attorney registered under this section may at any time on revocation of the power of attorney notify the Land Registrar who shall
  - (a) enter the revocation in the register of powers of attorney; and
  - (b) file the notice of revocation.
- (4) Where a power of attorney registered under subsection (1) is revoked by
  - (a) the death, bankruptcy, insolvency or disability of the donor; or

- (b) the death or disability of the donee,  
an interested person may give notice of the revocation in writing to the Land Registrar accompanied by proof required by the Land Registrar who shall;
  - (c) enter the revocation in the register of powers of attorney;
  - (d) note the revocation on the power of attorney; and
  - (e) file the notice of revocation.
- (5) Subsections (3) and (4) do not apply to a power of attorney given for valuable consideration during a period for which it is irrevocable by virtue of the terms of the power.
- (6) If by reason of the lapse of time after the execution of a power of attorney or for any other reason the Land Registrar considers it appropriate, the Land Registrar may require evidence that the power of attorney has not been revoked, and may refuse to register a disposition by the donee of the power of attorney until satisfactory evidence is produced.

### **163. Effect of Registered Power of Attorney**

- (1) A power of attorney registered under section 162 and in respect of which a notice of revocation has not been registered under that section shall subsist in favour of
- (a) a person who acquires the land or an interest in the land affected through the exercise of that power of attorney in good faith; and for valuable consideration and without notice of an unregistered revocation, or
  - (b) a person who derives title from the person referred to in paragraph (a).
- (2) A person who makes a payment or does an act in good faith in pursuance of a power of attorney registered under section 162, is not liable for the payment or an act by reason only that before the payment or the act the donor of the power of attorney had
- (a) died; or
  - (b) become bankrupt or insolvent; or
  - (c) become subject to a disability; or
  - (d) revoked the power,
- if at the time of payment or when the act was done that person did not have notice of the fact of death, bankruptcy, insolvency, disability or revocation.
- (3) A person who purports to act under a power of attorney which that person knows has ceased to be effective as a result of any of the reasons stated in subsection (2)

commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one thousand penalty units or a term of imprisonment of not less than six months and not more than four years or both.

#### **164. Registration of Certificate of Allocation**

- (1) A Certificate of Allocation issued by the Lands Commission on behalf of the Republic under section 221, is registrable under this Act.
- (2) A Certificate of Allocation issued by the Lands Commission does not have effect unless it is registered.
- (3) A Certificate of Allocation submitted for registration shall
  - (a) specify the beneficiary Ministry, Department or Agency;
  - (b) specify the commencement date of the certificate;
  - (c) specify the use to which the land shall be put; and
  - (d) include an approved plan specifying the location, size and boundaries of the land.

#### **165. Transmission on Death of Joint Proprietors**

Where one of two or more joint proprietors of land or interest in land dies, the Land Registrar shall on proof to the satisfaction of the Land Registrar of the death, delete the name of the deceased proprietor from the land register.

#### **166. Death of Sole Proprietor or Proprietors in Common**

- (1) Subject to subsection (3) where a sole registered proprietor or proprietor in common dies, the personal representative of that proprietor
  - (a) on application to the Land Registrar as specified in Form 21 of the Third Schedule; and
  - (b) on the production to the Land Registrar of the probate or letters of administration,is entitled to be registered by transmission as proprietor in place of the deceased proprietor with the following description after the name of the personal representative "as the executor of the will of ... the deceased" or "as the administrator of the property of ... the deceased", as the case may be.

- (2) On the production by the personal representative to the Land Registrar of the probate or letters of administration, the Land Registrar may, without the personal representative being registered, register by transmission
  - (a) a transfer by the personal representative, and
  - (b) a surrender of a lease or discharge of a mortgage by the personal representative.
- (3) Where there are two or more joint personal representatives of a deceased proprietor the application referred to in subsection (1) shall be made by those personal representatives jointly and they shall
  - (a) be registered as joint proprietors; and
  - (b) jointly execute the transfer, surrender or discharge to be registered under subsection (2).

#### **167. Transmission on the Death of a Proprietor**

- (1) Subject to any restrictions imposed on the power of the personal representative to dispose of land or interest in land contained in the appointment as personal representative, the personal representative or the beneficiary of the deceased proprietor, shall hold the land or interest in the land subject to the unregistered liabilities, rights or interests subject to which the deceased proprietor held the land or interest in land.
- (2) Without prejudice to subsection (1) and for the purposes of a transmission in respect of the land or the interest in land, the personal representative or the beneficiary of the deceased proprietor shall be deemed to be registered as proprietor of the land or the interest in land with the rights and subject to the limitations conferred or imposed by this Act and any other enactment on a proprietor who has acquired land or interest in land for valuable consideration.
- (3) The registration of a person under section 166, shall relate back to and take effect from the date of the death of the proprietor.

#### **168. Transmission in Bankruptcy**

- (1) A trustee in bankruptcy or insolvency shall, on the production to the Land Registrar of a certified copy of the order of the Court adjudging a proprietor bankrupt or insolvent or directing that the property of a deceased proprietor shall be administered according to the law of bankruptcy or insolvency, be registered as proprietor of land or interest

in land of which the bankrupt, insolvent or the deceased is proprietor and a copy of the order shall be filed.

- (2) A trustee in bankruptcy or insolvency shall be described in the register as "trustee of the property of ... a bankrupt or insolvent".
- (3) The trustee in bankruptcy or insolvency shall, subject to the restrictions contained in an enactment relating to bankruptcy or insolvency, hold land or an interest in land subject to the unregistered liabilities, rights or interests subject to which the bankrupt or insolvent or the deceased proprietor held the land or interest in land.
- (4) Without prejudice to subsection (3), and for the purposes of a transmission in respect of the land or interest in land the trustee in bankruptcy or insolvency shall have the rights and be subject to the limitations conferred or imposed by this Act or any other enactment on a proprietor who has acquired the land or interest in land for valuable consideration.

#### **169. Liquidation**

- (1) Where a company is being wound up, the liquidator shall produce to the Land Registrar the resolution or order by which the liquidator is appointed and the Land Registrar shall enter the appointment relating to a land or an interest in land of which the company is registered as proprietor in the register and shall file a copy of the resolution or order.
- (2) An instrument executed by or on behalf of a company in liquidation shall be executed in accordance with the Companies Act, 1963 (Act 179).

#### **170. Transmission in Other Cases**

Where a person becomes entitled to a land or an interest in land under an enactment or by virtue of a court order or a certificate of sale made, or issued under an enactment, the Land Registrar shall on the application of that person supported by the evidence that the Land Registrar requires, register that person as proprietor.

#### **171. Interest in Land through Trust**

- (1) A person who acquires land or an interest in land in a fiduciary capacity and is described by that capacity in the instrument of acquisition shall be registered with the addition of the words "as trustee" but the Land Registrar shall not enter particulars of the trust in the register.

- (2) An instrument which declares or is deemed to declare a trust, or a certified copy of the instrument, may be deposited with the Land Registrar for safe custody and reference, but the instrument or copy shall not form part of the land register or be deemed to have been registered.
- (3) Where it comes to the notice of the Land Registrar that a registered interest is affected by a trust, the Land Registrar may protect in the appropriate manner the rights of a person beneficially interested under the trust or whose consent is required to be given for any transaction under the trust.

### **172. Survivor of Trustees**

Where two or more proprietors are registered jointly as trustees and the survivor of the proprietors is not entitled to exercise alone the powers which were vested in them, the Land Registrar shall enter in the register a restriction to that effect.

