

No. 19 of 2007.

Forestry (Amendment) Act 2007.

Certified on: 12 DEC 2007



No. 14 of 2007

Forestry (Amendment) Act 2007,

ARRANGEMENT OF SECTIONS.

1. National Interest.
2. Interpretation (Amendment of Section 2).
"forest clearing authority"
3. Types of land on which, and manner in which forest industry activities may be permitted (Amendment of Section 55).
4. A large scale conversion of forest to agriculture or other land use (Amendment of Section 90A).
5. Repeal of Section 90B.
6. Large scale conversion of forest to road (Amendment of Section 90C).
7. Repeal of Section 90D.
8. Repeal of Section 90E.
9. Performance bonds (Amendment of Section 98).
10. Person not to apply for or be granted a licence, etc., unless registered under this Part (Amendment of Section 105).
11. Offence to participate, etc, in forest industry unless registered (Amendment of Section 114).
12. Offences (Amendment of Section 122).
13. Power to seize and sell timber, etc., (Amendment of Section 123).
14. Saving of existing permits, etc., (Amendment of Section 137).



No. of 2007.

AN ACT

entitled

Forestry (Amendment) Act 2007,

Being an Act to amend the *Forestry Act 1991*,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. NATIONAL INTEREST.

For the purposes of Section 41(2) of the *Organic Law on Provincial Government and Local-Level Government* it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended by inserting the following definition immediately after the definition of "firewood":-

"forest clearing authority" means a forest clearing authority granted under Section 90(B)(8);".

3. TYPES OF LAND ON WHICH, AND MANNER IN WHICH FOREST INDUSTRY ACTIVITIES MAY BE PERMITTED (AMENDMENT OF SECTION 55).

Section 55 of the Principal Act is amended by repealing Subsections (2)(e) and (2)(f).

4. A LARGE SCALE CONVERSION OF FOREST TO AGRICULTURE OR OTHER LAND USE (AMENDMENT OF SECTION 90A).

Section 90A of the Principal Act is amended –

(a) by repealing Subsection (1) and replacing it with the following:-

"(1) A person may make application in the prescribed form and accompanied by the prescribed application fee for a forest clearing authority for the purpose of clearance of natural forest on areas

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designated for agriculture or other land use development (other than roadline clearing on an existing forested area) designated by the relevant authorities where the size of the area proposed for the natural forest clearance for the project is greater than 50 hectares."

(b) in Subsection (3)(c) by repealing the following:-

"by an independent contractor appointed by the Authority"; and

(c) in Subsection (3) by repealing Paragraph (f) and substituting the following:-

"(f) a verification of ownership and the consent of each resource owning clan agent (or incorporated Land Groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form in relation to customary land, and otherwise the consent in writing of the Board, lessee or owner of the land, as the case may be, and."; and

(d) in Subsection (3) by repealing Paragraph (j) and substituting the following:-

"(j) a report by the Department responsible for agriculture and livestock matters or other relevant Government Department on a public hearing conducted by it at or near as practicable to the proposed agriculture or other land use site at which government bodies landowners and the private sector were heard on the proposed project; and

"(k) an agreement or agreements between the landowners and the proposed development of the agriculture or other land use project; and

"(l) the prescribed form signed by the Secretary of the Department responsible for agriculture and livestock matters or the Secretary of the relevant Government Department certifying that the matters set out in the preceding paragraphs are satisfactory; and

"(m) the prescribed sales and purchase agreement with the customary owners in relation to customary land, and in relation to other land with the Board, lessee or owner of the land as the case may be, which agreement shall provide for the purchase, harvesting, processing or marketing of timber and other forest produce and which agreement shall be subject to the grant of a forest clearing authority by the Board; and

"(n) such other particulars as are prescribed."

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5. **REPEAL OF SECTION 90B.**

Section 90B of the Principal Act is repealed and is replaced with the following:-

"90B. DEALING WITH APPLICATIONS FOR A FOREST CLEARING AUTHORITY FOR AGRICULTURE OR OTHER LAND USE.

"(1) If the Board determines that an application under Section 90A is in the prescribed form and contains all relevant particulars it shall prepare a report of the application and refer the application and report to the Provincial Forest Management Committee who shall consider and evaluate the application and make recommendations to the Board.

