

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 359.

Land (Ownership of Freeholds).

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.

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CHAPTER NO. 359.

Land (Ownership of Freeholds) Act.

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Land (Ownership of Freeholds) Act.

Being an Act to implement Section 56(1)(b) (*other rights and privileges of citizens*) of the Constitution by—

- (a) defining the forms of ownership that are to be regarded as freehold; and
- (b) defining the corporations that are to be regarded as citizens,

and to facilitate dealings in certain land to which that paragraph would otherwise apply by making provision for the conversion of certain interests in land to State leases, and for related purposes.

PART I.—PRELIMINARY.

1. Purpose of this Act.

(1) The main purpose of this Act is to implement Section 56(1)(b) (*other rights and privileges of citizens*) of the Constitution by defining—

- (a) the forms of ownership that are to be regarded as freehold; and
- (b) the corporations that are to be regarded as citizens,

for the purposes of that paragraph.

(2) The application by virtue of this Act of the definitions referred to in Subsection (1)(a) and (b) is limited to the purposes of Section 56(1)(b) of the Constitution, and this Act does not, for any other purpose, affect the nature or incidents of any interest in land.

2. Interpretation.

In this Act, "interest" means an interest in land and includes an estate in land.

PART II.—FREEHOLD OWNERSHIP.

Division 1.—Basic Principles.

3. General definition.

Subject to the qualifications and exceptions set out in Division 2 and to Section 4, the forms of ownership of land that are to be regarded as freehold for the purposes of Section 56(1)(b) of the Constitution are—

- (a) absolute ownership; and
- (b) ownership in fee simple; and
- (c) equivalent forms of ownership (being the ownership of interests greater than estates for terms of years),

whether technically called "legal" or "equitable", but not including any form of customary ownership of, or of customary interest in, land.

4. Indirect ownership.

(1) In this section—

“freehold land” means an interest that is a form of freehold ownership within the meaning of Section 3;

“indirect interest” means an interest that, in law or in equity, confers or includes in relation to any land, powers or rights that are equivalent to the powers and rights possessed by an owner of freehold land;

“interest” includes any right, power or privilege in, over or in connexion with land that is conferred by any instrument or transaction, whether or not it would, apart from this definition, amount to an interest in land.

(2) Ownership of any indirect interest in freehold land shall be regarded, for the purposes of Section 56(1)(b) of the Constitution, as a form of freehold ownership.

Division 2.—Exceptions.

5. Application of Division 2.

Where any provision of this Division declares that a particular interest acquired in a certain manner is not to be regarded as a form of freehold ownership—

(a) the declaration does not, of itself, affect the nature of the interest, or of any other interest, for the purposes of a subsequent acquisition or other transaction; or

(b) affect the nature or effect of any subsequent acquisition or other transaction.

6. Exception of life estates.

A life estate in an interest shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

7. Exception of certain non-beneficial interests.

So far as they do not include beneficial interests, the following interests shall not be regarded as forms of freehold ownership for the purposes of Section 56(1)(b) of the Constitution :—

(a) the interest acquired by the Public Curator under Section 44 of the *Wills, Probate and Administration Act*; and

(b) the interest acquired under a probate or letters of administration by an executor, administrator or trustee; and

(c) the interest acquired by a trustee in insolvency; and

(d) any other interest, whether or not of a kind referred to in Paragraph (a), (b) or (c), that is acquired by operation of law or by order of a court; and

(e) any interest that—

(i) is analogous to an interest referred to in Paragraph (a), (b), (c) or (d); or

(ii) is acquired in circumstances analogous to the circumstances referred to in any of those paragraphs.

8. Exception of converted equitable interests.

The additional interest acquired by the holder of an equitable interest on its conversion into, or on the acquisition by him of, the equivalent legal interest shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

9. Exception of effect of registration.

The additional interest (if any) acquired by the registration or recording of an interest in favour of the person entitled to be registered or recorded shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

10. Exception of effect of restoration of titles.

The interest (if any) acquired by a person by the making of an order under the *New Guinea Land Titles Restoration Act 1951* (adopted), or by the implementation of such an order, shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

11. Exception of "reserves".

The interest acquired under Section 26 of the *Land Act* by a trustee or a beneficiary under that section over land reserved from lease or further lease under Section 25 of that Act shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

12. Exception of title by survivorship.

The interest (if any) acquired by a joint tenant on the death of another joint tenant shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

13. Exception of right of sale.

A mere right or power of sale or management under a mortgage or charge, or under an order of a court, shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

14. Exception of certain transactions commenced before Independence Day.

Where a contract for the acquisition of an interest was entered into before Independence Day, an interest acquired in pursuance of the contract shall not be regarded as a form of freehold ownership for the purposes of Section 56(1)(b) of the Constitution.

