

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes) Act.*

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Lands at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in or in relation to this Chapter to—

“the Departmental Head”—should be read as references to the Secretary for Lands, National Mapping and Environment;

“the Department”—should be read as references to the Department of Lands, National Mapping and Environment;

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<sup>1</sup>Subsidiary legislation has not been up-dated.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes) Act.*

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*Lands Acquisition (Development Purposes)*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes) Act.*<sup>12</sup>

Being an Act to provide for and in relation to the acquisition of land by the State for development purposes.

PART I.—PRELIMINARY.

1. Purpose of this Act.

(1) The purpose of this Act is to enable the State to acquire land by agreement or by compulsory process in accordance with this Act—

(a) for the purpose of making land available to citizens within the meaning of Section 2—

(i) for subsistence farming where other land for that purpose is insufficient in any area; or

(ii) for economic development so that they may share in the economic progress of the country; or

(b) for the resettlement of residents of urban areas; or

(c) for any educational, social welfare or community development purpose where other suitable land is either unavailable or insufficient,

so as to implement the policies of the Government to develop rural areas and to assist, where necessary, such citizens who are residents of urban areas to achieve a better standard of living.

(2) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the Constitution, the purpose expressed in Subsection (1) is a public purpose. (*Added by No. 43 of 1976, s. 1.*)

2. Interpretation.

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

“annual net profit”, in relation to any land, means the annual net profit derived from that land as determined in accordance with Section 20;

“citizen” includes a group, association or corporation of which not less than 75% of the members or shareholders, as the case may be, are citizens;

“the date of acquisition”, in relation to any land acquired by compulsory process under this Act, means the date on which the notice of acquisition of the land is published in the National Gazette;

“financial year” means the period of 12 months commencing 1 July;

“gross income”, in relation to any land, means the total income to be derived from the land by working it in accordance with normal business principles under average management;

“improvements” includes a building, yard, fence, well, bore, reservoir, artificial watercourse or watering place, apparatus for raising, holding or conveying water, garden, plantation, cultivation or clearing, or any erection, construction or appliance, being a fixture, for the working or management of land or of

<sup>1</sup> See also, Constitution, Section 53 and the Land Act, Parts IV. (*Acquisition of land*) and XI. (*Compensation*).

<sup>2</sup> Amending Act (No. 43 of 1976) was retrospective; See, Appendix 1.

stock depastured on land or for maintaining or increasing the natural capabilities of the land;

"interest", in relation to land, means—

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, in or in connexion with the land;

"land" includes an interest in land;

"mortgagee", in relation to a mortgage, means the person for the time being entitled to moneys secured by the mortgage;

"mortgagor", in relation to a mortgage, means the owner for the time being of land that is the subject of the mortgage;

"notice of acquisition", in relation to any land, means a notice under Section 7(1) declaring the land to be acquired by compulsory process under this Act;

"primary production" means production resulting directly from—

- (a) the cultivation of land; or
- (b) the maintenance of animals or poultry for the purpose of selling them or their bodily produce (including any increase); or
- (c) fishing operations; or
- (d) forestry operations;

"the regulations" means any regulations made under this Act;

"the Trust Account" means the Alienated Land Fund Trust Account established by Section 35;

"this Act" includes the regulations;

"total outgoings", in relation to a parcel of land, means the total of the amounts paid in relation to the land to produce the gross income.

(2) A reference in this Act to the acquisition of land or of an interest in land includes a reference to the extinction of an interest in land by virtue of Section 7(2).

### 3. Application.

(1) This Act applies to all land in the country that, in the opinion of the Minister—

- (a) is undeveloped; or
- (b) is used, or is normally used, wholly or partly for primary production or for any other prescribed purposes,

other than customary land or any other prescribed land.

(2) This Act does not apply to land acquired by any person from the State by lease or otherwise after 19 December 1974 (being the date of commencement of the pre-Independence *Lands Acquisition Act 1974*).

(3) The provisions of this Act are in addition to and do not derogate the provisions of the *Land Act*.

### 4. Application of the Land (Underdeveloped Freeholds) Act.

The *Land (Underdeveloped Freeholds) Act* does not apply to land acquired or to be acquired under this Act.

PART II.—ACQUISITION OF LAND.

Division 1.—General.

5. Modes of acquisition.

The Minister may, on behalf of the State, acquire land—

- (a) by agreement; or
- (b) by compulsory process,

in accordance with this Act.

Division 2.—Acquisition by Agreement.

6. Acquisition by agreement.

(1) The Minister may, on behalf of the State, by agreement acquire from any person any land held by the person.

(2) Land acquired by agreement under this Act may be an easement, right, power, privilege or other interest that did not previously exist as such in, over or in connexion with the land.

(3) Notwithstanding any other law relating to the acquisition of chattels by the State, where—

- (a) land acquired or to be acquired under this Act is developed or partly developed land; and
- (b) at the time the land is acquired, certain chattels are being used on the land in connexion with the development of, or production from, the land,

the Minister may, where he is of the opinion that it is desirable to do so to develop the land or to maintain or increase its productivity, on behalf of the State, by agreement, purchase all or any of the chattels. (*Added by No. 43 of 1976, s. 2.*)

Division 3.—Acquisition by Compulsory Process.<sup>1</sup>

7. Compulsory acquisition of land.

(1) Notwithstanding anything in any other law, where in the opinion of the Minister it is necessary to do so for any of the purposes of this Act, the Minister may—