### **173. Registration of Stool, Skin, Clan and Family Lands**

- (1) Subject to this Act and any other enactment, where land or interest in land is vested in a stool, skin, clan or family, the stool, skin, clan or family shall be registered as proprietor of that land or interest.
- (2) On registration of land in subsection (1) an entry shall be made in the land register stating the occupant of the stool or skin, or head of clan or family, or any other person authorized by the stool, skin, clan or family to administer the land or interest in land.
- (3) Where there is a change of the occupant of the stool or skin, or head of clan or family, or any other person authorized by the stool, skin, clan or family to administer land or interest in land, that occupant, head or person shall notify the Land Registrar in writing and the Land Registrar shall if satisfied, make the appropriate change in the entry.
- (4) For the purposes of this Act,
  - (a) an occupant of a stool,
  - (b) an occupant of a skin, or
  - (c) a member of a clan or family appointed by the clan or family as the representative of the clan or family for the purpose of administration of land or interest in land,

who has been served with notices under this Act, may enter a caveat or apply for an order prohibiting or restricting a transaction in respect of the stool, skin, clan or

family land on behalf of the stool, skin, clan or family in the same manner and in the same circumstances as the occupant, holder or member would be entitled to do under this Act were the land or interest registered in the individual name of that occupant or appointed family member.

- (5) This Act does not relieve an occupant or a subject of a stool or skin or head or member of a clan or family from a duty, customary or otherwise to consult with or secure the consent or concurrence of other members of the stool, skin, clan or family.
- (6) A disposition of stool, skin, clan or family land or interest in land shall not be registered by the Land Registrar unless it is satisfactorily proved that the requisite consent and concurrence has been duly given, and that the relevant provisions of Article 267 of the Constitution have been complied with.

#### **174. Caveats**

- (1) A person who
  - (a) claims an unregistered interest enforceable in respect of a registered land or interest in land,
  - (b) is entitled to a licence, or
  - (c) has presented a bankruptcy or insolvency petition against the proprietor of a land or an interest in land registered under this Act,may lodge a caveat with the Land Registrar prohibiting the registration of dispositions and the making of entries in the register affecting the land or the interest in land.
- (2) A caveat may
  - (a) prohibit the registration of dispositions and the making of entries altogether; or
  - (b) prohibit the registration of dispositions and the making of entries to the extent specified in the caveat.
- (3) A caveat shall be as specified in Form 22 of the Third Schedule and accompanied with a statutory declaration made in accordance with the Statutory Declarations Act, 1971 (Act 389).
- (4) The Land Registrar may refuse to register a caveat where there is good reason for the refusal or if the purposes of the caveat can better be effected by the registration of an interest under this Act.
- (5) Subject to this section, a caveat shall be entered in the land register.



### **175. Notice and Effect of Caveats**

- (1) The Land Registrar shall give notice in writing of a caveat to a proprietor whose land or interest in land is affected.
- (2) For as long as a caveat remains registered, a disposition which is inconsistent with the caveat shall not be registered except with the consent of the caveator or by an order of a Court.

### **176. Withdrawal and Removal of Caveats**

- (1) A caveat may be withdrawn by the caveator or removed by an order of a Court or subject to subsection (2) by an order of the Land Registrar.
- (2) The Land Registrar may
  - (a) on the application of an interested person, serve notice on the caveator that the caveat shall be removed at the expiry of the period specified in the notice;
  - (b) remove the caveat if before the expiry of the period specified in the notice the caveator has indicated that the caveator does not object to the removal of the caveat.
- (3) Where the caveator objects to the removal of the caveat, the caveator shall, before the expiry of the period specified in the notice, notify the Land Registrar who after hearing the interested parties shall make an appropriate order.
- (4) On the withdrawal or removal of a caveat, the registration of the caveat shall be cancelled and a liability incurred by the caveator under section 178, shall not be affected by the cancellation.

### **177. Further Caveats in Respect of the Same Matter**

The Land Registrar may refuse to accept a further caveat by the same person or any other person in relation to the same matter in respect of which there is subsisting caveat.

### **178. Wrong Caveats**

- (1) A person who lodges or maintains a caveat wrongfully and without reasonable cause commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than one thousand penalty units or imprisonment for not less than six months and not more than three years or both.
- (2) Subsection (1) is without prejudice to the rights of any person adversely affected by a caveat to sue for compensation.

### **179. Notice of Intention to Register Instruments Affected by Caveat**

- (1) Where an application is made for the registration of a disposition or the making of an entry, the registration or making of which is prohibited by a caveat, the Land Registrar shall serve on the caveator a notice of the intention to register the disposition or make the entry after the expiry of a period of twenty-one days from the date of the issue of the notice unless before that period expires
  - (a) an order to the contrary has been made by the Court and served on the Land Registrar; or
  - (b) the application has been withdrawn or has otherwise become unsustainable.
- (2) Where, before the expiry of the notice issued under subsection (1), the application to which the notice relates is withdrawn, or has otherwise become unsustainable, the notice shall be cancelled, and the caveat shall remain in force until the caveat lapses under section 180.

### **180. Lapsing of Caveats**

- (1) A caveat lapses and ceases to affect land or interest in land
  - (a) at the expiry of the period specified under section 179, unless the Court has made an order to the contrary, in which case the caveat shall lapse according to the terms of the order;
  - (b) if before the expiry of the period specified in the notice given under Section 179, the caveat is withdrawn or removed; or
  - (c) at the expiration of five years from the date of the lodgment of the caveat.
- (2) Where, after the expiry of a notice given under section 179, the Land Registrar registers the disposition or makes the entry referred to in the notice, and the registration or entry does not wholly exhaust the intended purpose of the caveat, the caveat shall be deemed to have lapsed only to the extent necessary to permit the registration.
- (3) Where a caveat has lapsed wholly or partially the Land Registrar shall enter in the land register an appropriate notification to that effect.
- (4) Where a caveat lapses by virtue of paragraph (c) of subsection (1) a fresh caveat may be lodged in respect of the same matter.

### **181. Restrictions**

- (1) The Court may on the application of a person interested in a land or an interest in land after
  - (a) directing inquiries to be made;
  - (b) directing notices to be served; and
  - (c) hearing the applicant,if satisfied that there is a limitation or qualification on the power of the proprietor to deal with the land or interest in land, or that the interests of justice will be best served by a prohibition or restriction, make an order prohibiting or restricting a transaction in respect of that land or interest in land.
- (2) A restriction may
  - (a) be valid
    - (i) for a specified period;
    - (ii) until the occurrence of a particular event; or
    - (iii) until the making of a further order; or
  - (b) prohibit or restrict all transactions or only transactions that are inconsistent with specified conditions.
- (3) A restriction shall be entered in the appropriate land register.

### **182. Notice and effect of restriction**

- (1) The Land Registrar shall give notice in writing of a restriction entered in the land register to a proprietor affected by that restriction.
- (2) A transaction which is inconsistent with a subsisting restriction shall not be registered.

### **183. Removal and Variation of Restriction**

- (1) The Land Registrar may, on an application by an interested person or on the motion of the Land Registrar and after having given the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.
- (2) On an application to the Court by an interested person and on notice of the application to the Land Registrar, the Court may order the removal or variation of a restriction.

#### **184. Rectification by the Land Registrar**

- (1) The Land Registrar may rectify the land register or any instrument presented for registration if
  - (a) the land register or instrument contains clerical errors, omissions or any other matters that do not materially affect the interests of a proprietor; or
  - (b) the interested persons consent to the rectification; or
  - (c) on a survey verified and approved by the Director of Survey and Mapping Division, a dimension or an area shown in the land register is found to be incorrect
- (2) The Land Registrar shall, before rectifying a dimension or an area under subsection 1(c) give notice to the interested persons of the intention to rectify the land register.
- (3) On proof of the change of the name or address of a proprietor, the Land Registrar shall, on the written application of the proprietor, make an entry in the land register recording the change.

#### **185. Rectification by Court**

- (1) Subject to subsection (2), the Court may order the rectification of the land register by directing that a registration be cancelled or amended where the Court is satisfied that the registration has been obtained or made by fraud, mistake or other vitiating factor.
- (2) The register shall not be rectified so as to affect the title of a proprietor who has acquired a land or an interest in land for valuable consideration unless the proprietor had knowledge of the omission, fraud, mistake or other vitiating factor in consequence of which the rectification is sought or the proprietor had caused the omission, fraud, mistake or vitiating factor or substantially contributed to the omission, fraud, mistake or vitiating factor.