PART III.—CITIZEN CORPORATIONS.

15. General definition.

The corporations that are to be regarded as citizens for the purposes of Section 56(1)(b) of the Constitution are—

- (a) the State; and
- (b) other governmental bodies within the meaning of Section Sch. 1.2(1) of the Constitution that are corporations; and
- (c) Local Government Councils and Local Government Authorities; and
- (d) incorporated land groups within the meaning of the *Land Groups Incorporation Act*; and

- (e) business groups within the meaning of the *Business Groups Incorporation Act*, and
- (f) any other corporations that are declared by Act to be corporations that are to be regarded as citizens for the purposes of Section 56(1)(b) of the Constitution.

PART IV.—CONVERSION OF INTERESTS TO AVOID FRUSTRATIONS.

16. Application and interpretation of Part IV.

In this Part—

- (a) a reference to a freehold interest shall be read as a reference to any form of ownership that is freehold ownership for the purposes of Section 56(1)(b) of the Constitution; and
- (b) a reference to a frustrated right shall be read as a reference to what would have been, but for the operation of that section, a right to acquire freehold ownership; and
- (c) a reference to the holder of a frustrated right shall be read as a reference to the person who, but for the operation of that paragraph, would have had the right to acquire the freehold ownership; and
- (d) "substitute lease" means a lease granted, or to be granted, in accordance with Section 22(1).

17. Application for conversion.

(1) Subject to this Part, the owner of any freehold land or the holder of any frustrated right may apply in the prescribed manner to the Minister for the grant to him of a substitute lease in substitution for his freehold interest or frustrated right, as the case may be.

(2) An application under Subsection (1) shall be accompanied by the prescribed evidence as to other persons who have interests in the land the subject of the application.

(3) Subject to this Part, an application under this section shall be dealt with as prescribed.

18. Offer of substitute lease.

(1) As soon as practicable after the receipt of an application under Section 17, the Minister shall notify the applicant, in writing, whether he proposes to approve or to reject the application.

(2) The approval of an application may be made subject to such reasonable conditions as the Minister thinks proper and specifies in the notification under Subsection (1), and shall not be unreasonably withheld.

(3) The conditions to which an approval may, under Subsection (2), be made subject include conditions as to the adjustment of rights as between persons who have interests in the land the subject of the application.

19. Acceptance of offer.

(1) Within such period as is specified in the notice or such further period as the Minister allows, the person to whom notice of a proposal to approve an application is given under Section 18 may, by written notice in the prescribed form, accept the proposal.

(2) On receipt of a notice of acceptance under Subsection (1), the Minister shall cause to be published in the National Gazette details of the proposed approval and any conditions to which it is, under Section 18(2), to be subject.

20. Objections.

(1) A person who is aggrieved by—

(a) a proposal to grant or refuse an application under Section 17; or

(b) the conditions to which such a proposal is, under Section 18(2), to be subject, may, within the prescribed time and in the prescribed manner, make an objection to the proposal to the National Court.

(2) On an objection under Subsection (1), the National Court may, by order, direct the Minister—

(a) to approve the application or to grant a substitute lease; or

(b) to refuse the application; or

(c) to make the grant of the application subject to such further or other conditions as it thinks proper for adjusting the rights and liabilities of all persons interested in the land.

21. Withdrawal of the proposal or acceptance.

If on an objection under Section 20 the National Court makes an order of a kind referred to in Section 20(2)(c), then, within the prescribed time—

(a) the Minister may withdraw his proposal; or

(b) the applicant may withdraw his acceptance of the proposal,

and the application ceases to have effect.