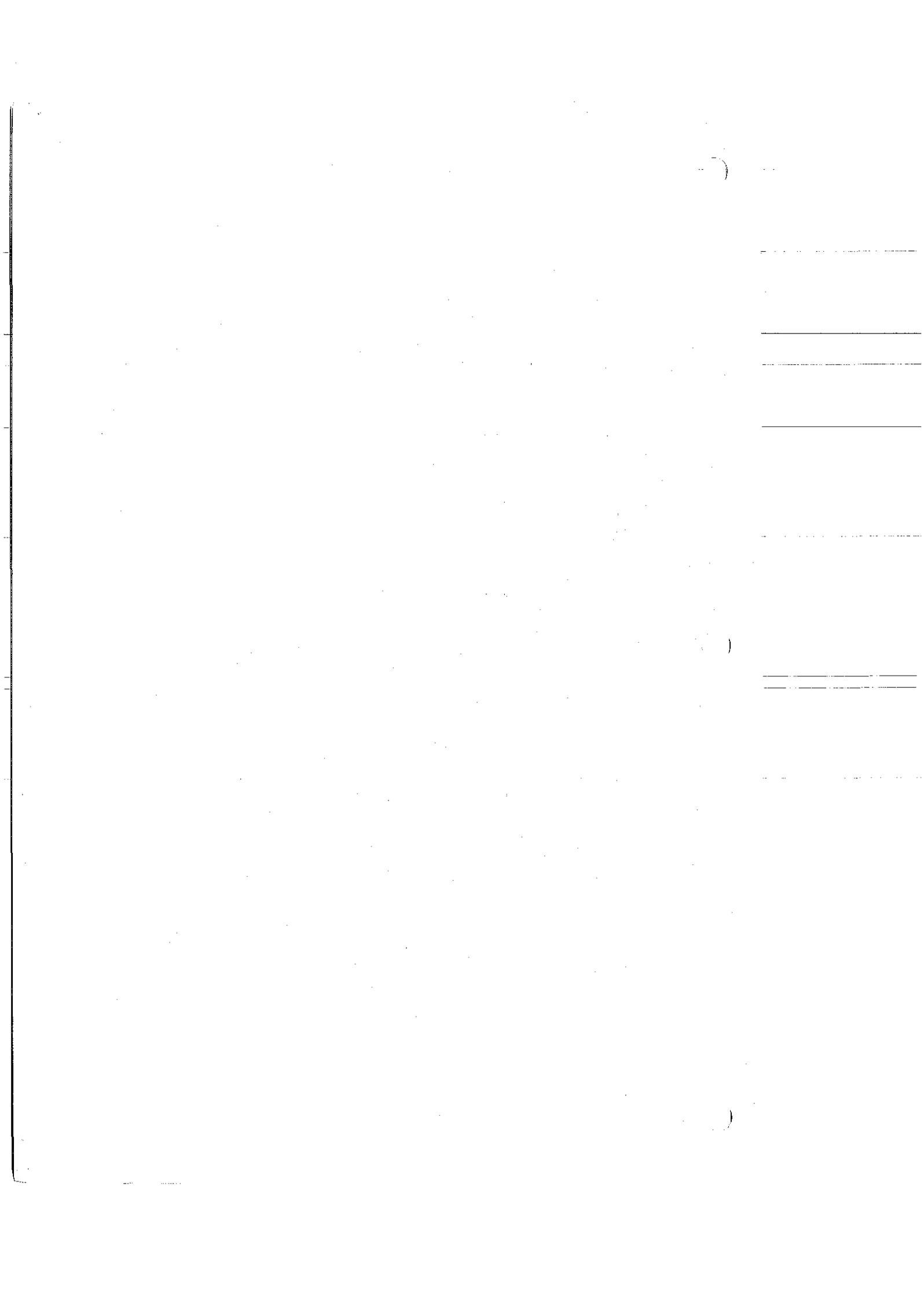
- (a) after the expiration of a period of two months after the service of a notice or notices under Section 8 in relation to the land; or
- (b) at any time, where, after diligent search and inquiry, he is satisfied that the owner of the land cannot be located; or
- (c) at any time after he has given a certificate under Section 8(5) in relation to the land,

by notice in the National Gazette declare that land specified in the notice is acquired by compulsory process under this Act.

(2) On the publication of a notice under Subsection (1), the land to which the notice applies is—

- (a) vested in the State; and

<sup>1</sup>See, also, Constitution, Section 53.



- (b) freed and discharged from all interests, trusts, restrictions, dedications, reservations, obligations, contracts, licences, charges and rates (other than local government charges and rates),

to the intent that the legal estate in the land and all rights and powers incident to that legal estate or conferred by this Act are vested in the State.

(2A) Notwithstanding any other law relating to the acquisition of chattels by the State, where—

- (a) land acquired or to be acquired under this Act is developed or partly developed land; and
- (b) at the time the land is acquired, certain chattels the property of the owner or owners of the land are being used on the land in connexion with the development of, or production from, the land,

on the publication of a notice of acquisition of the land under Subsection (1), absolute ownership of the chattels is, by force of this Act, vested in the State. (*Added by No. 43 of 1976, s. 3.*)

(3) The land acquired under this section may be an easement, right, power, privilege or other interest that did not previously exist as such in, over or in connexion with the land.

**8. Notice to treat.**

(1) The Minister shall not acquire land by compulsory process under this Act unless he has first caused to be served on each of the owners of the land, or such of them as can, after

diligent inquiry, be ascertained, a notice inviting the person on whom the notice is served to treat with the Minister for the sale or surrender to the Minister, on behalf of the State, of his interest in the land.

(2) A person served with a notice under Subsection (1) in respect of any land may, not later than two months after the service of the notice, furnish to the Minister particulars of—

- (a) the interest claimed by him in the land; and
- (b) the amount for which he is agreeable to sell to the Minister, on behalf of the State, his interest in the land; and
- (c) the name and address of any other person known to him to have an interest in the land and the nature of the interest.

(3) On receipt of the particulars referred to in Subsection (2), the Minister may treat with the person furnishing the particulars for the acquisition of his interest by the Minister, on behalf of the State, by agreement and may, notwithstanding anything in this Act, enter into an agreement with him for the acquisition.

(4) The Minister may, by written notice to a person served with a notice to treat, withdraw the notice to treat.

(5) This section does not apply in a case where the Minister certifies that there are special reasons specified in the certificate why the section should not apply.

#### 9. Disposal of resumed land.

Notwithstanding Section 1, where any land has been acquired under this Act the land may be dealt with in all respects as other Government land.

#### 9A. Disposal of resumed chattels.

Notwithstanding Section 1 or any law relating to the disposal of chattels by the State, where any chattel has been acquired under this Act, the chattel may only be disposed of—

- (a) by sale to any person or group of persons in whose favour a vesting order has been made under Section 15 of the *Land Redistribution Act*, or
- (b) as prescribed by or under the provisions of this Act or any other Act.

(Added by No. 43 of 1976, s. 4.)

#### 10. Grant of licence.

(1) Notwithstanding any other law, the Minister, or an officer authorized by him in writing for the purpose, may grant a licence in a form approved by the Minister to the person from whom any land has been acquired under this Act, or where that person does not apply for a licence to some other person, for the purpose of allowing him to use the land for the purpose or purposes for which it was used immediately before the date of acquisition or any other purpose. (Amended by No. 43 of 1976, s. 5.)

(2) A licence under Subsection (1) may be granted subject to such conditions as the Minister or officer granting the licence thinks proper, and, subject to those conditions, empowers the licensee to make such improvements and do such things on the land the subject of the licence as are necessary or convenient for the purposes of the licence.

(3) A licence under this section continues in force for such period as is specified in the licence.

