

P.N.D.C.L. 152

LAND TITLE REGISTRATION ACT, 1986

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P.N.D.C.L. 152

LAND TITLE REGISTRATION ACT, 19861

AN ACT to provide for the registration of title to land and for related matters.

PART ONE

Establishment of Land Title Registry

The Land Registry

1. Establishment of land title registry

(1) There is hereby established a land title registry with offices at the places that the Minister responsible for Lands may, by legislative instrument, determine on the advice of the Title Registration Advisory Board established under section 10.

- (2) There shall be kept and maintained in every registry office established under subsection (1),
- (a) the land register;
 - (b) the registry map;
 - (c) parcel files containing the instruments which support subsisting entries in the register and the filed plans and documents;
 - (d) the presentation book in which is kept a record of the applications numbered consecutively in the order in which they are presented to the Registry;
 - (e) an index arranged in alphabetical order of the names of the proprietors of land and interests in land, showing the numbers of the parcels of which they are proprietors or in which they hold interests; and
 - (f) a register and a file of powers of attorney.

2. Seals of registry offices

- (1) A registry office shall have a seal.
- (2) An instrument purporting to bear the imprint of that seal is admissible in evidence and, unless the contrary is shown, shall be deemed, without proof, to have been issued by an order or under the direction of the Chief Registrar of Lands appointed under section 3.

3. Appointment of registrars

- (1) There shall be a Chief Registrar of Lands who shall be appointed by the President in accordance with article 195 of the Constitution.
- (2) The Registrar shall be assisted in the performance of functions under this Act by land registrars who shall be appointed by the President in accordance with article 195 of the Constitution.

4. Appointment of other officers and employees

Other officers and employees as are necessary for the purposes of this Act may be appointed in accordance with article 195 of the Constitution.

Compilation of the Register, General Provisions

5. Declaration of registration districts

The Minister may, by legislative instrument, declare an area specified in the instrument to be a registration district.

6. Demarcation and survey of boundaries

(1) Where an area is declared a registration district under section 5, the Registrar may, in consultation with the Director of Surveys direct that the boundaries of a land in the registration district to which the declaration relates be demarcated or that a survey be made of the boundaries or both.

(2) The Registrar may, in consultation with the Director of Surveys, direct an official or a licensed surveyor or the agents and workmen of the surveyor to enter on a land which the surveyor is appointed to demarcate or survey.

(3) The official or the surveyor may make the enquiries or do or cause to be done the things that are necessary for effecting the land demarcation of the boundaries and survey of the land.

7. Registration sections

The Registrar may divide a registration district into registration sections.

8. Functions of the chief registrar of lands

The Registrar is charged with the overall responsibility for the administration of the registry established under section 1, and for the compilation and maintenance of the register and the other records kept in the registry offices.

9. Powers of the land registrars

(1) Subject to section 8, a land registrar in the performance of functions under this Act

(a) may require a person to produce an instrument, a certificate or any other document or plan relating to the land or interest in land to be registered;

(b) may summon a person to appear and give an information or explanation in respect of an interest in land to be registered under this Act and that person shall appear and give the information or explanation;

(c) may refuse to proceed with a registration if an instrument, a certificate or any other document, plan, information or explanation required to be produced or given is withheld or an act required to be done under this Act is not done;

(d) may refuse to proceed with a registration where the land registrar has reasonable cause to believe that the Republic or a person who is a minor or of unsound mind or under any other disability or who is absent from the Republic will be adversely affected or for the prevention of any fraud or an improper dealing with a land or an interest in land.

(2) Where a person disobeys an order made under subsection (1), the land registrar may certify the disobedience to the High Court, and that person may be dealt with by the High Court as if the order made by the land registrar were the order of the Court.

10. Establishment of a Title Registration Advisory Board

(1) There is hereby established a Title Registration Advisory Board consisting of

- (a) the chairman,
- (b) the Registrar,
- (c) the Chief Lands Officer,
- (d) the Director of Surveys, and
- (e) one other person.