#### **186. Right to Indemnity**

- (1) Subject to this Act and to the Limitations Act, 1972 (NRCD 54), a person is entitled to be indemnified by the Republic if that person has suffered damage in consequence of being deprived of or prevented from acquiring land or an interest or a right in land by reason of
  - (a) a rectification of the register; or
  - (b) a mistake or an omission in the register which cannot be or is not ordered to be rectified under this Act; or

- (c) an error in a copy of or extract from a document or plan certified under this Act.
- (2) An indemnity shall not be payable under this Act to a person who has caused or substantially contributed to the damage by that person's fraud or negligence or who derives title otherwise than under a registered disposition made bona fide for valuable consideration from a person who caused or substantially contributed to the damage.

#### **187. Amount of Indemnity**

An indemnity in respect of the loss of a land or an interest or right in land shall not exceed

- (a) where the land register is not rectified, the value of the land, interest or right at the time when the omission, mistake, fraud or other vitiating factor which caused the damage; or
- (b) where the land register is rectified, the value of the land, interest or right in land immediately before the rectification.

#### **188. Procedure for Claiming Indemnity**

- (1) The Commission may, on the application of an interested party, determine whether a right of indemnity has arisen under section 186, and if so, award an indemnity, and costs properly incurred in relation to the matter.
- (2) An applicant dissatisfied with the decision of the Lands Commission may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

#### **189. Recovery of Indemnity Paid**

Where moneys are paid by way of indemnity under this Act, the Republic may

- (a) by suit or otherwise recover the amount paid from a person who had by fraud or negligence caused or substantially contributed to the loss; and
- (b) enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

#### **190. Fees**

The Lands Commission shall charge in respect of any search, survey, plan, printed form and any other matter connected with registration the fees prescribed under this Act and the Land Registrar shall refuse to act until the fees are paid.

### **191. Reviews and Appeals**

- (1) Where the Land Registrar refuses to perform any act or duty required to be performed by this Act or where a proprietor or other interested person is dissatisfied with a direction, decision or order of the Land Registrar in respect of an application, claim, matter or thing under this Act, the proprietor or other interested person may in the first instance apply to the Commission for review.
- (2) A person who is dissatisfied with the decision of the Commission may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

### **192. Effect of Reviews and Appeals on Registration**

Where a person applies for a review or lodges an appeal under section 191 that person shall within fourteen days give notice in writing of the application or the appeal to the Land Registrar who shall make a note of the application or the appeal in the part or parts of the land register affected by the application or the appeal, and without prejudice to the effect of the application or the appeal on previous entries in the land register, a subsequent registration shall have effect subject to the outcome of the application or the appeal.

### **193. Lands Commission to state special case to the High Court**

- (1) Where the Land Registrar has any doubt as to a matter of law concerning the construction of an instrument lodged for registration under this Act or any other question of law the Land Registrar shall refer the matter to the Lands Commission which may state a case for the determination by the High Court.
- (2) A determination of the Court under subsection (1) or, in the case of an appeal, the final determination is conclusive and binding on the parties.

## ***DEEDS REGISTRATION***

### **194. Application of Powers and Functions of the Land Registrar**

The powers and functions of the Land Registrar in respect of title registration apply to deeds registration with the necessary modifications.

### **195. Registrable instruments**

- (1) An instrument affecting land including
  - (a) conveyances;

- (b) vesting assents;
  - (c) certificate of purchase issued by a court registrar
  - (d) certificate of purchase under the Borrowers and Lenders Act, 2008 (Act 773);  
and
  - (d) power of attorney,
- may be registered under this Act.
- (2) An instrument shall not be registered if that instrument
    - (a) does not have a description which in the opinion of the Land Registrar is sufficient to enable the location and boundaries of the land to which it relates to be identified;
    - (b) does not have a sufficient reference to the date and particulars of registration of an instrument affecting the same land and already registered;
    - (c) does not have attached to it, a plan that has been approved by the Director of the Survey and Mapping Division or the duly authorized representative of the Director of the Survey and Mapping Division;
    - (d) has not been duly stamped in accordance with any enactment which requires stamping of the instrument; and
    - (e) does not conform to the requirements of this Act.
  - (3) Only originals of instruments shall be submitted for registration unless in any particular case the officer is satisfied that the original instrument is not obtainable and that a duplicate or certified copy is sufficient for the purpose of registration.
  - (4) At least three copies of the instruments shall be submitted for registration.

**196. Plans attached to instruments**

- (1) The plan attached to an instrument submitted for registration shall be accurately drawn and the scale chosen shall be as specified by the Director of the Survey and Mapping Division at the time of preparation and shall show clearly all the details and specifications required by the relevant enactment.
- (2) Every plan shall have a title which shall include the scale, the designation of the parcels of land shown in the plan, the region, district, city, town or village in which the land is situated at the time of the survey.

### **197. Proof of Instruments**

- (1) An instrument presented for registration shall be proved to have been duly executed by the grantor by the oath of one of the subscribing witnesses of the grantor.
- (2) The oath shall be on the instrument and state whether the grantor could read and write, and if the grantor could not read and write, state that the instrument was read over and interpreted to the grantor at the time of its execution and that the grantor appeared to understand its contents.
- (3) The form of the oath may be prescribed by Regulations.
- (4) For the purposes of this section “instrument” does not include a will, probate or letters of administration and an instrument which may be registered without proof under this Act.

### **198. Persons before whom proof shall be made**

- (1) The proof of instruments required for registration under this Act shall be made,
  - (a) if the instrument was executed in the Republic, before the Land Registrar at the office where the instrument was presented for registration, or before a Judge, a District Magistrate, or a registrar of the High Court;
  - (b) if the instrument was executed in a Commonwealth country, before a diplomatic agent or consular officer representing or acting on behalf of the Republic in that country, a judge, magistrate or a notary public;
  - (c) if the instrument was executed in any other country, before a diplomatic agent or consular officer representing or acting on behalf of the Republic in that country or a notary public.
- (2) An instrument not proved before the Land Registrar shall not be registered unless the instrument bears a certificate as near as may be specified in Form 1 of the Fourth Schedule, purporting to be signed
  - (a) personally and under the official seal or private seal, if there is no official seal, or
  - (b) by that person if that person does not have an official or private seal, and
  - (c) by one of the persons authorised to receive the proof to the effect that the instrument has been proved.



### **199. Judge's Certificates and Decisions of a Court**

- (1) A judgment from a court of competent jurisdiction relating to land shall be accompanied by a site plan which delineates the boundaries.
- (2) A judgment from a court of competent jurisdiction declaring title to land shall state the specific interest in land granted by the court.
- (3) The site plan under subsection (1) shall be approved and signed by the Director of Survey and Mapping Division or his representative and further signed or thumb printed at the back by the parties or grantor and the grantee.
- (4) A judge's certificate or a decision of a court which satisfies subsections (1) and (2) may, on production to the Land Registrar, be registered without proof.

### **200. Instruments kept in another Country**

Where an instrument is executed in a part of the world where by law the original is kept in the custody of a public officer, a copy of the original and the certificate of proof, certified to be correct by the public officer in whose custody the original is kept, shall be registered in the same manner as the original instrument, if the original has been proved in accordance with this Act.

### **201. Presentation of Instruments at the Registry**

- (1) Where an applicant presents an instrument for registration, the Land Registrar shall issue a receipt of acknowledgement to the applicant showing the date and time of the receipt or acknowledgement.
- (2) The form of the receipt or acknowledgement shall be prescribed by Regulations.
- (3) The Land Registrar shall publish notice of an application, in one newspaper of national circulation.

### **202. Register and Mode of Registration**

- (1) The Land Registrar shall keep a register, and subject to the exceptions stated in this Act, register the instruments presented in the manner specified in Form 2 of the Fourth Schedule.
- (2) The Land Registrar shall file a duplicate or copy of the instrument presented for registration in the Registry.
- (3) A duplicate or copy shall bear the certificate required by section 204, to be placed on the original instrument, and a certificate signed by the Land Registrar that the duplicate has been compared and verified with the original.