(4) A licence granted under this section is subject to the payment of—

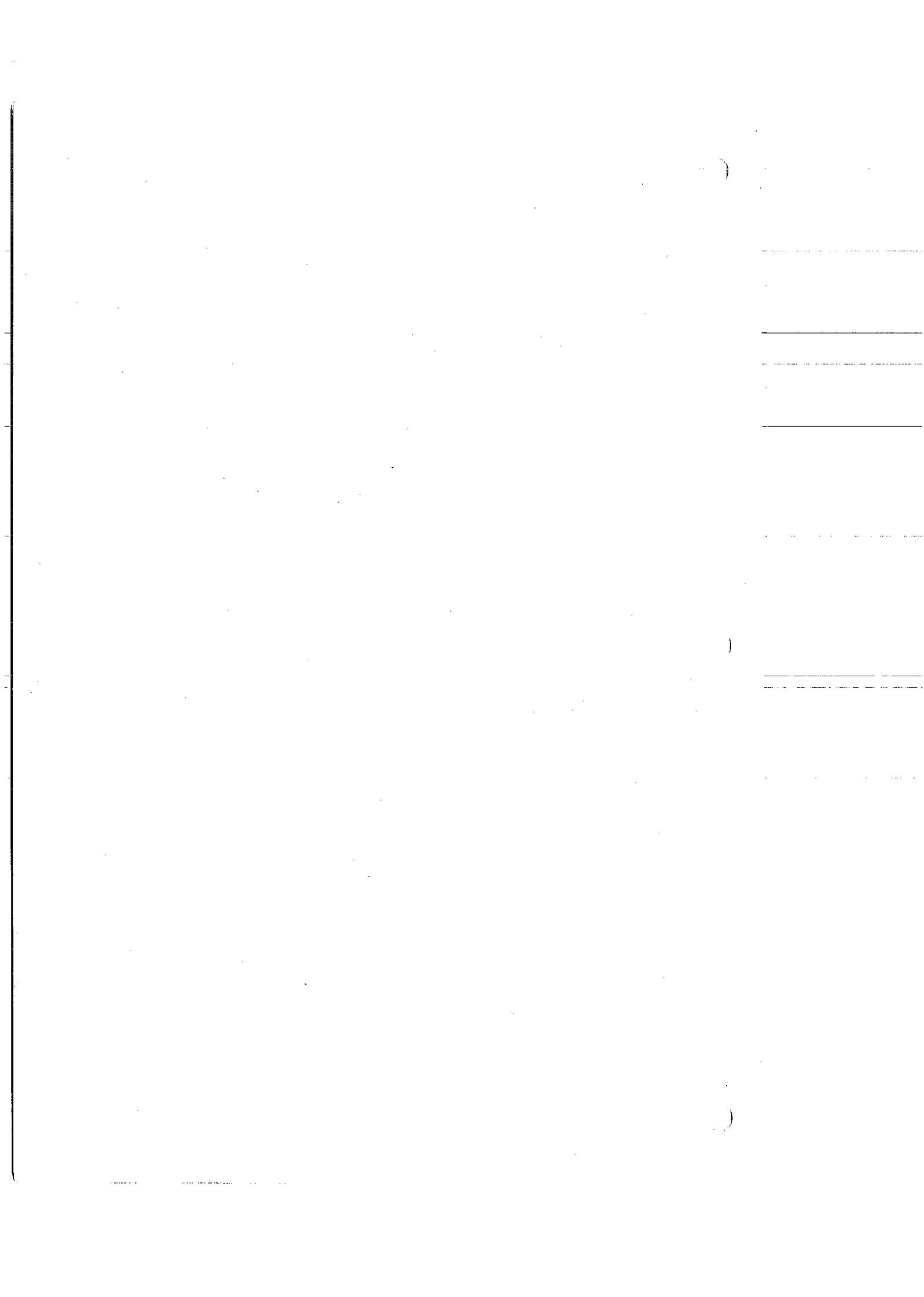
- (a) the fee; and

(b) the amount of premium (if any),  
fixed in relation to it by the Minister. (*Replaced by No. 43 of 1976, s. 5.*)

(5) A licence may be revoked by the Minister at any time for failure to comply with a condition of the licence.

**11. Power to lease direct.**

(1) Notwithstanding anything in the *Land Act*, the Minister may, in addition to his other powers under that Act, grant, on application or otherwise, a lease under that Act over any land acquired under this Act without referring the matter to the Land Board and without regard to the procedures under that Act.



(2) Notwithstanding anything in Section 3 or in the *Land Act*, a lease granted under that Act pursuant to Subsection (1) shall, in addition to the reservations and conditions prescribed by Section 39 of that Act, contain such other reservations, covenants and conditions as the Minister thinks fit. (*Replaced by No. 43 of 1976, s. 6.*)

**12. Conversion of estates and interest into claims for compensation.**

(1) Subject to Subsection (2), the interest of every person in land to which a notice of acquisition applies is, on the date of acquisition, converted into a right to compensation under this Act.

(2) Where in accordance with Section 7(3) an easement, right, power, privilege or other interest in, over or in connexion with land is acquired, the interest of every person in the land is, on the date of acquisition, and to the extent to which the interest is affected by the acquisition, converted into a right to compensation under this Act.

**13. Notice to owner.**

(1) Where land is acquired by compulsory process under this Act, the Departmental Head shall, as soon as practicable after the date of acquisition, cause a copy of the notice of acquisition—

(a) to be given to or served on—

(i) the owner; and

(ii) where the owner is not the occupier, the occupier; and

(iii) any other person whom he has reasonable cause to believe has an interest in the land; and

(b) to be published in a newspaper circulating in the area in which the land is situated; and

(c) to be affixed, if practicable, on a conspicuous part of the land.

(2) Service of a notice under Subsection (1) shall be effected by serving the person with the notice, personally or by registered post, at the address of the person last-known to the Minister, or where for some reason the notice cannot be so served by serving it on any person in occupation of the land.

**14. Registration of notification.**

(1) Where land registered under the *Real Property Act, 1913* of the former Territory of Papua (Adopted) or the *Lands Registration Act 1924* of the former Territory of New Guinea (Adopted), has been acquired by compulsory process under this Act, the Departmental Head shall lodge with the Registrar of Titles a copy, certified under his hand, of the notice of acquisition.

(2) The Registrar of Titles shall—

(a) register the acquisition in the manner, as nearly as may be, in which dealings with land are registered; and

(b) deal with and give effect to the copy of the notice of acquisition as if it were a duly executed grant, conveyance, surrender, memorandum or instrument of transfer of the land to the State.

**15. Order as to rights and basis of compensation.**

(1) Notwithstanding anything in this Act, where land is acquired by compulsory process under this Act the National Court may, on the application of the State or of any other interested person, make such orders as it thinks proper for declaring or adjusting

rights and liabilities in connexion with the land or with transactions in relation to the land or otherwise affected by the acquisition.

