

No. 21 of 2009.

Land Registration (Amendment) Act 2009.

Certified on : 20 MAY 2010



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Land Registration (Amendment) Act 2009,

ARRANGEMENT OF SECTIONS:

1. Compliance with Constitutional requirements.
2. Insertion of new Part IIIA.
3. Interpretation (Amendment of Section 2) -
 - "absolute ownership"
 - "Adjusted Registration Plan"
 - "Court"
 - "customary land"
 - "customary owners"
 - "dealing"
 - "Deputy Registrar"
 - "Director"
 - "document"
 - "Final Registration Plan"
 - "good root of title"
 - "interest" or "interest in land"
 - "land"
 - "owner"
 - "Regional Surveyor"
 - "Register"
 - "register" or "registered"
 - "Registrar of Titles"
 - "Registration Plan".
4. Application.
5. New Section 34A.

**"34A. APPOINTMENT OF DIRECTOR OF CUSTOMARY LAND
REGISTRATION."**

6. New Section 34B.

"34B. POWERS AND FUNCTIONS OF THE DIRECTOR OF CUSTOMARY LAND REGISTRATION."

7. New Section 34C.

"34C. DUTIES, ETC., OF DEPUTY DIRECTOR."

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"34D. APPLICATION FOR REGISTRATON."

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"34E. VERIFICATION."

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"34F. VERIFICATION OF REGISTRATION PLAN."

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"34I. OBJECTIONS TO REGISTRATION PLAN."

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"34J. FINAL REGISTRATION PLAN."

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"34K. REGISTRATION OF CLAN LAND."

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"34O. LAND TRANSACTIONS."

20. New Section 34P.

"34P. CONTROLLING LAND TRANSACTIONS."

21. New Section 34Q.

"34Q. UNLAWFUL OCCUPATION OF CLAN LAND."



AN ACT

entitled

Land Registration (Amendment) Act 2009,

Being an Act to amend the *Land Registration Act* (Chapter 191) to apply and give effect to the National Goals and Directive Principles of the *Constitution* as they relate and apply to ownership of lands held under customary tenure and dealings in those lands, and in particulars to –

- (a) allow development to take place primarily through the use of Incorporated Land Groups; and
- (b) encourage traditional villages and communities to remain as viable units of Papua New Guinea society, and for active steps to be taken to improve their culture, social economic and ethical quality; and
- (c) promote and facilitate the registration of land held under customary law.

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

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) The Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely –

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare and public order.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

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2. **INSERTION OF NEW PART IIIA.**

The Principal Act is amended by inserting after Part III the following new part:-

"PART IIIA. – REGISTRATION OF CUSTOMARY LAND."

3. **INTERPRETATION (AMENDMENT OF SECTION 2).**

Section 2 of the Principal Act is amended by inserting the following definitions in their respective alphabetical order –

"absolute ownership" means a title which is not dependent upon any higher title but which may be subject to and qualified by an interest derived from or dependent on that title;

"Adjusted Registration Plan" means an Adjusted Registration Plan prepared under Section 13;

"Court" means the Land Court;

"customary land" means land that is owned or possessed by virtue of rights of a possessed kind and regulated by custom;

"customary owners" means a land, lineage, family, extended family or other group of persons who hold, or are recognized under custom as holding, rights and interests in customary land, and includes a land group incorporated under the *Land Groups Incorporation Act* (Chapter 147);

"dealing" means a disposition of a derivative interest in land and includes a lease, surrender, mortgage, charge, discharge, easement and similar interests;

"Deputy Registrar" means a Deputy Registrar of Customary Land appointed under Section 5;

"Director" means the person appointed as Director of Customary Land Registration and tenure conversion under Section 5;

"document" means any writing relating to land whether of a formal nature or otherwise;

"Final Registration Plan" means a Final Registration Plan prepared under Section 15;

"good root of title" means a document or other source from which title to the interest claimed is traced;