- (4) The duplicate or copy may be printed, photocopied or copied by any other acceptable process.
- (5) The Land Registrar may refuse to accept a duplicate or copy
  - (a) that is made on paper or other material which in the opinion of the Land Registrar is of a size unsuitable for filing or of insufficient substance to be durable; and
  - (b) made in a way which, in the opinion of the Land Registrar, does not produce a permanent impression.

### **203. Numbering and filing of Duplicates or Copies**

The Land Registrar shall number each duplicate or copy filed consecutively, and shall file the duplicates or copies in the order in which they are received by the Land Registrar.

### **204. Certificate of Registration**

- (1) A Land Registrar shall immediately after the proof of an instrument presented, or on the presentation of an instrument duly proved before any other person for registration, or of an instrument which may be registered under this Act without proof, place on the instrument a certificate in the Form 3 set out in the Fourth Schedule.
- (2) The certificate shall specify the year, month, day and hour of the proof or presentation of the instrument.
- (3) The year, month, day and hour specified in the certificate is, for the purposes of this Act, if the instrument is ultimately registered, the year, month, day and hour at which the instrument was registered.

### **205. Endorsed instruments**

An instrument endorsed on another instrument shall not be registered without the instrument on which that other instrument is endorsed, unless the latter instrument is already registered.

### **206. Replacement of Illegible Instruments**

- (1) Where in the opinion of a Land Registrar any duplicate or copy of an instrument registered in accordance with this Act has deteriorated or become illegible or is likely to deteriorate or become illegible, the Land Registrar may substitute for that duplicate or copy
  - (a) a further copy of the original instrument, or
  - (b) an improved and legible copy of the deteriorated or illegible duplicate or copy.

- (2) The Land Registrar shall endorse on the substituted document a certificate that sets out the circumstances which made the substitution necessary.

### **207. Copies of Plans to be Provided**

Where a plan is comprised in or annexed to an instrument, a true copy of the plan must accompany the instrument when the instrument is presented for registration, and the true copy of the plan shall be filed in the register.

### **208. Register of instruments**

- (1) The Land Registrar shall keep a record in which the Land Registrar on registration of an instrument, shall enter the registered number, the names of the parties, the date and nature of the instrument, a description of the parcel of land the instrument relates to and the date of registration.
- (2) The Lands Commission may cause the Land Registrars to keep other records and registers as the Commission considers appropriate.

### **209. Publication of Lists of Registered Instruments**

- (1) Within ten days after the last day of each month the Land Registrar in charge of each office shall send to the Director of the Land Registration Division a complete list as specified in Form 4 of the Fourth Schedule, or to that effect, of all instruments registered in the Land Registrar's office during the previous month.
- (2) On receipt of these lists the Director of the Land Registration Division shall within fourteen days compile one general list which shall be retained in the Director's office, and shall send one copy of the general list to the Land Registrar in charge of each office and publish the general list in a bulletin approved by the Lands Commission
- (3) Failure by the Land Registrar to comply with sections (1) and (2) constitutes misconduct and is subject to disciplinary sanctions by the Commission.

### **210. Searches, Copies and Extracts**

- (1) A person seeking information concerning a registered instrument may apply to the Land Registrar to conduct an official search in the records and the Land Registrar shall issue to the applicant a report of the result of the search which shall be presumed to be conclusive of the matters stated in the report.
- (2) A person seeking information concerning a registered instrument may subject to

prescribed conditions apply to the Land Registrar to search a record, register, or list in the custody of the Land Registrar.

- (3) A Land Registrar shall, on application under subsection (2) and upon payment of the appropriate fees allow searches to be made at all reasonable times in a record, register or list in the Land Registrar's custody, and shall on request give certified copies of, or extracts from any record, register or list.
- (4) An application for a certified copy of a registered instrument filed in the registry can only be made by
  - (i) a party to the instrument
  - (ii) a successor-in-title of a party to the instrument or
  - (iii) a person who can sufficiently prove an interest in the land covered by the instrument.

### **211. Refusal of Registration**

A registrar may, subject to sections 212, 213 and 214, refuse to register an instrument affecting a particular land if

- (a) the registrar is satisfied that the instrument deals with the land or part of it in a manner inconsistent with an instrument previously executed, whether by the same grantor or a predecessor-in-title or by any other person, or
- (b) on the face of the records, the grantor does not appear to be entitled to deal with the land as the instrument purports to do, or
- (c) the instrument is made in contravention of, or is void by virtue of, an enactment, or
- (d) it contains an interlineation, a blank, an erasure or alternation not verified by the signatures or initials of the person executing the instruments.

### **212. Notice of Grounds of Objection to Register**

Where, on presentation of an instrument for registration, the Land Registrar is of the opinion that there are grounds under this Act for refusal to register the instrument the Land Registrar shall

- (a) notify the applicant of the opinion of the Land Registrar and the grounds of the opinion, and
- (b) give the applicant one month notice within which to reply to the notice and satisfy the Land Registrar as to the title of the grantor to deal with the land in

the manner proposed by the instrument.

### **213. Formal hearing of Application for Registration**

- (1) Where after the reply to the notice given under section 212, the Land Registrar is still not satisfied with the title of the grantor to execute the instrument, the Land Registrar shall give notice
  - (a) to the applicant of the opinion of the Land Registrar, and
  - (b) to the effect that, unless the application for registration is withdrawn within thirty days or any extended period, not longer than one month, as the Land Registrar may for good cause allow, the Land Registrar will proceed to deal with the presented instrument in the manner provided by this section.
- (2) If the instrument presented for registration is not withdrawn within the specified time, the Land Registrar shall
  - (a) serve
    - (i) on the applicant, and
    - (ii) on every person with known interest in the land or who appears to have an interest in the land or is likely to be affected by the instrument, notice of the time and place at which the Land Registrar will hear and determine whether the registration of the instrument should be refused; and
  - (b) publish notice of the hearing in the Gazette, a national newspaper, and in any other manner that the Land Registrar considers appropriate.
- (3) The Land Registrar shall proceed to hear and determine the matter at the time and place appointed or at any other time or place to which the Land Registrar may adjourn the hearing.
- (4) The Land Registrar shall hear every person who claims to be entitled to an interest in the land.
- (5) The decision of the Land Registrar shall be communicated in writing to the grantor and to every person represented at the hearing and shall be published in the same manner as the notice of the hearing.
- (6) The grantor, the grantee and any other party represented at the hearing who is dissatisfied with the decision of the Land Registrar may appeal to the Regional Lands Commission or seek a resolution of the matter by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

#### **214. Registration of Instruments Showing Grantor's Title**

- (1) The Land Registrar may, as a condition of registration, require the grantor to present for registration any instruments prior to the instrument presented for registration which, in the opinion of the Land Registrar, are necessary in order to show on the face of the register the title of the grantor to execute the instrument.
- (2) Where the grantor satisfies the Land Registrar as to the existence and purport of any prior instrument and that the instrument is not within the possession, power or control of the grantor, the Land Registrar may accept and register, in lieu of the instrument, documentary evidence that the Land Registrar considers sufficient.

#### **215. Registration Necessary for Validity**

- (1) Subject to subsection (2), an instrument other than a judge's certificate or decision of a court, first executed after the commencement of this Act shall be of no effect until it is registered.
- (2) This Act shall not operate to prevent an instrument which, by virtue of an enactment, takes effect from a particular date from so taking effect.

#### **216. Registration to be Actual Notice**

- (1) The registration of an instrument constitutes actual notice of the instrument and of the fact of registration to all persons and for all purposes, as from the date of registration, unless otherwise provided in an enactment.
- (2) Subsection (1) does not apply to a judge's certificate or a decision of a court.

#### **217. Priority of Instruments**

- (1) An instrument other than a Judge's Certificate or a decision of a court whether executed before or after the commencement of this Act shall so far as regards a land affected by the instrument, take effect in accordance with section 215, 216, 218 and this section as against any other instruments affecting the same land.
- (2) Rights derived from instruments registered in accordance with this Sub-Part have priority according to the order in which the instruments were presented to the Registry irrespective of the dates of the instruments and although the entry in the land register may have been delayed.