22. Grant of substitute lease.

(1) Where a proposal is accepted under Section 19 then, subject to any order made under Section 20(2)(b) and to any action taken under Section 21, the Minister shall, by notice in the National Gazette, grant a lease from the State in accordance with the proposal under Section 18 as varied, if necessary, in accordance with any order under Section 20(2)(c).

(2) A substitute lease shall be granted as soon as practicable after—

(a) the end of the period prescribed under Section 20(1) for the making of objections; or

(b) if an objection is made under Section 20—

(i) the objection is determined; and

(ii) in a case to which Section 21 applies—the end of the period prescribed under that section for the withdrawal of a proposal or an application,

whichever first happens.

23. Conditions of substitute lease.

(1) In this section, a reference to an Act to which this section applies is a reference to an Act made after this Act that—

(a) provides for the conversion of freehold land to land held in some other way;
or

(b) makes provision in respect of State leases generally, or for State leases of a class provided for by the *Land Act*.

(2) Until varied by or under an Act to which this section applies, the term of a substitute lease is 99 years.

(3) Subject to any Act to which this section applies, rent is not payable on a substitute lease.

(4) The reservations, covenants and improvement and other conditions of a substitute lease are as determined by or under an Act to which this section applies.

24. Effect of substitute lease.

(1) A substitute lease commences on the date of publication of the relevant notice under Section 22.

(2) On the commencement of the substitute lease—

(a) the absolute ownership of the land vests in the State; and

(b) the substitute lease shall, subject to this Act, be deemed to be a State lease granted under the *Land Act* and the provisions of that Act that apply generally to State leases apply accordingly; and

(c) all other rights, titles, interests in, over or in connexion with the land take effect, as far as they are capable of so taking effect in relation to the substitute lease.

(3) This Part is not intended to affect the operation of Section 53 (*protection from unjust deprivation of property*) of the Constitution, and for the purposes of Section 53(2) of the Constitution the State shall be deemed to be the expropriating authority in relation to any interest (other than a frustrated right) that is adversely affected by the operation of this Part.

25. Application of Lands Acquisition (Development Purposes) Act.

The grant of a substitute lease is not an acquisition of land from the State within the meaning of Section 3(2) of the *Lands Acquisition (Development Purposes) Act*.

26. Ancillary transactions.

(1) No transactions that are necessary or convenient to comply with any conditions of an approval of a kind referred to in Section 18(3) are liable to stamp duty or any similar duty.

(2) In the case of a transaction referred to in Subsection (1), the grant of the substitute lease is conclusive as to—

(a) the power of any person to enter into the transaction; and

(b) the granting of any consent or approval required under any other law.

PART V.—MISCELLANEOUS.

27. Evasion of Section 56 of the Constitution.

The National Court has all jurisdiction and powers necessary to allow it to make whatever orders appear to it to be desirable to prevent or to nullify an attempted evasion of Section 56(1)(b) of the Constitution.

28. Regulations.

(1) In this section, "the Lands Registration Act"—

(a) in relation to land in the former Territory of Papua—means the *Real Property Act, 1913* of that Territory (adopted); and

(b) in relation to land in the former Territory of New Guinea—means the *Lands Registration Act, 1924* of that Territory (adopted).

(2) 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, notwithstanding anything in the Lands Registration Act, in respect of the manner of registration under that Act of anything that is necessary or convenient to give effect to this Act.

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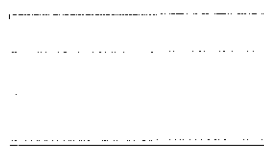
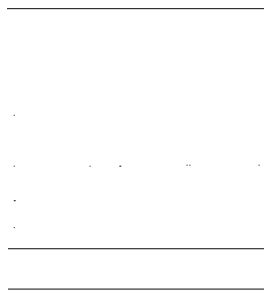
Land (Ownership of Freeholds) Regulation.

ARRANGEMENT OF SECTIONS.

1. Interpretation—
"the Registrar".
2. Application for conversion.
3. Dealing with application.
4. Acceptance of offer.
5. Objections.
6. Withdrawal of proposal or acceptance.
7. Lease.
8. Registration.
9. Service of notices.

SCHEDULE—

- FORM 1.—Application for Substitute Lease.
FORM 2.—Notice of Acceptance.
FORM 3.—Lease.