"(2) An evaluation of an application by the Provincial Forest Management Committee under Subsection (1) shall be made taking into account-

- (a) the National Forest Policy and National Forest Plan; and
- (b) any relevant Provincial Government policies provided they are not inconsistent with the National Forest Policy; and
- (c) any relevant National and Provincial Government policies relating to agriculture or the proposed land use; and
- (d) the financial resources of the applicant to undertake the forest clearance, the past performance of the applicant in forest industry, analysis of the projected cash flows and the anticipated net benefit to the resource owners and the State; and
- (e) any other matters that the Provincial Forest Management Committee considers relevant.

"(3) In making an evaluation under Subsection (2), the Provincial Forest Management Committee shall request the assistance of the National Forest Service and of any relevant Department.

"(4) Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that it is satisfactory, it shall recommend to the Board to approve the application for a forest clearing authority for agriculture or other land use.

"(5) If the Provincial Forest Management Committee is not satisfied with the application, it shall inform the Board accordingly together with reasons for its decision and the application shall be rejected.

"(6) The Board shall inform the applicant of the rejection of the application and the reasons thereof.

"(7) If the Board is satisfied with the recommendation under Subsection (4) it shall approve the application and advise the applicant accordingly.

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"(8) The Board shall, on approval of the application, grant to the applicant a forest clearing authority to carry out a agriculture or other land use development which authority shall -

- (a) be in the prescribed form; and
- (b) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (c) specify such other conditions as are determined by the Board.

"(9) A forest clearing authority shall -

- (a) in order to ensure that the planned agriculture or other land use actually takes place, provide that any forest clearing operation shall be authorized in four phases, each phase -
 - (i) shall represent approximately one quarter of the total area to be cleared under the forest clearing authority; and
 - (ii) contain such conditions as are determined by the Board; and
 - (iii) shall be subdivided into blocks for clearing of a maximum 500 hectares unless the Board considers that the maximum of 500 hectares is inappropriate in the circumstances in which case it may increase or decrease the maximum clearance figure; and
- (b) provide that the holder of a forest clearing authority shall comply with the implementation schedule under Section 90A(3)(c); and
- (c) provide that a further phase under the same forest clearing authority may only be granted for the same purposes of forest clearance for agriculture or other land use where all conditions relating to the development plan under Section 90A(3)(a) and implementation schedule under Section 90A(3)(c) have been satisfied; and
- (d) provide that the rights under the forest clearing authority may be suspended -
 - (i) where the planned land use by the applicant for which a forest clearing authority is granted is not progressing according to, or meeting the set standards of the Department responsible for agriculture and livestock matters or other relevant Government Department agency or instrumentality, or the development plan under Section 90A(3)(a) or the implementation schedule under Section 90A(3)(c); or
 - (ii) where any condition of the forest clearing authority or a provision of the Act is breached."

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6. LARGE SCALE CONVERSION OF FOREST TO ROAD (AMENDMENT OF SECTION 90C).

Section 90C of the Principal Act is amended –

(a) by repealing Subsection (1) and replacing it with the following:-

"(1) A person may make application in the prescribed form and accompanied by the prescribed application fee for a forest clearing authority to carry out any roadline development over an existing forested area where the proposed roadline will be greater than 12.5 kilometres in length."; and

(b) in Subsection (3)(d) is amended by repealing the following words:-

"by an independent contractor appointed by the Authority and successive land use development approved in writing by the Departmental Head of the Department responsible for transport matters"; and

(c) in Subsection (3) by repealing Paragraph (g) and replacing it with the following:-

"(g) a verification of ownership and the consent of each resource owning clan agent (or incorporated Land Groups if they have been formed) within the project area, which has been signed in the presence of a Village Court Magistrate or land mediator in the prescribed form in relation to customary land, and otherwise the consent in writing of the Board, lessee or owner of the land, as the case may be; and"; and

(d) in Subsection (3) by repealing Paragraph (j) and replacing it with the following:-

"(j) a report by the Department responsible for transport matters on a public hearing conducted by it at or near as practicable to the proposed roadline project site at which government bodies landowners and the private sector were heard on the proposed project; and

"(k) a copy of the National Executive Council decision in relation to a national road or Provincial Executive Council decision in relation to a provincial road, approving the proposed roadline project; and

"(l) an agreement or agreements between the landowners and the proposed developer of the roadline project; and

"(m) the prescribed form signed by the Secretary of the Department responsible for transport matters certifying that the matters set out in the preceding paragraphs are satisfactory; and

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- "(n) the prescribed sales and purchase agreement with the customary owners in relation to customary land, and in relation to other land with the Board, lessee or owner of the land as the case may be, which agreement shall provide for the purchase, harvesting, processing or marketing of timber and other forest produce and which agreement shall be subject to the grant of a forest clearing authority by the Board; and
- "(o) such other particulars as are prescribed."