(2) Without limiting the generality of the powers conferred by Subsection (1), the orders that may be made under that subsection include—

- (a) an order for the payment or repayment of money; and
- (b) an order discharging a person from an obligation to pay money; and
- (c) where there was a subsisting contract of sale of the land—an order with respect to the rights and liabilities of the parties to the contract; and
- (d) where there was a rent charge or other charge or encumbrance over the land—
  - (i) an order releasing a person in whole or in part from a personal covenant or obligation in relation to the charge or encumbrance; and
  - (ii) an order apportioning the charge or encumbrance between the land acquired and other land subject to the charge or encumbrance; and
- (e) an order determining the average annual net profit for the purposes of Section 20.

### PART III.—COMPENSATION.

#### *Division 1.—Claims for Compensation.*

#### 16. Making, acceptance and rejection of claims.

(1) A person who has a right to compensation under Section 12 may make a written claim for compensation to the Departmental Head, and shall provide such information in relation to the claim as the Departmental Head requires.

(2) Compensation is not payable to a person in respect of an interest in land acquired by compulsory process under this Act if—

- (a) a claim for compensation in accordance with Subsection (1) in respect of the interest is not served on the Departmental Head by the person within six months after the date of acquisition, or within such further time as the Departmental Head for a special reason allows; or
- (b) the interest is inconsistent with an interest claimed by another person in respect of which the State has, in good faith, paid or agreed to pay compensation.<sup>1</sup>

(3) Where a claim for compensation is made, the Minister shall, except where compensation is not payable by virtue of Subsection (2), consider the claim, and if he is satisfied that the claimant has produced prima facie evidence that he had, immediately before the date of acquisition of the land, the interest claimed by him in the land the Minister shall accept the claim for determination, but otherwise he shall reject the claim.

(4) Within three months after a claim for compensation is made, the Minister shall, by written notice served on the claimant, accept the claim for determination or reject the claim, and if the Minister fails to serve such a notice on the claimant he shall be deemed to have accepted the claim for determination.

(5) The acceptance of a claim for determination under this section does not entitle the claimant to payment of compensation otherwise than in accordance with Divisions 3 and 4.

<sup>1</sup>But see Constitution, Section 53(2).

**17. Proceedings where claim rejected.**

(1) Where a claim for compensation has been rejected by the Minister, the claimant may bring an action against the State in the National Court claiming a declaration that he was, immediately before the date of acquisition of the land, entitled to the interest specified in the claim.

(2) After notice to such persons as it directs, the National Court shall hear the action, and may—

- (a) declare that the claimant was entitled to the interest specified in his claim or to some other interest; or
- (b) dismiss the action.

(3) For the purposes of this Act, an order of the National Court under this section is binding on the State and on all persons who had interests in the land immediately before the date of acquisition of the land, whether or not it or they were represented before the Court on the hearing of the action.

(4) Where the National Court declares under this section that a claimant had an interest in land—

- (a) compensation in respect of the interest shall be determined in accordance with this Act as if the claim had been accepted by the Minister; and
- (b) if the interest declared by the Court differs from the interest specified in the claim, the claim shall be deemed to be amended accordingly.

(5) Where, in relation to a claim for compensation that has been rejected by the Minister—

- (a) the claimant does not, within one month after service on him of the notice of rejection of the claim or within such further time as the Minister allows, institute an action under this section in relation to the claim; or
- (b) the claimant has so instituted an action and—
  - (i) the action has been dismissed; and
  - (ii) a period of not less than 90 days has elapsed since the dismissal of the action and no appeal or further appeal by the plaintiff (including an application for leave to appeal) is pending,

the State may pay compensation in respect of the acquisition on the basis that the claimant was not, at the date of acquisition, entitled to the interest the subject of the claim.

(6) In a case to which Subsection (5) applies, where compensation is paid in respect of an interest that is inconsistent with the interest the subject of the claim no compensation is payable in respect of the last-mentioned interest.<sup>1</sup>

*Division 2.—Determination of Compensation Payable.*

**18. Principles of compensation.**

(1) The State shall, in respect of any land acquired by compulsory process under this Act, pay by way of compensation for the land—

- (a) in the case of undeveloped land—the prescribed amount; and

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<sup>1</sup>But see Constitution, Section 53(2).

- (b) in the case of land that has been developed or partly developed for purposes other than the return of income—the product of the value of the improvements, as determined by the Valuer General, and the prescribed factor for the land; and
- (c) in the case of land that has been developed or partly developed for the purpose of returning an income—
- (i) if, at the date of acquisition, the land has been in production for not less than five financial years—the product of the average annual net profit received in relation to the land over the five financial years immediately preceding the date of acquisition, as determined by the Valuer General, and the prescribed factor for the land; or
  - (ii) if, at the date of acquisition, the land has been in production for more than one financial year but less than five financial years—the product of the average annual net profit that would have been received in relation to the land over the period of five financial years immediately preceding the date of acquisition if the land had been in production for the full period, as determined by the Valuer General, and the prescribed factor for the land; or
  - (iii) if, at the date of acquisition, the land has been in production for more than one financial year but has incurred an average annual net loss for the period that it has been in production, or for the period of five financial years immediately preceding the date of acquisition, whichever is the lesser period—an amount fixed by the Minister, after receiving a report from the Valuer General, in respect of the land; or
  - (iv) if, at the date of acquisition, the land has been in production for less than one financial year or is not yet in production—the product of the value of the improvements on the land, as determined by the Valuer General, and the prescribed factor for the land.

(2) Where there are two or more claimants in respect of any land, the State is not liable for any amount of compensation exceeding that for which it would have been liable if there were only one claimant and all rights to compensation in relation to the land were vested in him.

(3) The Valuer General—

- (a) in determining the average annual net profit for the purposes of Subsection (1)(c)(i) and (ii); and
- (b) in giving a report for the purpose of Subsection (1)(c)(iii); and
- (c) in determining the value of improvements for the purposes of Subsection (1)(b) and Subsection (1)(c)(iv),

shall have regard to—

- (d) the accepted principles of valuation practice; and
- (e) the current value of any improvements on the land and any chattels the property of the owner or owners of the land being used on the land in connexion with the development of, or production from, the land.

*(Amended by No. 43 of 1976, s. 7.)*

#### 19. Factors.

The Head of State, acting on advice given after receiving a report from the Valuer General, may by regulation fix factors for the purposes of the determination of compensation under Section 18, in relation to—

- (a) each class of land in the country; or

- (b) each class of land in different parts of the country; or
- (c) the use to which each class of land in the country or in different parts of the country is being put; or
- (d) a particular parcel or particular parcels of land.

**20. Determination of annual net profit.**

(1) Subject to Section 15(2)(e), the annual net profit received from any land acquired by compulsory process under this Act is the amount by which the gross income received from the land during a financial year exceeds the total outgoings in respect of the land for that year, as determined by the Valuer General.