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Land (Ownership of Freeholds) Regulation.

MADE under the *Land (Ownership of Freeholds) Act*.

1. Interpretation.

In this Regulation, unless the contrary intention appears "the Registrar" means the Registrar of Titles as defined in the *Land Act*.

2. Application for conversion.

(1) An application by the owner of any freehold land or the holder of any frustrated right for the grant of a substitute lease in substitution for his freehold interest or frustrated right, as the case may be, shall be in Form 1.

(2) Where an application under Subsection (1) is lodged by the owner of a frustrated right, he shall attach a copy of the document by which he claims to be the holder of that frustrated right.

3. Dealing with application.

(1) The Minister shall, on receipt of an application under Section 2—

- (a) by written notice advise each person noted in the application, having an interest in the land the subject of the application, and require that person to state any objection to or make any representation concerning the application to the Minister in writing within 28 days of the receipt of the notice; and
- (b) advertise in a newspaper circulating in the area where the land the subject of the application is situated, that the application has been received and invite any person having an interest in the land to make written representation to the Minister within 28 days of the date of publication of the advertisement.

(2) The Minister shall, after considering any objection or representation made under Subsection (1) notify the person making an objection or representation (if any) whether—

- (a) the objection or representation is to be—
 - (i) considered; or
 - (ii) rejected; or
- (b) he requires further information concerning the objection or representation.

4. Acceptance of offer.

The person to whom notice of a proposal to approve an application is given may accept the proposal in Form 2.

5. Objections.

A notice of objection to—

- (a) a proposal to grant or refuse an application; or
- (b) conditions to which a proposal is subject,

shall be by Notice of Motion to the National Court filed within 28 days of receipt of a notice under Section 18 of the Act.

6. Withdrawal of proposal or acceptance.

(1) The Minister may, by written notice to the applicant, withdraw his proposal within 28 days of the receipt of an order by the National Court under Section 20(2)(c) of the Act.

(2) The applicant may, by written notice to the Minister, withdraw his acceptance of the proposal within 28 days of receipt of notice of an order by the National Court under Section 20(2)(c) of the Act.

7. Lease.

(1) A substitute lease granted in accordance with a proposal shall be in Form 3.

(2) The lessee to whom a substitute lease is granted shall be deemed to have executed the lease on the date of publication of the relevant notice under Section 22 of the Act.

8. Registration.

(1) On publication of the notice under Section 22 of the Act, the Minister shall forward particulars of the notice and the substitute lease to the Registrar.

(2) On receipt of the notice and particulars under Subsection (1), the Registrar shall—

(a) note on the document evidencing the freehold interest or frustrated right an endorsement showing that the land is vested absolutely in the State, subject to the substitute lease; and

(b) enter the substitute lease in the Register of State Leases; and

(c) note on the substitute lease all other rights, titles, interests in, over or in connexion with the land by appropriate endorsement.

9. Service of notices.

(1) Subject to this section, where, under this Regulation a notice is required or permitted to be given to or served on a person (other than a corporation), the notice shall be given or served personally or by registered post to the last postal address of that person known to the Minister.

(2) Where it is impracticable to serve a person in accordance with Subsection (1), or the Minister has cause to believe that that person is dead, it shall be sufficient service if a copy of the notice—

(a) is published in three consecutive issues of a newspaper that is distributed regularly throughout Papua New Guinea; and

(b) is forwarded by pre-paid post to the Local Government Council (if any)—

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

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

(c) is placed in a conspicuous place on the land the subject of the notice.

(3) Where, under this Regulation, a notice is required or permitted to be given to or served on a corporation, the notice may be given or served by registered post to the last postal address of that corporation known to the Minister.

SCHEDULE.

PAPUA NEW GUINEA.

Land (Ownership of Freeholds) Act.

Act, Sec. 17.

Form 1.

Reg., Sec. 2.

APPLICATION FOR SUBSTITUTE LEASE.

The Secretary,

Department of Lands.

I, _____, of _____ being the owner of freehold land/holder of a frustrated right in freehold land* being all that piece of land described as—

Lot: Section: Town: Province: Portion: Milinch: Fourmil: Province: contained in Certificate of Title Vol. Fol. apply for a substitute lease under the Land (Ownership of Freeholds) Act in substitution for my freehold interest/frustrated right.*

(Signature of Applicant.)