"interest" or "interest in land" means –

(a) a legal or equitable interest in land; or

(b) a right, power or privilege over, in or in connection with land;

"land" means the soil and everything above and below the soil and includes –

(a) land below low-water mark and within jurisdiction; and

(b) land covered with water; and

(c) rights to rivers and streams;

"owner" in relation to land, means a person or group entitled to an absolute ownership of the land;

"Regional Surveyor" means a person appointed by the Department responsible for land matters to be a Regional Surveyor, and, in respect of a province, means the Regional Surveyor for that province;

"Register" means the Register of Clan Land established under Section 5;

"register" or "registered", in relation to a matter affecting an interest in land means –

(a) the entry of the matter in the Register; and

(b) the endorsement of the matter in the instrument of title of the interest;

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"Registrar of Titles: means the person appointed Registrar of Titles under the principal Act;

"Registration Plan" means a Registration Plan prepared under Section 19.

4. **APPLICATION.**

(1) This Act binds the State.

(2) All customary land in Papua New Guinea is subject to this Act.

5. **NEW SECTION 34A.**

The Principal Act is amended by adding the following new section after Section 34 -

"34A. APPOINTMENT OF DIRECTOR OF CUSTOMARY LAND REGISTRATION.

The Minister may, by notice in the National Gazette appoint a Director of Customary Land Registration and such Deputy Directors as necessary."

6. **NEW SECTION 34B.**

The Principal Act is amended by adding the following new section after Section 34 -

"34B. POWERS AND FUNCTIONS OF THE DIRECTOR OF CUSTOMARY LAND REGISTRATION.

"(1) The Director shall be responsible for dealing with applications for customary land registration.

"(2) In addition to any other powers given to him under this Act, the Director may -

- (a) require any person to produce any document in his possession or control relating to any land or dealing in land; and
- (b) summon any person to appear before him to give information or explanation relating to any land or dealing in land; and
- (c) screen, vet, verify and ensure compliance with all legal requirements pertaining to registration of customary land or dealing in such land and related matters; and
- (d) administer an oath or affirmation or take a statutory declaration and require that any proceeding, instrument, information or explanation relating to or affecting land or any dealing in land be verified on oath or affirmation or by statutory declaration; and
- (e) by himself or his agent enter upon and land for purposes in connection with this Act; and
- (f) order that any costs, charges or expenses incurred by him or by any person in or in connection with any investigation or hearing held by him for the purposes of this Act be borne by any such person and in such proportion as he thinks fit.

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"(3) A person who -

- (a) refuses or neglects to produce any document in his possession or control; or
- (b) refuses or neglects to appear and give information or explanation; or
- (c) knowingly misleads or deceives the Director; or
- (d) knowingly makes a false oath, affirmation or declaration; or
- (e) willfully obstructs or prevents the Director or his agent from entering upon any land; or
- (f) willfully refuses or neglects to pay any costs, charges, or expenses as ordered by the Registrar,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years or a fine not exceeding K2000.00 or both.

7. NEW SECTION 34C.

The Principal Act is amended by adding the following new section after Section 34 -

"34C. DUTIES, ETC., OF DEPUTY DIRECTOR.

"(1) A Deputy Director has the duties, powers and functions as assigned to him by the Director.

"(2) A duty, power or function carried out by a Deputy Director has the same force or effect as if it were or had been carried out by the Director."

8. NEW SECTION 34D.

The Principal Act is amended by adding the following new section after Section 34 -

"34D. APPLICATION FOR REGISTRATION.

"(1) Subject to this Act, representatives of the Incorporated Land Group may apply to the Director in the prescribed form for registration of ownership of customary land or an interest in customary land.

"(2) The application for registration shall include a registration plan -

- (a) describing the land or parcels of land owned absolutely under customary tenure by the customary group including, its boundaries; and
- (b) where necessary, the names of such individuals or customary groups which established derivative interests in the land, including the boundaries of the parcels of such land and the nature of the interest.