- (3) Subsection (2) does not apply where there is fraud, notice or mistake or any other legal incapacity.
- (4) An instrument sent by post and received on any day during the hours of business shall be deemed to have been presented at the time it was received.
- (5) An instrument shall, except as otherwise expressly provided in sections 215, 216, 218 and this section

#### **218. Copies or Extracts as Evidence**

A copy of an instrument, an extract of the register or a certificate of registration signed by a Land Registrar shall be receivable in evidence in court without further or other proof, unless the copy, extract or certificate is proved to be a forgery.

#### **219. Previously Registered Instruments**

- (1) An instrument duly registered in accordance with an enactment in force before the commencement of this Act shall be retained by the Land Registrar in charge of the instrument.
- (2) An instrument duly registered under subsection (1) in accordance with the enactment that governed the registration of that instrument at the date of the registration of that instrument shall be deemed to be duly registered under this Act and shall continue to take effect in accordance with that law.

### ***ACQUISITION OF LAND BY THE REPUBLIC***

#### **220. Power of the State to Compulsorily Acquire Land for Public Purposes**

- (1) The State may compulsorily acquire any land where the acquisition of that land is necessary
  - (a) for a public purpose and in the interest of defence, public safety, public order, public morality, public health, town and country planning or resettlement; or
  - (b) in order to secure the development or utilization of that land or other land in such a manner that promotes the public benefit.
- (2) The necessity for the acquisition shall be clearly stated and shall be such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property.
- (3) Prompt payment of fair and adequate compensation shall be made for the acquisition.

- (4) Acquisition of land by the Republic shall be by the publication of an Executive Instrument (EI) in the Gazette which shall specify the extent of the land acquired.
- (5) A copy of the instrument made under subsection (4) shall
  - (a) be served personally on a person having an interest in the land or left with a person in occupation of the land;
  - (b) be served on the traditional authority of the area in which the land is situate and that authority shall request the chief to notify the people of the area concerned;
  - (c) be affixed at a conspicuous place on the land;
  - (d) be published on three consecutive occasions in a newspaper circulating in the district where the land is situate and in any other manner directed by the Lands Commission; and
  - (e) where the person who is to be affected by the acquisition is outside the country, a copy of the instrument shall be sent by registered mail to the last known address of that person outside the country.

#### **221. Acquisition of Land by Purchase or Gift**

- (1) The Republic may agree with the owner of any land required for public purposes for the purchase of that land, as required, for the consideration that may be agreed upon or determined under the provisions of this Act.
- (2) The Republic may accept from the owner a gift of land to be used for the purposes determined by the donor.
- (3) The Lands Commission shall prepare and publish standard practice guidelines for the conduct of purchase of land for the Republic and gift of land to the Republic.
- (4) Where the Republic acquires land by purchase or gift the instrument relating to the purchase or gift shall be published in the Gazette and that shall be conclusive proof of the acquisition.

#### **222. Allocation of Public Land**

- (1) Where land is acquired by the Republic, the allocation of the land shall be for the purpose for which the land was acquired or in the public interest and in accordance with Regulations made under this Act.
- (2) The Republic shall not grant a freehold interest of public land compulsorily acquired under this Act.



- (3) The Lands Commission shall issue a certificate of allocation to a Ministry, Department or Agency to which public land is allocated.
- (4) A Certificate of Allocation grants a user right only and does not confer on the beneficiary institution the right to create or transfer an interest in the land.

### **223. Unlawful Occupation or Sale of Public Land**

- (1) Despite the provisions of the Limitation Act, 1972 (NRCD 54) and any other law, a person who unlawfully occupies public land does not acquire an interest in or right over that land by reason of the occupation.
- (2) A person who unlawfully sells public land commits an offence and is liable on summary conviction to a fine of not more than ten thousand penalty units and a term of imprisonment of not more than fifteen years.

### **224. Lands Commission to act on behalf of the Republic**

The Lands Commission established under Article 258 of the Constitution shall act on behalf of the Republic in the acquisition of land under sections 220 and 22 of this Act.

### **225. Availability of Funds for Payment of Compensation**

- (1) Compulsory acquisition of land shall not be undertaken or facilitated by the Lands Commission unless the intended user of the acquired land proves in writing to the satisfaction of the Commission that the funds for the payment of compensation and other costs associated with the acquisition have been paid into an escrow account.
- (2) The escrow accounts shall be managed by the Lands Commission.

## ***PROCEDURE FOR COMPULSORY ACQUISITION***

### **226. Compulsory Acquisition Procedure**

Compulsory Acquisition by the Republic shall be in accordance with the procedures provided for in sections 227 to 236.

## **227. Preliminary Investigations**

- (1) Where the Republic is satisfied that land in any locality is required for a public purpose, it shall be lawful for a person authorized by the Lands Commission and the person's servants and workmen to
  - (a) enter upon and survey and take levels of that land and adjoin lands in that locality;
  - (b) dig under the subsoil;
  - (c) undertake an interim valuation of that land;
  - (d) do all other acts necessary to ascertain the suitability of that land for the intended public purpose;
  - (e) clear, set out and mark the boundaries of that land and the intended line of work (if any) proposed to be done on that land.
- (2) A person intending to enter any land to do any of the things described in subsection (1), shall give one month notice in the locality where the land is located employing the appropriate media as the circumstances of the affected locality may dictate.
- (3) Without prejudice to subsection (2), a person shall not enter into any land or premises except with the consent of the occupier,
- (4) Despite subsection (3) a person may enter into land or premises if consent to enter is not granted within 14 days after the notice referred to in subsection (2).
- (5) As soon as an entry is made under subsection (1), the authorized person shall pay for any damage done after the entry and in case of a dispute as to the amount to be paid either that person or the person claiming compensation may refer the matter to the Lands Commission and subsequently for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

## **228. Notice to Interested Persons**

- (1) Where the Republic decides to acquire land under this Act, the Lands Commission shall give notice as specified in Form 1 of the Fifth Schedule to the persons interested or claiming to be interested in the land or to the persons entitled by this Act to convey the land or to those of them that after reasonable enquiry may be known.
- (2) The notice referred to in subsection (1) shall be published in the *Gazette*.
- (3) A notice under subsection (1) shall

- (a) be served personally on the persons interested or claiming to be interested or be left at their last or usual place of abode or business; or
  - (b) where the persons are absent from Ghana or their last usual or place of abode or place of business cannot after reasonable enquiry be found, the notice shall be left with the occupier of the land or the agent of the occupier; or
  - (c) where there is no agent the notice shall be affixed on a conspicuous part of the land.
- (4) Where the person to be served is a corporation, company or firm, the notice shall
- (a) be left at the registered office of the corporation, company or firm in Ghana; or
  - (b) where an office cannot be found after reasonable inquiry the notice shall be served on any principal officer or agent of the corporation, company or firm in Ghana; or
  - (c) where there is no officer or agent, or where an officer or agent cannot be found, the notice shall be affixed upon a conspicuous part of the land.
- (5) A notice required to be served under this Section shall be published at least once in the Gazette and a newspaper circulating in the locality where the land is situate and a copy shall be posted on the official notice board of the District Assembly, the Traditional Council and be affixed on a conspicuous part of the land.
- (6) A notification under subsection (1) shall lapse if no action is taken pursuant to the notice within twelve months from the date of publication in the Gazette.
- (7) Notwithstanding subsection (6), it is lawful for the Lands Commission to publish a fresh notification under subsection (2) in respect of the land or part of the land in relation to which the notification has lapsed if the Commission is satisfied that the land or part of the land is likely to be needed for a public purpose.

**229. Land to be surveyed, demarcated and Entered on Register**

Upon the publication of the notice pursuant to section 228 that any land is needed for the purpose specified in that notice, the Lands Commission shall

- (a) cause the areas affected by the compulsory acquisition to be surveyed and demarcated, unless this has already been done to satisfaction of the Commission; and
- (b) make a note of the intended compulsory acquisition in the Lands Register or

Deeds Register.