(2) The chairman and the other person referred to in paragraph (e) of subsection (1) shall be appointed by the President in accordance with article 195 of the Constitution.

(3) Subject to any other functions that may be assigned to it, the Board shall advise the Minister on matters relating to the administration and implementation of this Act.

11. Notice of registration districts

Subject to section 13, on the declaration of a registration district the Registrar shall, within fourteen days of the declaration, issue in respect of that district a notice in which the Registrar shall

- (a) specify the situation and limits of the registration district;
- (b) require a person who claims to be the proprietor of a land or of an interest in a land within the registration district to make a claim in respect of the land or the interest in person or by an agent within the period and at the place and in the manner specified in the notice;
- (c) require the claimants to a land or to an interest in land within the registration district to mark or indicate the boundaries of the land in the manner specified in the notice.

12. Staying of land suits

(1) An action concerning land or an interest in land in a registration district shall not be commenced in a Court until the procedures for settling disputes under this Act have been exhausted.

(2) Where at the time of the publication of a notice under section 11 an action or proceeding concerning land or an interest in land in a registration district referred to in the notice is pending in a Court,² a claim under this Act in respect of the same land or interest shall be noted by the land registrar but a further action shall not be taken on the claim until the matter is determined by the Court.

13. Compilation of register of lands

(1) On the declaration by the Minister of a registration district the land registrar shall, in relation to every land situated in that district, in respect of which an instrument has before the date of the declaration been registered under the Land Registry Act, 1962 (Act 122),

- (a) prepare a list in the prescribed form, within ninety days, showing the instances of proprietorship of a land or an interest in land evidenced by the instruments and in respect of which a

conflicting claim does not appear from a registered instrument or to have been made in response to the notice issued under section 11;

(b) serve on a person named as a proprietor of land or an interest in land in the list prepared in accordance with paragraph (a) a notice of the intention to register that person as proprietor of the land or the interest in land after a specified date.

(2) Where there are conflicting claims in respect of a land referred to in subsection (1) the matter shall be referred to the adjudication committee established under section 22.

(3) After the expiry of the period specified in the notice given under paragraph (b) of subsection (1) and the period specified in the notice given in relation to the land under paragraph (b) of section 11, or as soon as the adjudication committee has determined a matter referred to it under this Act, the land or the interest shall be registered in accordance with section 14 of this Act and the Land Registry Act, 1962 (Act 122) shall cease to apply to an instrument in so far as it affects that land or interest.

14. Time and manner of first registration

(1) The first registration of a parcel shall, whichever last occurs, be effected by the land registrar

(a) on the expiry of the period specified in the notice issued under section 11 in respect of the district in which the parcel is situated; or

(b) on the expiry of the notice issued under paragraph (b) of subsection (1) of section 13 in respect of the parcel; or

(c) on the determination by the adjudication committee of a dispute referred to it concerning the claim of a person to be registered as proprietor of the land or interest in the land.

(2) The first registration shall consist of the opening by the land registrar of a folio in respect of the parcel to be registered and the entry in the folio of

(a) the name of a person who has been shown to be entitled to be registered as proprietor of the parcel and the particulars of that person and of the proprietorship as are prescribed to be entered,

(b) the particulars of the plan to enable the parcel to be fully identified on the registry map, and

(c) the particulars as prescribed of the interests which have been shown to exist in the land.

(3) Where after the first registration, a person who has not been registered as a proprietor of the land or of an interest in the land, shows a proprietorship of the land or of an interest in the land, the land registrar shall effect registration of that person by making additions in the prescribed manner to the folio.

15. Description of lands affected by dealings

(1) Without prejudice to section 20 and except as otherwise provided in subsection (2) of this section, where land or an interest in land being registered is evidenced by an instrument, that land or interest in the land shall not be registered under this Act, unless there is attached to that instrument a plan of the land

which has been approved and duly signed by the Director of Surveys or an officer of the Survey Department authorised by the Director.