(2) In determining the total outgoings in respect of any land for the purposes of Subsection (1), regard shall be had to—

- (a) all amounts paid by way of or for—
  - (i) salaries, wages and rations for staff and employees; and
  - (ii) maintenance of plant, vehicles and equipment; and
  - (iii) purchase of fuel, oil and lubricants; and
  - (iv) purchase of fertilizers, weedicides and insecticides; and
  - (v) insurance payments; and
  - (vi) maintenance of buildings; and
  - (vii) purchase of bags, twine, dye and other minor materials; and
  - (viii) purchase of tools; and
  - (ix) freight; and
  - (x) overheads concerned with office income-producing expenditure;<sup>1</sup> and
  - (xi) management, accountancy fees, rents, postage and other minor matters; and
- (b) depreciation of buildings, plant, vehicles and equipment.

**21. Determination of amounts payable to claimants.**

(1) After receipt of claims for compensation under Section 16, the Minister shall determine the amount of compensation payable to each of the claimants whose claim has been accepted for determination.

(2) As soon as practicable after he makes a determination under Subsection (1), the Minister shall cause a copy of the determination to be served on each of the claimants by registered post to the address of the claimant last known to the Minister.

**22. Appeals.**

(1) A claimant whose claim has been accepted by the Minister and who is dissatisfied with a determination made by the Minister under Section 21 may, within three months after the date on which a copy of the determination was served on him or such further time as the National Court allows, appeal to the National Court against the determination on all or any of the following grounds :—

- (a) that the valuation determined by the Valuer General for the improvements to the land is an incorrect valuation; and

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<sup>1</sup> Sic.

- (b) that the average annual net profit that was received, or that would have been received, in relation to the land, as determined by the Valuer General is incorrect; and
- (c) that the Minister used an incorrect prescribed factor when assessing the compensation payable for the land or the improvements.

(2) The notice of appeal shall state the amount of compensation that the claimant claims and the interest in respect of which it is claimed.

(3) Where an appeal under this section has been instituted in relation to an interest in land, the National Court may, by order, direct any person (other than the appellant) who has claimed compensation arising out of the acquisition of the land, and whose claim has been accepted under Section 16, to join as a respondent in the proceedings within a time specified in the order.

(4) A determination of the National Court under this section is binding on the State and the claimant and on all persons who had an interest in the land at the date of acquisition of the land, whether or not they were represented before the Court on the hearing of the appeal.

*Division 3.—Mortgages over Land Acquired by Compulsory Process.*

**23. Mortgage moneys barred by statute of limitations.**

For the purposes of this Division, moneys shall not be deemed to have been due to a mortgagee under a mortgage, or to have been secured by the mortgage, at the date of acquisition of land that was subject to the mortgage if the right of the mortgagee to recover the moneys was, at that date, barred by a statute relating to the limitation of actions, unless the mortgagee had, at that date, a power of sale or other remedy exercisable in relation to the land.

**24. Rights of mortgagee on compulsory acquisition.**

(1) Where land acquired by compulsory process under this Act was, at the date of acquisition, subject to a mortgage, the mortgagee may either—

- (a) claim compensation under this Act; or
- (b) by notice to the Minister, waive his rights to compensation.

(2) If the mortgagee makes a claim for compensation, he shall state in his claim—

- (a) the amount of principal due under the mortgage at the date of acquisition; and
- (b) the amount of interest, costs and charges due under the mortgage at that date.

(3) The Minister may, by written notice served on a person who is or may be a mortgagee, require him, at his option—

- (a) to make a claim under this Act for compensation as mortgagee; or
- (b) to waive his rights to compensation.

(4) If the person referred to in Subsection (3) fails to make a claim for compensation in accordance with this Act within two months, or such further period as the Minister in writing allows, after the service of the notice under that subsection, he shall be deemed to have waived his rights to compensation as mortgagee.

(5) Where a mortgagee claims compensation under this Act, the acquisition of the land has, to the extent to which the compensation payable to the mortgagee under Section 28(1) is sufficient to satisfy the mortgage debt and interest, costs and charges due to the

mortgagee under the mortgage as at the date of acquisition, the effect of extinguishing the liability of the mortgagor under the mortgage as from the date of acquisition.

(6) A mortgagee who waives his rights to compensation is debarred from claiming or receiving as mortgagee any compensation or other amount from the State.

**25. Particulars of mortgages.**

(1) The Minister may, by written notice served on the owner of land acquired by compulsory process under this Act, require him to furnish the following particulars :—

- (a) whether or not the land is subject to a mortgage; and
- (b) if the land is subject to a mortgage—
  - (i) the name and address of the mortgagee; and
  - (ii) the amount of principal due under the mortgage at the date of acquisition; and
  - (iii) the amount of interest, costs and charges due to the mortgagee under the mortgage at that date.

(2) If the owner of the land fails to furnish the particulars to the Minister within two months, or such further period as the Minister in writing allows, after the service of notice under Subsection (1), the Minister may agree with any person claiming to be a mortgagee of the land as to the amount due under the mortgage, and the owner is debarred from disputing the correctness of any amount so agreed on.

**26. Interest, etc., paid after date of acquisition.**

(1) Where an amount has been paid by any person or recovered by a mortgagee under a mortgage in respect of a liability that, on the making of a claim by the mortgagee, is extinguished, by virtue of Section 24(5), as from the date of acquisition—

- (a) the mortgagee is liable to repay the amount to the person who paid it; and
- (b) the Minister may deduct from the compensation payable to the mortgagee, and pay to the person who paid that amount, so much of the amount as has not been so repaid.

(2) A payment made by the Minister in accordance with Subsection (1)(b) shall be deemed to have been made in discharge of the obligation of the mortgagee under Subsection (1)(a).

**27. Court may order stay of proceedings under mortgage.**

(1) In this section, "proceedings" means any action to enforce the rights of a mortgagee under a mortgage, whether or not the proceedings are in a court, including action with a view to taking possession of or selling land, or to foreclosing.

(2) Where—

- (a) any land acquired by compulsory process under this Act was, at the date of acquisition, subject to a mortgage; and
- (b) proceedings by the mortgagee in relation to the mortgage—
  - (i) were pending at the date of acquisition; or

- (ii) are commenced or proposed to be commenced after that date and before compensation has been paid in full to the mortgagor in respect of the acquisition,

the National Court may—

- (c) on the application of the mortgagor and subject to such conditions as the Court thinks proper, order a stay of the proceedings or enjoin the mortgagee against commencing or continuing the proceedings; and
- (d) make such other orders as it thinks necessary.

**28. Compensation to mortgagee.**

(1) The compensation payable to a mortgagee is an amount equal to the sum of—

- (a) the principal secured by the mortgage at the date of acquisition; and
- (b) any interest, costs or charges due to the mortgagee under the mortgage at that date,

but not exceeding the compensation payable to the mortgagor in respect of the land.