### **230. Consultation with Stakeholders**

A compulsory acquisition of land shall not be undertaken by the Republic unless the Lands Commission has consulted the owners and occupiers of the lands to be affected, the traditional authorities and community leaders and the concerns of the landowners, occupiers, and community leaders have been taken into consideration.

### **231. Report of Consultation**

- (1) The Lands Commission shall prepare and publish a full report of consultation in respect of the proposed acquisition.
- (2) A copy of the Report made under subsection (1) shall be made available to the traditional authority and the District Assembly of the area in which the land is situated and upon request to any person who has an interest in the land.

### **232. Further Survey**

- (1) The Lands Commission may by written authority generally or specifically authorize any officer or person, together with servants and workmen, to enter upon land in any locality specified in a notification published under section 227, to carry out further survey work that may be detailed in the written authorization.
- (2) A person authorized under subsection (1) shall, on demand by the occupier of any land upon which the person enters, produce to the occupier, the letter of authority of that person together with a copy of the relevant notification.
- (3) A person authorized under subsection (1) shall not enter into any premises unless
  - (a) that person has first sought and obtained the consent of the occupier of the premises; or
  - (b) failing the consent, the person has given the occupier 14 days notice in writing of the intention of the person to enter the premises.

### **233. Declaration that the Land is Required for Public Purpose**

- (1) Where the State decides that any of the lands referred to in section 220, is needed for any of the purposes referred to in the section, a declaration as specified in Form Two of the Fifth Schedule shall be published in the Gazette.
- (2) A declaration in the Form as in subsection (1) shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

- (3) A declaration under subsection (1) shall lapse and cease to be of any effect on the expiry of two years after the date of its publication in the Gazette in so far as it relates to any land or part of any land in respect of which the procedures for acquisition have not been concluded and a compensation award made within the said period of two years, and, accordingly, all proceedings already taken or being taken in consequence of such declaration in respect of that land or that part of the land shall terminate and be of no effect.

#### **234. Withdrawal from Acquisition**

- (1) The Lands Commission may withdraw from an intended compulsory acquisition of land by publishing a notification of the withdrawal in the same manner as in section 228.
- (2) Where there is a withdrawal under subsection (1), the Lands Commission shall reserve the right to forfeit an amount which is sufficient to defray the amount of costs and damages incurred by any person interested and the amount shall be determined by the Lands Commission in consultation with the persons affected by the withdrawal and shall be deducted from the deposit or escrow account.

#### **235. Information on land use of scheduled land**

- (1) For the purposes of assessing the amount of compensation, the Lands Commission shall request from the Department responsible for Town and Country Planning information on the following matters:
  - (a) whether the scheduled land is within a local planning authority area;
  - (b) whether the scheduled land is subject to any development plan under the law applicable to it relating to town and country planning; and
  - (c) if there is a development plan, the land use indicated in the development plan for the scheduled land.
- (2) The Town and Country Planning Department shall provide the information required within one month after the request has been made.
- (3) The information obtained by the Lands Commission under this section shall be conclusive evidence, for the purpose of valuing the scheduled land, with regard to the land use at the date of the acquisition.

### **236. Publication of Executive Instrument**

- (1) Acquisition takes effect from the date of publication of the Executive Instrument referred to in section 220 (4) and (5).
- (2) On the publication of the instrument, the land shall without further assurance vest in the President free from any encumbrances.
- (3) An Instrument which is not published in accordance with section 220 (4) and (5) of this Act is ineffective and any purported acquisition under that Instrument is void.

### **237. Interested claimants to submit claims**

- (1) A person who claims a right or interest in land which is the subject of an Instrument made under section 220(4) and (5) or whose right or interest in that land is affected in any manner shall, within a period not exceeding six months from the date of the publication of the Instrument, submit in writing to the Commission
  - (a) particulars of the claim or interest in the land of that person;
  - (b) the manner in which the claim or interest of that person has been affected by the Instrument of declaration; and
  - (c) the amount of compensation claimed and the basis for the calculation of the compensation.
- (2) A person is entitled to make a submission under subsection (1) if that person is a holder of
  - (a) allodial title;
  - (b) customary law freehold;
  - (c) common law freehold;
  - (d) usufructuary interest;
  - (e) leasehold interest;
  - (f) customary tenancy; or
  - (g) any other interest or right in relation to the land.

### **238. Notice of Assessment**

- (1) The Lands Commission shall, having completed the action required by section 239, assess compensation for the land by giving public notice as specified in Form Three of the Fifth Schedule, for the assessment of claims for compensation.

- (2) A copy of the schedule to the declaration in the Form gazetted under section 220, shall be appended to every notice.

### **239. Service of Notices**

- (1) The Lands Commission shall, in addition to giving public notice as required by section 220, in respect of all scheduled land specified in the notice serve copies of such notice in the manner prescribed by section 220 upon
  - (a) the occupier of the land;
  - (b) the registered proprietor of the land, where the person is not the occupier of the land;
  - (c) any person having a registered interest in the land;
  - (d) any person who is known by the Commission or the Commission has reason to believe to be interested in the land:
- (2) An omission or failure to serve the notice upon a person specified subsection (1), shall invalidate the assessment.

### **240. Assessment of Compensation**

- (1) The Lands Commission shall assess the value of scheduled lands and the amount of compensation payable and issue a written report in respect of the assessment.
- (2) Where there is no dispute regarding the amount of compensation assessed and the person to whom the compensation is to be paid, the Lands Commission shall pay the compensation immediately and in any event not later than six (6) months after the assessment.
- (3) A person who is dissatisfied with the assessment of compensation by the Lands Commission may apply to the Lands Commission for a review of the assessment and where that person is still dissatisfied after the review, that person may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).
- (4) Subsection (3) does not take away the right of a person who is dissatisfied with a decision of the Lands Commission to resort to the High Court in accordance with article 20(2)(b) of the 1992 Constitution.
- 5) An Officer of the Commission who intentionally overvalues or undervalues a scheduled land commits an offence and is liable on summary conviction to a fine of not more than Ten Thousand penalty units or a term of imprisonment of not more than fifteen years or to both.

#### **241. Conflicting Claims of Interest and Rights**

- (1) Where there is a dispute as to the right or interest claimed by reason of conflicting claims, the claimants may refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).
- (2) Subsection (1) does not take away the right of a claimant to resort to the High Court in accordance with article 20(2)(b) of the 1992 Constitution.
- (3) Where there is a dispute as to the right or interest claimed, the Lands Commission shall assess the compensation payable and pending the final determination of the dispute, the intended user of the acquired land shall lodge the compensation in an interest yielding escrow account and the amount together with the interest shall be released to the person entitled immediately after the final determination of the dispute.

#### **242. Basis of Assessment of compensation**

- (1) Whenever land is acquired for public purposes under this Act, market value shall be the basis of assessment of compensation.
- (2) For the purposes of this Act the term “market value” where applied to any scheduled land means the market value of the land at the date of the publication of the Executive Instrument in the Gazette.
- (3) In assessing the market value of any scheduled land, the Valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid in recent sales for land with similar characteristics which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subsection (1).
- (4) Where only a part of the land is to be acquired, the market value of the scheduled land shall be determined by reference to the whole land as shown in the document of title of the scheduled land and after having regard to the particular features of that part.
- (5) In assessing the market value of any scheduled land, regard shall not be had to the evidence of any sales transactions effected after the date with reference to which the scheduled land is to be assessed under subsection (2).
- (6) Where the scheduled land is held under a title for a period of years, in assessing the market value, regard may be had to the date of expiry of the lease as shown in the document of title, but regard shall not be had to the likelihood of a subsequent



alienation to the person or body who is the proprietor the interest in land immediately before the expiry of the lease.