"(3) The Registration Plan shall be in such form and shall contain such particulars as are prescribed."

9. NEW SECTION 34E.

The Principal Act is amended by adding the following new section after Section 34 -

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"34E. VERIFICATION.

"(1) Where an application has been made for the registration of customary land the Director shall as soon as practicable commence verification of the registration plan.

"(2) For the purposes of Subsection (1), the Director shall -

- (a) conduct such investigations as are necessary to verify the membership of customary groups; and
- (b) make such inspections of the land, together with appointed representatives of such customary groups as are necessary to verify the identity and the boundaries of parcels of land claimed by such customary land group as stated in the registration plan."

10. NEW SECTION 34F.

The Principal Act is amended by adding the following new section after Section 34 -

"34F. VERIFICATION OF REGISTRATION PLAN.

"(1) Upon the completion of his investigation, the Director shall, as soon as practicable, prepare a Registration Plan showing -

- (a) the land or parcels of land owned absolutely under customary tenure by the customary group, including the boundaries; and
- (b) the names of such individuals or customary groups which established derivative interests in the land, including the boundaries of the parcels of such land and the nature of the interest.

"(2) For the purposes of Subsection (1)(a), the Director shall concern himself only with the area of the land determined as being in the ownership of the Clan."

11. NEW SECTION 34G.

The Principal Act is amended by adding the following new section after Section 34 -

"34G. PUBLICATION OF REGISTRATION PLAN.

"(1) On the acceptance of a Registration Plan, the Director shall, as soon as practicable -

- (a) forward a copy of the Plan to the Regional Surveyor; and
- (b) give notice to the public indicating -
 - (i) where the Registration Plan may be examined; and
 - (ii) the procedure for making an objection to the contents of the Registration Plan; and
 - (iii) the period of not more than 90 days within which an objection can be made.

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"(2) The Director shall cause a notice made under Subsection (1)(b) to be advertised in such a manner he considers appropriate to bring it to the attention of all persons who may have an interest in the land or parcels of land the subject of the Registration Plan."

12. NEW SECTION 34H.

The Principal Act is amended by adding the following new section after Section 34 –

"34H. ADJUSTED REGISTRATION PLAN.

On the receipt of a copy of the Registration Plan the Regional Surveyor shall, where necessary, prepare an Adjusted Registration Plan showing such adjustments as are necessary to indicate –

- (a) the situation of the land or parcels of land; and
- (b) any reservation, easement or other such interest acquired for public purposes by the State under any law; and
- (c) any right, title or interest granted by the State under any law and shall return the Adjusted Registration Plan to the Director as soon as practicable."

13. NEW SECTION 34I.

The Principal Act is amended by adding the following new Section after Section 34 –

"34I. OBJECTIONS TO REGISTRATION PLAN.

"(1) A person who objects to the contents of a Registration Plan may, within the period specified in the notice, make an objection in writing to the Director.

"(2) An objection under Subsection (1) shall specify -

- (a) whether, in the case of an objection from an individual, the person is objecting in his personal capacity or as a representative of a customary group; and
- (b) the matters in the Registration Plan which are the subject of objection; and
- (c) the area or areas within the Registration Area which are the subject of objection; and
- (d) the grounds upon which the objection is made."

14. NEW SECTION 34J.

The Principal Act is amended by adding the following new section after Section 34 –

"34J. FINAL REGISTRATION PLAN.

"(1) Subject to Subsection (3), where, in respect of a Registration Plan -

- (a) the period specified in Section 11(1)(b)(iii) has expired; and
- (b) the Registration Plan has been adjusted, where necessary, by

the Regional Surveyor, the Director, shall, as soon as practicable, prepare the Final Registration Plan.

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"(2) In preparing the Final Registration Plan, the Director shall take into consideration -

- (a) the Registration Plan prepared under Section 8; and
- (b) the Adjusted Registration Plan prepared under Section 12; and
- (c) any objection made pursuant to Section 13.