(2) For the purposes of Subsection (1), the compensation payable to the mortgagor shall be deemed to be—

- (a) if there was only one mortgage over the land—the compensation that would have been payable to the mortgagor if there had been no mortgage over the land; or
- (b) if there were more mortgages than one over the land—the compensation that would have been payable to the mortgagor if there had been no mortgage over the land, less the amount, or the sum of the amounts, of principal, interest, costs and charges due at the date of acquisition to a mortgagee or mortgagees in respect of a mortgage or mortgages having priority over the mortgage in respect of which the compensation is to be determined.

(3) In addition to the compensation referred to in Subsection (1), the mortgagee is entitled to payment by the State of—

- (a) interest on the amount of principal included in the compensation at the lowest rate (whether for prompt payment or otherwise) provided by the mortgage, from the date of acquisition to—
  - (i) the date of payment of compensation; or
  - (ii) where payment is delayed through a default of the mortgagee, the date when payment would have been made but for the default; and
- (b) if the principal was not repayable (with or without notice) at the date when interest ceased to be payable under Paragraph (a)—
  - (i) the costs of the mortgagee of re-investing the principal included in the compensation; and
  - (ii) if a loss of interest is reasonably to be expected, regard being had to the rate of interest secured by the mortgage and the rate of interest obtained or likely to be obtained on the re-investment—a reasonable allowance for loss of interest until the date on which the principal would have been repayable (with or without notice).

**29. Deduction of mortgagee's compensation from mortgagor's compensation.**

The compensation payable to the mortgagee under Section 28(1) shall be deducted from the compensation that would have been payable to the mortgagor if the mortgage did not exist.

**30. Execution of discharge of mortgage debt.**

On payment or tender of the compensation to the mortgagee, he shall, if so required by the mortgagor and at the expense of the mortgagor, execute a discharge of the mortgage debt to the extent to which the liability of the mortgagor under the mortgage is extinguished by virtue of Section 24(5).

**31. Rights of mortgagor where mortgagee does not claim.**

Where a mortgagee does not claim compensation, the mortgagor is entitled to the same compensation as if the mortgage did not exist, and, in addition, to such amount (if any) as he should justly receive as compensation in respect of—

- (a) interest on the mortgage debt accruing after the date of acquisition; and
- (b) any other liability to the mortgagee.

**32. Saving of certain rights of mortgagees.**

Where land that is subject to a mortgage is acquired by compulsory process under this Act and the whole or part of the mortgage debt is not discharged by virtue of this Act, the mortgagee retains, in respect of the whole or the part of the mortgage debt, as the case may be, his rights and remedies against the mortgagor (other than rights and remedies in relation to the land acquired) and in relation to any other land that is subject to the mortgage.

*Division 4.—Payment of Compensation.*

**33. Payment of compensation.**

(1) Where the amount of compensation to which a person is entitled has been determined under Section 18, the amount shall, subject to Subsection (2), be paid to him when he has—

- (a) made out, to the satisfaction of the State Solicitor, a title, as at the date of acquisition, to the interest in respect of which the compensation is payable; and
- (b) produced or surrendered all deeds and documents relating to, or evidencing, that title that the State Solicitor reasonably requires to be produced or surrendered, as the case may be; and
- (c) executed such documents as the State Solicitor reasonably requires.

(2) Compensation payable under this Act is payable—

- (a) in such manner and at such time or times as are agreed on between the Minister and the person to whom the compensation is payable; or
- (b) where no agreement has been entered into under Paragraph (a)—
  - (i) in not more than three instalments; and
  - (ii) within five years after the date of acquisition.

(3) Where the whole or any part of the compensation payable to a person under this Act remains unpaid for more than six months after the date of acquisition, interest at the rate of 5% per annum is payable from the date of acquisition on the amount outstanding.

**34. Reduction of compensation for bad farming practices, etc.**

(1) Where, after receiving a report from the Valuer General, the Minister is of the opinion that a claimant has, at any time within three years before—

- (a) the date of service on him of a notice under Section 8; or
- (b) the date of a certificate under Section 8(5),

as the case may be, in respect of any land or chattels acquired by compulsory process under this Act, done anything whether wilfully or negligently, or failed to do anything, to the land or chattels that has had the effect, or will have the effect, of reducing the production or profitability of the land, the Minister may reduce the amount of compensation otherwise payable to the claimant in respect of the land or chattels, as the case may be, by such amount as the Minister determines.

(2) Where, after—

- (a) the date of service on him of a notice under Section 8; or
- (b) the date of a certificate under Section 8(5),

as the case may be, in respect of any land or chattels acquired by compulsory process under this Act, and before the date of determination of compensation under Section 21 in respect of the land or chattels, as the case may be, a claimant has remained in occupation of the land or part of the land or possession of the chattels whether as a licensee or otherwise, and has—

- (c) used bad farming or production practices that have resulted or may result in a loss of production; or
- (d) improved the land in any way that has resulted or may result in an increase in production; or
- (e) done anything else or failed to do anything else that has resulted or may result in the land or chattels, as the case may be, having a lesser or greater value than it had at the date referred to in Paragraph (a) or (b), as the case may be,

the Minister may reduce or increase the amount of compensation otherwise payable to the claimant in respect of the land or chattels, as the case may be, by such amount as the Minister determines.

*(Amended by No. 43 of 1976, s. 8.)*

**PART IV.—ALIENATED LANDS COMPENSATION FUND TRUST ACCOUNT.**

**35. Alienated Lands Compensation Fund Trust Account.**

An Alienated Lands Compensation Fund Trust Account is hereby established.

**36. Application of the Public Finances (Control and Audit) Act.**

Except where this Act provides to the contrary, the provisions of the *Public Finances (Control and Audit) Act* relating to Trust Accounts within the meaning of that Act apply to and in relation to the Trust Account.

**37. Payments into the Trust Account.**

There shall be paid into the Trust Account—

- (a) all moneys appropriated by Act or otherwise for the purposes of the acquisition of land under this Act; and
- (b) all moneys received by way of payments for lease rents, purchase moneys, payments for improvements or otherwise from any person for or in connexion with land acquired under this Act.

**38. Payments out of the Trust Account.**

There shall be paid out of the Trust Account all moneys that the State is liable to pay under this Act, including payment of compensation for land improvements, and chattels acquired under this Act.

*(Amended by No. 43 of 1976, s. 9.)*

**PART V.—MISCELLANEOUS.**

**39. Eviction of occupier of resumed land.**

(1) A person who—

- (a) is in occupation of land acquired under this Act at the date of acquisition of the land; and
- (b) refuses to leave that land within 14 days after receiving a notice to quit from the Departmental Head,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K100.00.

(2) A person who contravenes Subsection (1) may be forcibly ejected by a member of the Police Force.