- (7) In assessing the market value
  - (a) the effect of any express or implied condition of title restricting the use to which the scheduled land may be put; and
  - (b) the effect of any prohibition, restriction or requirement imposed by any other law on the scheduled land, shall be taken into account.
- (8) In assessing the market value of any scheduled land, where the information provided by the Department responsible for Town and Country Planning indicates that the scheduled land is within a local planning authority area, then the land shall be assessed by having regard to the specific land use for that land as indicated in the development plan.
- (9) In assessing the market value of any scheduled land which but for the acquisition would continue to be devoted to a purpose that has is no general demand or market, the assessment shall be made on the basis of the reasonable cost to the proprietor of the scheduled land of using or purchasing other land and devoting it to the same purpose to which the scheduled land is devoted, if the Lands Commission is satisfied that this is *bona fide* intended by the proprietor of the scheduled land.
- (10) If the market value of any scheduled land has been increased, in either of the following ways, the increase shall be disregarded:
  - (a) if it is made by the owner or the owner's predecessor in interest within two years before the publication of the Executive Instrument in the Gazette under section 220, unless it is proved that the improvement was made *bona fide* and not in contemplation of the acquisition of the land;
  - (b) if it is contrary to law or is detrimental to the health of the occupiers of the premises or to the public health.
- (11) The value of any building and other structures on any land to be acquired shall be disregarded if that building is not permitted by virtue of
  - (a) the category of land use; or
  - (b) an express or implied condition or restriction, to which the land is subject or deemed to be subject under any legislation.

### **243. Other Matters to be taken into account in determining compensation**

In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following other matters:

- (a) any betterment to the property of the claimant as a result of the acquisition ;
- (b) any damage sustained or likely to be sustained by the claimant at the time of the acquisition;
- (c) any damage sustained or likely to be sustained by the claimant by reason of the acquisition adversely affecting the claimant's other property, whether movable or immovable, in any other manner;
- (d) the need of the claimant to change residence or place of business and reasonable expenses incurred as a result of the change;
- (e) an undertaking by the Republic, person or corporation on whose behalf the land is to be acquired, to construct roads, drains, walls, fences or provide other facilities benefiting any part of the land left unacquired; and
- (f) any other cost that is necessary for the compulsory acquisition.

### **244. Matters to be disregarded in determining compensation**

In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:

- (a) the degree of urgency which has led to the acquisition; or
- (b) any disinclination of the person interested to part with the land acquired.

### **245. Fair and Adequate Compensation**

- (1) Where the assessment made by the Lands Commission is higher than the claim of the claimant, the claimant shall be paid the amount assessed by the Lands Commission which shall be fair and adequate.
- (2) A claimant under this section is entitled to be represented by a lawyer or a valuer and any other expert necessary for assessing meaningful compensation.
- (3) Where the claimant is unable to pay for the services of a lawyer or a valuer and other experts under subsection (2), the payment shall be made from the escrow account provided for in section 225 (availability of funds for payment of compensation) and deducted from the compensation payable to the claimant.
- (4) The Commission shall not make a decision on the compensation payable to a claimant if that claimant is not represented as provided for under subsection (2).

#### **246. Disbursement of assessed compensation**

- (1) Compensation assessed in respect of land shall
  - (a) where usufructuary interest exists be disbursed as follows
    - (i) 60% to the holder of the usufructuary interest; and
    - (ii) 40% to the holder of the allodial title.
  - (b) where there is no usufructuary interest, be paid to the allodial holder.
- (2) Where the land for which compensation is to be paid is the subject matter of tenancy
  - (a) as between a holder of the allodial title and a customary tenant, the compensation payable for the land, shall subject to express agreement to the contrary, be 60% to a holder of allodial title and 40% to the customary tenant
  - (b) as between a holder of the allodial title, a holder of a usufructuary interest and a customary tenant the compensation payable for the land, shall subject to express agreement to the contract, be 40% to the holder of the allodial title, 30% to the holder of the usufructuary interest and 30% to the customary tenant.
- (3) Despite subsections (1), (2) and (3), compensation for loss of buildings, crops or other improvements shall be paid to the owners of the buildings, crops or other improvements

#### **247. Payment of compensation or deposit in Court**

- (1) After a notice of the assessed compensation has been served on all interested persons by the Lands Commission, the Lands Commission shall make payments of the compensation to the person entitled unless
  - (a) there is no person competent to receive the payment;
  - (b) the person entitled refuses to receive payment; or
  - (c) there is a dispute as to the right or title of the person to receive the compensation.
- (2) In the cases referred to in paragraphs (a), (b) and (c) of subsection (1), the Lands Commission shall apply *ex parte* to the Court, supported by affidavit, for an order to deposit into court the amount awarded.
- (3) For the purposes of this section, “payment” is deemed to have been made on the day

- (a) the Lands Commission gives notice in writing to a claimant that the cheque; money order or cash is available for collection;
- (b) the cheque or money order is sent by registered post to a claimant; or
- (c) of the delivery of the cheque or money order by the Lands Commission to the Court.

**248. Delay in payment of compensation**

- (1) A person aggrieved by a delay in the payment of compensation due to that person under this Act may apply to the High Court for the purpose of obtaining prompt payment of compensation.
- (2) Where the High Court upholds the claim of an applicant, there shall be added to the compensation interest determined by the Court.

**249. Payment in error**

- (1) A person who receives the whole or a part of a compensation awarded for an interest in any scheduled land either in error or before it has been established that another person is rightfully entitled to the interest, is liable, on demand by the Lands Commission, to refund the amount received or to pay it to the person entitled to the compensation within three months or any longer period that the Lands Commission may specify in the Commission's demand notice.
- (2) An officer of the Commission who knowingly makes a payment to a person who is not entitled to compensation commits an offence and is liable on summary conviction to a fine of not more than five thousand penalty units or a term of imprisonment of not more than five years or both, unless that officer proves that the payment was in good faith.

**250. General power to take possession**

The Lands Commission may take possession of any land in respect of which compensation has been paid under section 247, after service upon the occupier of a notice as specified in Form 4 of the Fifth Schedule.

**251. Procedure for taking possession**

- (1) The Lands Commission or any Ministry, Department or Agency authorized by the Commission shall take possession of any scheduled land by serving upon the occupier

of that land or, if the person cannot be found, by posting on the land, a notice as specified in Form 5 of the Fifth Schedule.

- (2) A copy of the plan of the land and the notice gazetted under section 220, or any relevant part of the plan of the land, shall be included as a schedule to the notice.
- (3) Upon taking possession of land under subsection (1), the Lands Commission shall also serve a copy of the notice in subsection (1), upon the registered proprietor of the land, where the proprietor is not the occupier.

### **252. Entry in Register**

The Commission shall register the land specified in the Executive Instrument in the name of the Republic as land that has become public land within the meaning of Article 257 of the Constitution.

### **253. Subsequent disposal of acquired land**

Where land has been compulsorily acquired under this Act, or before the commencement of this Act a subsequent disposal or use of, or dealing with the land, whether by the Republic or person on whose behalf the land was acquired, shall not invalidate the acquisition of the land except that the disposal or use of, or dealing with the land shall be in accordance with the provisions of Article 20 of the Constitution.

### **254. Resettlement of displaced persons**

- (1) Where compulsory acquisition or possession of land under this Act involves displacement of the inhabitants, the Commission or any other person directed by the President shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and the social and cultural values of the inhabitants.
- (2) The Commission or any other person directed by the President under subsection (1) shall prepare a land acquisition and resettlement plan which shall among others provide for
  - (a) the land to be acquired
    - (i) whether the land is occupied and by whom;
    - (ii) what the land is presently being used for; and
    - (iii) the condition of the land and its facilities;
  - (b) the persons who will suffer any loss of assets, income or sources of livelihood;
  - (c) the persons to be displaced and the place where those persons are to be

- resettled;
- (d) the arrangements to be made to facilitate resettlement and integration;
  - (e) the manner and form in which compensation is to be assessed and paid;
  - (f) the heads of compensation payable;
  - (g) an estimate of the compensation payable and of the resettlement expenses;
  - (h) an Environmental Impact Assessment;
  - (i) the procedures to be followed in executing the plan;
  - (j) the arrangements for the involvement of the persons affected by the acquisition and resettlement; and
  - (k) what opportunities there will be to challenge plan execution and compensation.
- (3) Copies of this report should be distributed in accordance with section 231.