"(3) Where any objection made under Section 13 conflicts with the Registration Plan or the Adjusted Registration Plan or both, the Director shall hear and determine the matter and shall not proceed with the preparation of the Final Registration Plan until the objection has been settled."

15. NEW SECTION 34K.

The Principal Act is amended by adding the following new section after Section 34 -

"34K. REGISTRATION OF CLAN LAND.

The application for registration on behalf of the Incorporated Land Group shall -

- (a) be in the prescribed form; and
- (b) be accompanied by a copy of the instrument of incorporation; and
- (c) be accompanied by -
 - (i) registration plan; and
 - (ii) such order of the court, document or instrument forming a good root of title."

16. NEW SECTION 34L.

The Principal Act is amended by adding the following new section after Section 34 -

"34L. ISSUE OF CERTIFICATE OF TITLE.

"(1) Where the customary group has been registered as the owner of land, the Registrar of Titles shall, upon payment of a prescribed fee, prepare and issue a Certificate of Title in the prescribed form in the name of the group.

"(2) In preparing a Certificate of Title under Subsection (1), the Registrar of Titles shall prepare a copy of the title for the purposes of registration in the Register."

17. NEW SECTION 34M.

The Principal Act is amended by adding the following new section after Section 34 -

"34M. EFFECT OF REGISTRATION.

"(1) An entry in the Register -

- (a) is conclusive evidence of the facts; and
- (b) unless endorsed otherwise, shall be deemed to guarantee the area and the boundary of the land to which the entry relates; and

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(c) shall be subject to such rights and interests as are recorded in the register.

"(2) Registration of ownership which is inconsistent with -

(a) a title previously registered under the provision of this Act;
or

(b) a reservation, easement or other such interest made by the State for public purposes under any law; or

(c) an estate, right, title or interest granted by the State under any law,

shall be ineffective to the extent of the inconsistency."

18. NEW SECTION 34N.

The Principal Act is amended by adding the following new section after Section 34 -

"34N. CUSTOM.

"(1) Land entered in the Register under this Part and the right to ownership or possession of any such land or any right, title, or interest in or in relation to any such land shall cease to be subject to customary law.

"(2) Subsection (1) has no application to the transfer of a member's rights and custom shall apply."

19. NEW SECTION 34O.

The Principal Act is amended by adding the following new section after Section 34 -

"34O. LAND TRANSACTIONS.

"(1) An Incorporated Land Group registered as owner of clan land has power to grant derivative rights and interests in the land or portions to itself, any land group, unincorporated or incorporated, an individual or any entity on payment of a rent or rent free in such manner as provided in Part VI of the Principal Act.

"(2) Land transactions, unless provided to the contrary, are deemed to be on such terms and conditions provided for in Parts VI, VII and IX of the Principal Act.

"(3) The transfer of allodial title in clan land is prohibited."

20. NEW SECTION 34P.

The Principal Act is amended by adding the following new section after Section 34 -

"34P. CONTROLLING LAND TRANSACTIONS.

"(1) Part XVII of the Land Act, (Approval of Dealings), apply to dealings in land registered under this Part, except for transactions between the Incorporated Land Group and its members, corporate or unincorporated.

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"(2) The grant of a mortgage or charge of land is regulated by terms and conditions contained in Section 23."


21. NEW SECTION 34Q.

The Principal Act is amended by adding the following new section after Section 34 –

"34Q. UNLAWFUL OCCUPATION OF CLAN LAND.


Sections 144, 145, 146 and 147 of the *Land Act* apply for the protection of clan land."

I hereby certify that the above is a fair print of the *Land Registration (Amendment) Act 2009* which has been made by the National Parliament.



Clerk of the National Parliament.

I hereby certify that the *Land Registration (Amendment) Act 2009* was made by the National Parliament on 19 March 2009.



Speaker of the National Parliament