Occupation:

Postal Address:

*Strike out whichever is inapplicable.

DECLARATION.

I, _____, of _____ do solemnly and sincerely declare that the statements made by me in reply to the questions below are true and correct in every particular.

Question.

Statement in reply.

State name and address of any other person or persons who have an interest in the land the subject of this application.

What is the nature of that interest?

And I make this solemn declaration by virtue of the Oaths, Affirmations and Statutory Declarations Act conscientiously believing the statements contained in it to be true in every particular.

Declared at _____ 19____

Before me: (insert title of person before whom the declaration is made.)

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Land (Ownership of Freeholds) Act.

Act, Sec. 19.

Form 2.

Reg., Sec. 4.

NOTICE OF ACCEPTANCE.

The Secretary,

Department of Lands.

I, _____ of _____ being the applicant for a substitute lease under the *Land (Ownership of Freeholds) Act* give notice of acceptance of the proposal to approve the application in respect of my freehold interest/frustrated right in freehold land* being all that piece of land described as :—

Lot: _____ Section: _____ Town: _____ Province: _____
Portion: _____ Milinch: _____ Fourmil: _____
Province: _____ contained in Certificate of Title Vol. _____ Fol. _____

(Signature of Applicant.)

Occupation:

Postal Address:

Dated _____, 19 _____

*Strike out whichever is inapplicable.

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Land (Ownership of Freeholds) Act.

Act, Sec. 22.

Form 3.

Reg., Sec. 7.

LEASE.

Registered in the Register

of State Leases

Vol. _____ Fol. _____

Registrar of Titles.

Dated: _____ 19 _____

SUBSTITUTE LEASE UNDER SECTION 22.

THE MINISTER hereby grants to _____ of _____, Papua New Guinea (hereinafter called "the Lessee") a substitute lease under Section 22 of the *Land (Ownership of Freeholds) Act* (hereinafter called "the Act") for a period of 99 years from _____, 19 _____ of all that piece or parcel of land to which the following description applies :—

Land (Ownership of Freeholds)

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Portions Allotment	Milinch Section	Fourmil Town	Area	District
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be the same a little
more or less.

as shown coloured yellow in the plan annexed hereto with all appurtenances thereto (hereinafter called "the land")

EXCEPTING AND RESERVING therefrom the reservations implied in and related to substitute leases by the Act TO HOLD unto the Lessee for the said term subject to the terms, provisions, restrictions and conditions (including those relating to term and rental) contained in the Act and the Regulations thereunder and to the reservations, covenants, terms and conditions hereinafter set forth.
SIGNED SEALED AND DELIVERED BY

Minister for

Dated 19

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SUBSIDIARY LEGISLATION.

Act, Section 22—Grant of substitute lease.

Allotment 6, Section 32; Allotments 9 and 10 Section 18; Allotment 20, Section 38; Allotment 4, Section 33; Allotment 6, Section 14; Allotment 7, Section 14; Lot 4 Section 33, Town of Rabaul, Province of East New Britain.

Allotment 1, Section 6; Allotment 8, Section 4, Town of Kokopo, Province of East New Britain.

Portion 2; Portion 10; Portion 307, Milinch Blanche, Fourmil Rabaul, Province of East New Britain.

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Land (Ownership of Freeholds).

APPENDIXES.

APPENDIX 1.

SOURCE OF THE LAND (OWNERSHIP OF FREEHOLDS) ACT.

Part A.—Previous Legislation.

Land (Ownership of Freeholds) Act 1976 (No. 76 of 1976).

Part B.—Cross References.

Section, etc. in Revised Edition.	Previous Reference ¹ .
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
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22	22
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25	25
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27	27
28	28

¹Unless otherwise indicated references are to the Act set out in Part A.

APPENDIX 2.

SOURCE OF THE LAND (OWNERSHIP OF FREEHOLDS) REGULATION.

Part A.—Previous Legislation.

Land (Ownership of Freeholds) Regulation 1977 (No. 21 of 1977).

Part B.—Cross References.

Section, etc. in Revised Edition.	Previous Reference ¹ .
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
Schedule	Schedule.

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