7. **REPEAL OF SECTION 90D.**

Section 90D of the Principal Act is repealed and is replaced with the following:-

"90D. DEALING WITH APPLICATIONS FOR A FOREST CLEARING AUTHORITY FOR CONVERSION OF FOREST TO ROAD.

"(1) If the Board determines that an application under Section 90C is in the prescribed form and contains all relevant particulars it shall prepare a report of the application and refer the application and report to the Provincial Forest Management Committee who shall consider and evaluate the application and make recommendations to the Board.

"(2) An evaluation of an application by the Provincial Forest Management Committee under Subsection (1) shall be made taking into account-

- (a) the National Forest Policy and National Forest Plan; and
- (b) any relevant Provincial Government policies provided they are not inconsistent with the National Forest Policy; and
- (c) any relevant National or Provincial Government policies relating to public road networks and construction; and
- (d) the financial resources of the applicant to undertake the forest clearance, the past performance of the applicant in forest industry, analysis of the projected cash flows and the anticipated net benefit to the resource owners and the State; and
- (e) any other matters that the Provincial Forest Management Committee considers relevant.

"(3) In making an evaluation under Subsection (2), the Provincial Forest Management Committee shall request the assistance of the National Forest Service and of any relevant Department.

"(4) Where the Provincial Forest Management Committee, after having considered and evaluated an application, is of the opinion that it is satisfactory, it shall recommend to the Board to approve the application for a forest clearing authority for a conversion of forest to roadline.

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"(5) If the Provincial Forest Management Committee is not satisfied with the application, it shall inform the Board accordingly together with reasons for its decision and the application shall be rejected.

"(6) The Board shall inform the applicant of the rejection of the application and the reasons thereof.

"(7) If the Board is satisfied with the recommendation under Subsection (4) it shall approve the application and advise the applicant accordingly.

"(8) The Board shall, on approval of the application, grant to the applicant a forest clearing authority to carry out a roadline development which authority shall -

- (a) be in the prescribed form; and
- (b) require a performance bond in accordance with Section 98 for an amount specified in the authority; and
- (c) specify such other conditions as are determined by the Board.

"(9) A forest clearing authority shall -

- (a) provide that forest clearance for road construction shall only be authorized in stages of 20 kilometres in length in order to ensure actual construction of the road takes place; and
- (b) provide that the forest clearing must follow a surveyed alignment which must have been carried out by a registered surveyor; and
- (c) specify that where the Managing Director receives a statement in writing from the Department responsible for works matters that road construction has been completed in the previous section of cleared road corridor to the requirements of the Department, the Managing Director may authorize further road clearance in a further section of road corridor, not exceeding 20 kilometres in length, which is next scheduled for clearing; and
- (d) specify that the maximum roadline corridor which may be cleared under a forest clearing authority shall not exceed -
 - (i) in respect to the corridor length - the length of road planned to be constructed; and
 - (ii) in respect to the corridor width for each and every stage of forest clearance - shall not exceed 40 metres in width and such said width shall not be more than 20 metres on either side of the centre of the road; and
- (e) provide that the rights under the forest clearing authority may be suspended where -
 - (i) construction of the road in the corridor cleared under the forest clearing authority is not

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- progressing according to, or meeting the set standards of, the Department responsible for transport matters or Department responsible for works matters, or the development plan under Section 90C(3)(a) or the implementation schedule under Section 90C(3)(d); or
- (ii) the applicant has not provided the Authority with a certificate from the Department responsible for works matters confirming that the length of road constructed in the roadline has been cleared in accordance with any stage of the implementation schedule and that it meets the road construction standards of that Department; and
 - (iii) where any condition of the forest clearing authority or a provision of the Act is breached.

"(10) If, at any time, after the coming into operation of this provision, a road that is presently being constructed or that is proposed to be constructed through forested areas under an existing timber permit, timber authority, or licence and which is at variance with any of the provisions of this section, then, in such a case, such permit shall be varied by the Authority so that such timber permit, timber authority or licence complies with this section and no compensation shall be payable to the timber permit, timber authority or licence holder, as the case may be, as a result of such holder being required to comply with this section."