**40. Evidence of acquisition, etc.**

A notice of acquisition given under Section 7(1) and published in the National Gazette is conclusive evidence of the matters specified in the notice and shall not be challenged in any court.<sup>1</sup>

**41. Power to examine land.<sup>2</sup>**

(1) A person authorized in writing by the Minister to act under this section may, for the purpose of ascertaining whether any land is suitable for acquisition under this Act, or of surveying or obtaining information in relation to any land that he thinks suitable for such a purpose—

- (a) enter on the land, or on adjoining land, with such persons, vehicles and things as he thinks proper; and
- (b) make surveys, take levels, sink pits, examine the soil and do any other thing in relation to the land.

(2) If a person hinders or obstructs a person authorized under this section to enter on land in the exercise of any of his powers under this section in relation to the land, a court of summary jurisdiction may, on the application of the person so authorized, grant a warrant authorizing a commissioned officer of the Police Force—

- (a) to enforce the entry on the land; and
- (b) to prevent hindrance or obstruction to the exercise of any such power in relation to the land.

<sup>1</sup>But see Constitution, Sections 37(11) and 155.

<sup>2</sup>Section 41 is especially affected by Division III.3 (*Basic Rights*) of the Constitution, and in particular by Sections 44 (*freedom from arbitrary search and entry*) and 53 (*protection from unjust deprivation of property*).

**42. Access to records, etc., relating to resumed land.**

(1) The Minister or a person authorized by him is entitled, at all reasonable times after—

- (a) the date of service on a claimant of a notice under Section 8; or
- (b) the date of the certificate under Section 8(5),

in respect of any land to be acquired or acquired by compulsory process under this Act to full and free access to all accounts, records, documents and papers relating directly or indirectly to—

- (c) the land; or
- (d) the sales of produce from the land; or
- (e) the receipt or payment of moneys relating to the land; or
- (f) any income produced from the land; or
- (g) the improvements on the land; or
- (h) the fixtures on the land; or
- (i) any agreement or proposed agreement entered into or to be entered into—
  - (i) for the sale of produce from the land; or
  - (ii) for the sale or lease of the land; or
  - (iii) relating to a mortgage or proposed mortgage for which the land is held or offered as security,

and generally to any matter that may affect compensation under this Act.

(2) The Minister or a person authorized by him may make copies of or extracts from any accounts, records, documents or papers referred to in Subsection (1).

(3) The Minister or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Minister or authorized person thinks necessary for the purposes of the functions of the Minister under this Act.

(4) A person who fails to comply with a requirement under Subsection (3) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

**43. Regulations.**

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

- (a) the land to which this Act does not apply; and
- (b) the forms to be used in connexion with this Act; and
- (c) the manner of disposal of chattels acquired under this Act; and
- (d) the amount of compensation payable for undeveloped land; and
- (e) the classes of land for the purposes of the determination of compensation; and
- (f) the factors to be used in determining compensation; and
- (g) the manner of doing or performing anything by this Act required to be done or performed; and

(b) the imposition of penalties of fines not exceeding K200.00 for offences against the regulations.

(2) Notwithstanding any other law, a regulation made under Subsection 1(d), (e) or (f)—

(a) comes into operation on the date on which it is published in the National Gazette; and

(b) unless renewed by resolution of the Parliament, expires at the end of 21 sitting days of the Parliament after the making of the regulation.

(3) Where a regulation expires under Subsection (2)(b), the expiry has the same effect as a repeal of the regulation, except that, if the regulation amended or repealed any law in force immediately before the regulation took effect, the expiry revives the previous law from the date of the expiry as if the expired regulation had not been made.

*(Amended by No. 43 of 1976, s. 10.)*



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes) (Fixing of Factor) Kama  
Plantation Regulation.*

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ARRANGEMENT OF SECTIONS.

1. Fixing of Factor.

SCHEDULE.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

***Lands Acquisition (Development Purposes) (Fixing of Factor) Kama Plantation Regulation.***

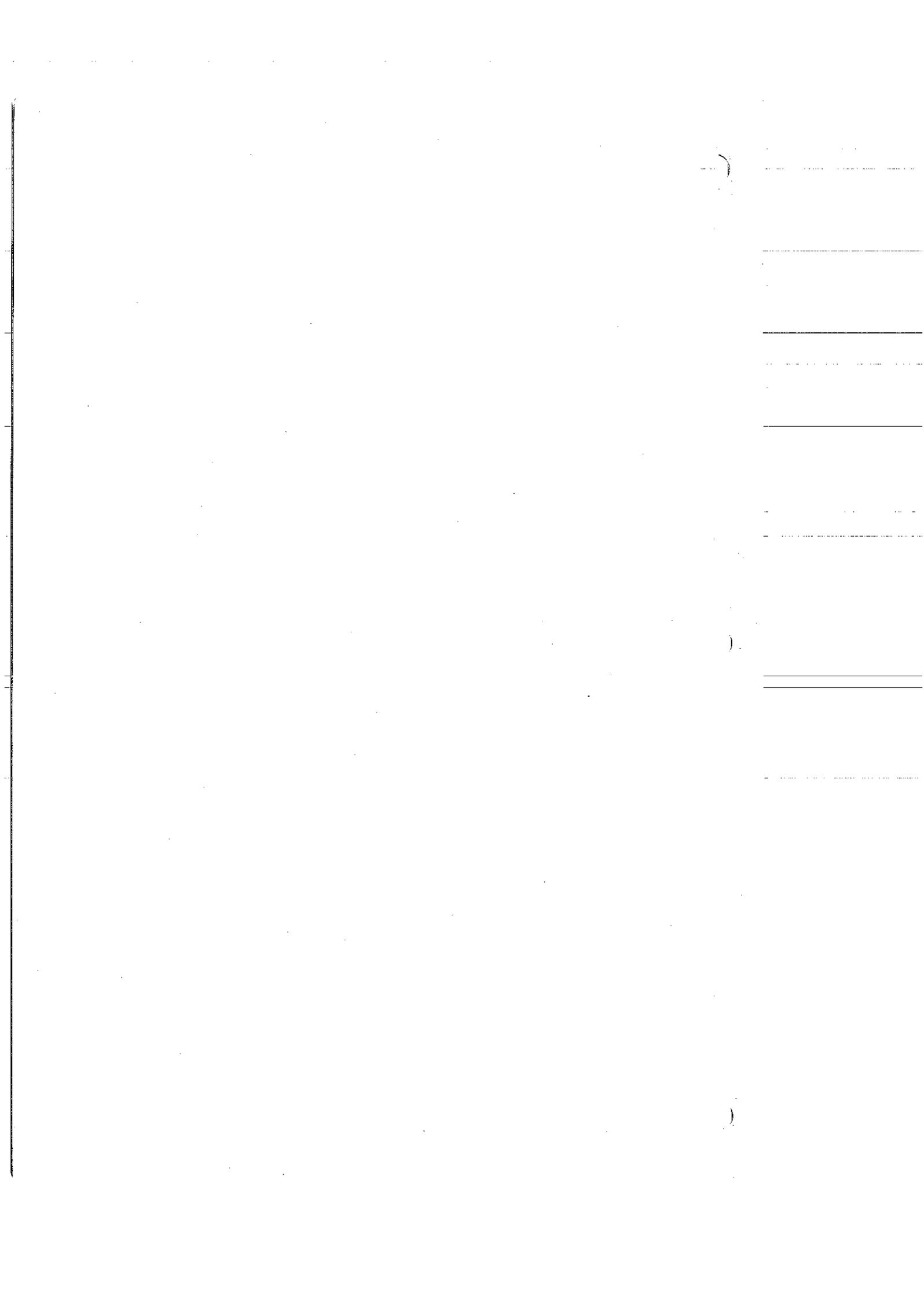
Made by the Head of State, acting with and in accordance with the advice of the National Executive Council, after receiving a report from the Valuer-General, under the *Lands Acquisition (Development Purposes) Act*.