### ***VESTING***

#### **255. Vesting of stool lands**

- (1) On the coming into force of the 1992 Constitution it shall be unlawful to vest stool or skin land in the Republic.
- (2) After the commencement of this Act it shall be unlawful to vest clan or family land in the Republic.

#### **256. Management of vested lands**

- (1) The Commission shall constitute Management Committees for vested lands on which pre-vesting owners shall have adequate representation.
- (2) The details of membership and mandate of the Management Committee and related matters shall be prescribed by Regulations.

#### **257. De-vesting of vested lands**

- (1) Where it appears to the President to be in the national interest, the President may either unconditionally or subject to terms and conditions that the President may prescribe authorize the de-vesting of any land which prior to the commencement of the Constitution was vested in the President by any law.
- (2) The de-vesting shall be by Executive Instrument published in the Gazette.
- (3) Subject to accrued and reserved rights, the publication shall without further assurance de-vest the affected land.

## ***TEMPORARY OCCUPATION OF LAND***

### **258. Temporary Occupation of Land**

- (1) Subject to Article 20 of the Constitution, the President may authorise the temporary occupation and use of a land for a purpose which, in the opinion of the President is conducive to the public welfare or the interests of the State.
- (2) Where the President authorises the occupation and use of land under this section, the President shall publish a notice as specified in the Sixth Schedule in the Gazette giving particulars of the land, of the use to which it is intended to be put, and of the payments which are intended to be made under this section in respect of the use of the land.
- (3) A temporary occupation or use of land under subsection (1) shall be for a period of not more than ten (10) years which may be renewed for a further period of ten years after which the land shall be returned to the owner.
- (4) Where the land is not returned to the owner after the period specified in subsection (2) has expired, the land shall be deemed to have been compulsorily acquired and the provisions of this Act in respect of Compulsory Acquisition shall be complied with.
- (5) The Republic shall out of moneys provided by Parliament whilst the temporary occupation of the land subsists, pay to the owner of the land an annual amount of money determined to be proper payments to be made for the land based on full rental value, taking into consideration
  - (a) the location, size, existing use and other market factors of the land, and
  - (b) the benefits derived by the people of the area in which the land is situated from the use of the land.
- (6) Where a person suffers special loss by reason of disturbance as a result of an authorisation under this section that person shall be paid, out of moneys provided by Parliament, the compensation that the Commission or, on appeal, the High Court, may determine.
- (7) A person dissatisfied with the failure of the Commission to grant compensation or with the amount of the compensation, may appeal to the High Court.

### **259. Restoration of land**

On the expiration of the term of occupation or use referred to in section 258 (3), the Republic shall restore the land to the condition in which it was before the occupation or use and, failing

that restoration, compensation shall be paid for any damage done to the land, or for the extent by which the value of the land has been reduced by reason of the occupation or use.

**260. Disagreement over compensation or restoration**

Where the Lands Commission is unable to agree with the persons interested on the amount of compensation payable under section 259 or as to the condition of the land at the expiration of the term for which it is occupied or used, the Lands Commission shall refer the matter for resolution by alternative dispute resolution under the Alternative Dispute Resolution Act, 2010 (Act 798).

**261. Temporary Occupation of Land for Access**

Where the Lands Commission is satisfied that any land is needed solely as a means of access to any other land, then

- (a) the right of access so acquired shall extend to the passage of vehicles of all kinds including heavy machinery, whether owned or operated by the authority responsible for the public works or by any contractor or servant employed by that authority; and
- (b) the compensation to be paid shall be limited to the damage done on that land to trees, plants, growing crops and permanent improvements on the land.

**262. Right of Entry**

The Lands Commission or any staff of the Commission and any officer or person authorized under section 258, shall have the right at all reasonable times to enter upon land for any of the purposes of this Act.



***PART THREE- MISCELLANEOUS AND TRANSITIONAL PROVISIONS***

**263. OFFENCES**

- (1) A public officer or any other person who
  - (a) falsifies land records;
  - (b) fraudulently issues any document or makes or procures the registration of any document or instrument or erases an entry in or alters a document kept in or issued by the Lands Commission;
  - (c) fraudulently removes from the Lands Commission any land register or part of any land register or any other document filed with the Lands Commission;
  - (d) fraudulently defaces, obliterates or mutilates or causes to be defaced, obliterated or mutilated any land register or other document kept in the Lands Commission;
  - (e) fraudulently causes any unauthorised entry or alteration to be made in any land register or other document kept in the Lands Commission,commits an offence and is liable on summary conviction to a fine of not more than two thousand (2000) penalty units or to a term of imprisonment of not more than five years or both.
- (2) Any person who without reasonable excuse, the burden of proof which shall be on that person, willfully neglects or refuses to indicate the land of that person or land in which that person claims an interest or to assist in the demarcation of that land, when required to do so by a Surveyor or an officer under this Law, commits an offence and is liable on summary conviction to a fine of not more than two thousand penalty units or imprisonment not exceeding five years or both.
- (3) A person who fails to comply with an order, contained in a notice duly served on that person under this Act commits an offence and is liable on summary conviction to a fine of not more than five hundred penalty units or a term of imprisonment of not more than three years or both.
- (4) Proceedings or a conviction in respect of any act which is an offence under this section shall not affect any remedy which a person aggrieved or injured by the act may be entitled to against the person or the estate of the person who committed the act.

## **264. Protection of Officers**

An officer of the Lands Commission is not personally liable for any act done in good faith in the discharge of the duties or the exercise of the powers of the officer under this Act.

## **265. Regulations**

The Minister in consultation with the Commission may by Legislative Instrument make Regulations to provide for

- (a) the establishment, records and fees of Customary Lands Secretariats;
- (b) matters relating to power of entry and survey; matters relating to erection of boundary marks;
- (c) matters relating to land valuation;
- (d) matters relating to fees for consent and other matters concerning transactions relating to stool, skin, clan and family land;
- (e) facilities required for the provision of electronic conveyancing services; conditions of a licence for the provision of electronic conveyancing services;
- (f) matters relating to the compilation of Deeds;
- (g) matters relating to form of land register;
- (h) matters relating to registration of title to land;
- (i) registration of instrument affecting land;
- (j) matters relating to cancellation of entries in the land register;
- (k) compulsory acquisition of land by the Republic;
- (l) sustainable land management ;
- (m) the detailed requirement of registration and disposition of stool, skin, clan and family Land;
- (n) matters relating to registration of easements, restrictive agreements, profits and licences
- (o) Matters relating to receipt or acknowledgment of presentation of instruments at the registry
- (p) conditions for access to the land information system and the transaction that may be made by using that system;
- (q) matters relating to Form of Instruments
- (r) matters relating to verification of execution of instruments
- (s) matters relating to the allocation of public lands;
- (t) generally for giving full effect to the provisions of this Act;

- (u) fees in respect of matters connected with registration
- (v) matters relating to form of oath of proof
- (w) matters relating to form of acknowledgment receipt for instrument presented for registration
- (x) matters relating to management of vested lands

## **266. Repeals and Savings**

- (1) The following enactments are hereby repealed:
  - (a) Administration of Lands Act, 1962 (Act 123);
  - (b) State Lands Act, 1962 (Act 125);
  - (c) Land Registry Act, 1962 (Act 122);
  - (d) The Conveyancing Act, 1973 (NRCD 175);
  - (e) Land Title Registration Act, 1986 (PNDCL 152); and
  - (f) Section 11 of the Survey Act, 1962 (Act 127)
  - (g) High Court (Civil Procedure Rules, 2014) C.I. 47, Order 53
- (2) Despite the repeal of the enactments in subsection (1), Regulations, by-laws, notices, orders, directions, appointments or any other act lawfully made or done under the repealed enactments and in force immediately before the commencement of this Act shall be considered to have made or done under this Act and shall continue to have effect until reviewed, cancelled or terminated.
- (3) Any instrument or document made or issued under the repealed enactments shall continue to be valid under this Act until otherwise revoked.

## **267. Interpretation**