8. REPEAL OF SECTION 90E.

Section 90E of the Principal Act is repealed and is replaced with the following:-

"90E. CANCELLATION, ETC., OF AUTHORITIES.

A forest clearing authority to carry out an agriculture or other land use development under Section 90B, or to carry out construction of a road under Section 90D may be cancelled under Section 97 as if that authority is a licence."

9. PERFORMANCE BONDS (AMENDMENT OF SECTION 98).

Section 98 of the Principal Act is amended –

- (a) by repealing Subsections (1)(ca) to (cd) and replacing them with the following:-

"(ca) Section 90B(8)(b) in relation to the grant of a forest clearing authority for agriculture or other land use; or

"(cb) Section 90D(8)(b) in relation to the grant of a forest clearing authority for roadline construction,"; and

- (b) by repealing Paragraph (f) of Subsection (1) and replacing it with the following:-

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"(f) subject to Subsection (2) authorize the Authority to draw directly on the bond in the event of non performance by the holder of the timber permit, timber authority, licence, or forest clearing authority, as the case may be, of any condition or requirement of the timber permit, timber authority, licence or forest clearing authority, or of any provision of the Act."

10. PERSON NOT TO APPLY FOR OR BE GRANTED A LICENCE, ETC., UNLESS REGISTERED UNDER THIS PART (AMENDMENT OF SECTION 105).

Section 105 is amended by repealing Paragraph (e) and replacing it with the following:-

"(e) apply for or be granted a forest clearing authority for agriculture or other land use under Section 90B or roadline construction under Section 90D – unless registered as a forest industry participant under this Part, ; or".

11. OFFENCE TO PARTICIPATE, ETC., IN FOREST INDUSTRY UNLESS REGISTERED (AMENDMENT OF SECTION 114).

Section 114 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:-

"(1) A person who makes application for a timber permit, timber authority, licence, or forest clearing authority under Sections 90B or 90D without being registered under this Part is guilty of an offence.

"Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding one year, or both."

12. OFFENCES (AMENDMENT OF SECTION 122).

Section 122 of the Principal Act is amended –

(a) by repealing Subsection (1) and replace it with the following:-

"(1) A forest industry participant, and any person acting in the capacity of an employee, servant or agent of a forest industry participant, who engages in forest industry activities except under or in accordance with a timber permit, timber authority, licence, or forest clearing authority under Sections 90B or 90D held by the forest industry participant is guilty of an offence.

"Penalty: A fine not exceeding K1,000,000.00 or imprisonment for a term not exceeding five years or both.

"Default penalty: A fine not exceeding K10,000.00."; and

(b) in Subsection (4) by adding "forest clearing authority under Sections 90B or 90D" following the word "licence" as it occurs in the provision; and

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- (c) in Subsection (5) by repealing Paragraph (b) and replacing it with the following:-
 "(b) an application for a timber permit, timber authority, licence or forest clearing authority under Sections 90B or 90D made jointly by two or more persons."

13. POWER TO SEIZE AND SELL TIMBER, ETC., (AMENDMENT OF SECTION 123).

Section 123 of the Principal Act is amended in Subsection (1)(a)(ii) by repealing "or" as it occurs before "licence" and adding "or forest clearing authority under Sections 90B or 90D" after "licence".

14. SAVING OF EXISTING PERMITS, ETC., (AMENDMENT OF SECTION 137).

Section 137 of the Principal Act is amended -

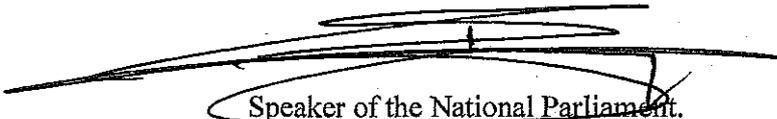
- (a) in Subsection (1B) by adding "or renewed" following the word "extended"; and
(b) in Subsection (1C) by adding "or renewal" following the word "extension"; and
(c) in Subsection (1D) by adding "or renew" after word "extend" and adding "or renewal" following the word "extension"; and
(d) in Subsection (1E) by adding "or renewed" following the word "extended"; and
(e) in Subsection (1F) by adding "or renewed" twice occurring after the words "extended".

I hereby certify that the above is a fair print of the *Forestry (Amendment) Act 2007* which has been made by the National Parliament.



Clerk of the National Parliament
12 DEC 2007

I hereby certify that the *Forestry (Amendment) Act 2007* was made by the National Parliament on 28 November 2007.



Speaker of the National Parliament.

12 DEC 2007