1. Fixing of Factor.

The factor to be used in determining the compensation payable by the Government under Section 18 of the Act in respect of the particular parcels of land described in the Schedule is fixed at four.

SCHEDULE.

All those pieces of land situated in the Milinch of Goroka Fourmil of Karimui Eastern Highlands Province being part of the land described in Government Lease Volume 56 Folio 27 in the Office of the Registrar General Port Moresby being firstly that peice of land containing an area of 0.1731 hectare or thereabouts commencing at a point being the southernmost corner of Portion 86 in the said Milinch bounded thence on the north-west by a straight line bearing 60 degrees 5 minutes for 10.82 metres thence on the north-east by a straight line bearing 149 degrees 36 minutes for 131.47 metres thence on the south-east by a straight line bearing 239 degrees 36 minutes for 17.50 metres thence generally on the south-west by straight lines bearing 329 degrees 36 minutes for 29.26 metres 344 degrees 3 minutes for 24.17 metres and 330 degrees 5 minutes for 78.91 metres to the point of commencement be the said several dimensions all a little more or less and all bearings Fourmil Standard. Secondly that piece of land containing an area of 37.74 hectares or thereabouts commencing at a point bearing 236 degrees 56 minutes and distant 10.01 metres from the westernmost corner of Portion 86 in the said Milinch bounded thence generally on the north-east by straight lines bearing 150 degrees 5 minutes for 375.87 metres 164 degrees 3 minutes for 24.21 metres and 149 degrees 36 minutes for 25.53 metres thence on the south-east by a straight line bearing 239 degrees 36 minutes for 26.50 metres thence again on the north-east by a straight line bearing 145 degrees 58 minutes for 126.56 metres thence again on the south-east by a straight line bearing 234 degrees 59 minutes for 576.26 metres to the left bank of the Asaro River thence generally on the south-east south-west and north-west by the said left bank of the Asaro River upstream for approximately 980 metres thence on the north-west by a straight line bearing 56 degrees 56 minutes for 503.19 metres to the point of commencement be the said several dimensions all a little more or less and all bearings Fourmil Standard.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes) (Service of Notice to Treat)  
Regulation.*

ARRANGEMENT OF SECTIONS.

1. Interpretation--  
"notice".
2. Service of notice.

( )

( )

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

***Lands Acquisition (Development Purposes) (Service of Notice to Treat) Regulation.***

MADE under the *Lands Acquisition (Development Purposes) Act.*

**1. Interpretation.**

In this Regulation, unless the contrary intention appears "notice" means a notice to treat under Section 8 of the Act, and includes a written notice of the withdrawal of a notice to treat.

**2. Service of notice.**

(1) Subject to Subsections (2) and (3), notice may be given or served on a person (other than a corporation) claiming an interest in any land, personally or by registered post to the postal address of that person last known to the Minister.

(2) Where—

(a) in the opinion of the Minister, it is impracticable to serve a person in accordance with Subsection (1); or

(b) the Minister has cause to believe that the person concerned is dead,

it is sufficient service if a copy of the notice is—

(c) published in the National Gazette; and

(d) forwarded by prepaid post to the Local Government Council (if any)—

(i) in whose area the land the subject of the notice is situated; or

(ii) in whose area the person to be served last resided (as far as the knowledge of the Minister extends); and

(e) placed in a conspicuous position on the land the subject of the notice.

(3) A notice to be given or served on a corporation may be given or served by registered post to the postal address of the corporation last known to the Minister.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 192.

*Lands Acquisition (Development Purposes).*

APPENDIXES.

APPENDIX 1.

SOURCE OF THE LANDS ACQUISITION (DEVELOPMENT PURPOSES) ACT.

Part A.—Previous Legislation.

*Lands Acquisition Act 1974* (No. 66 of 1974)

as amended by—

<sup>1</sup>*Lands Acquisition (Amendment) Act 1976* (No. 43 of 1976).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>2</sup> .	Section, etc., in Revised Edition.	Previous Reference <sup>2</sup> .
1	1	22	23
2	2	23	24
3	3	24	25
4	4	25	26
5	5	26	27
6	6	27	28
7	7	28	29
8	8	29	30
9	9	30	31
9A	9A	31	32
10	10	32	33
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14	14	36	37
15	15	37	38
16	17	38	39
17	18	39	40
18	19	40	41
19	20	41	42
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21	22	43	44

<sup>1</sup>This Act had a retrospective operation and came into force—  
(a) as to Section (1), on 16 September 1975; and  
(b) as to the balance of the Act, on 19 December 1974.

<sup>2</sup>Unless otherwise indicated, references are to the Act set out in Part A.

APPENDIX 2.

SOURCE OF THE LANDS ACQUISITION (DEVELOPMENT PURPOSES) (SERVICES OF NOTICE TO TREAT) REGULATION.

Part A.—Previous Legislation.

Lands Acquisition (Service of Notice to Treat) Regulation 1975 (Statutory Instrument No. 30 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>1</sup> .
1	1
2	2

APPENDIX 3.

SOURCE OF THE LANDS ACQUISITION (DEVELOPMENT PURPOSES) (FIXING OF FACTOR) KAMA PLANTATION REGULATION.

Part A.—Previous Legislation.

Lands Acquisition (Fixing of Factor) Kama Plantation Regulation 1978 (Statutory Instrument No. 15 of 1978).

Part B.—Cross References.

Section etc., in Revised Edition.	Previous Reference <sup>1</sup> .
1 Schedule	— Schedule

<sup>1</sup>Unless otherwise indicated, references are to the regulation set out in Part A.