(2) Where a plan referred to in subsection (1) has already been filed in the registry with an instrument relating to the same land it shall be sufficient, without attaching the plan to the instrument, if the land is described by reference to the instrument and plan already filed in the Registry office.

16. Form of register

(1) The land register shall comprise a folio in respect of each parcel in every registration district, and each folio shall comprise

(a) an entry of the description of the parcel with reference to the registry map and a plan approved by the Director of Surveys under sections 15 and 34,

(b) an entry in respect of every proprietor of the parcel, stating the name of the proprietor and the nature of the proprietorship, and

(c) an entry in respect of every interest held in the parcel by a person, stating the name of the proprietor of the interest and the nature of the interest.

(2) Subject to subsection (1) the land register shall be in the prescribed form.

17. Cancellation of obsolete entries

The land registrar may cancel an entry in the land register if the land registrar is satisfied that the entry has ceased to have effect.

18. Conclusiveness of the register

(1) The land register is conclusive evidence of the title of the proprietor of the land or interest in land appearing on the register.

(2) Subsection (1) does not affect a right or an interest in land acquired under the law relating to prescription or the Limitation Act, 19723, but where title to registered land has been acquired under the law relating to prescription or the Limitation Act, 19724 the registered proprietor shall hold the land on trust for the person who claims to have acquired the title.

(3) A person claiming to have acquired land or an interest in land under the provisions or rules referred to in subsection (2) may apply to the land registrar for an appropriate amendment to be made to the land register.

(4) On receipt of an application under subsection (3), the land registrar shall, after giving notice of the application to the persons whose rights are liable to be affected and giving those persons an opportunity to make representations, follow as far as practicable in regard to the application, section 23 of this Act.

19. Proprietor of land and registrable interests

(1) A person shall be registered as proprietor of land if, in relation to that land, that person

(a) is the allodial owner, that is to say, that person holds it under customary law where that person is not under a restriction on the rights of user or obligations in consequence of that holding other than restriction or an obligation imposed by the law of the Republic generally; or

(b) holds a customary law freehold, that is to say, that person holds rights of user subject only to the restrictions or obligations imposed on a subject of a Stool or a member of a family who has taken possession of land of which the Stool or family is the allodial owner without consideration or on payment of a nominal consideration in the exercise of a right under customary law to the free use of that land; or

(c) holds the land for an estate of freehold vested in possession or an estate or interest less than freehold according to the rules generally known as the rules of the common law; or

(d) holds a leasehold interest, that is to say, that person holds an interest under a lease for a term of years of which more than two years are unexpired; or

(e) holds a lesser interest in land, that is to say, holds an interest in land by virtue of a right under contractual or share cropping or any other customary tenancy arrangement.

(2) The land registrar shall register the Republic

(a) as proprietor of the lands vested in the Republic by an enactment;

(b) as trustee of the lands held by the Republic in trust under an enactment; and

(c) as proprietor of the lands not held by any other proprietor.

(3) Subject to subsections (4) and (5), an interest appertaining to or affecting a land may be registered under this Act.

(4) Where an interest will according to its terms expire without notice of termination within less than two years after the date on which an application is made for its registration, it shall not be registered under this Act although it may be renewable on notice.

(5) Despite subsection (4), a concession granted under the Concessions Ordinance (Cap. 136) or the Concessions Act, 1962 (Act 124) or a licence in respect of minerals granted under the Minerals Act, 1962 (Act 126) shall be registered under this Act.

20. Rejection of application for first registration

(1) Subject to this Act and to the Limitation Act, 19725, the land registrar may reject an application for first registration by a person claiming to be a proprietor of land or an interest in land and basing a claim on an instrument,

(a) if the instrument deals with the land or part of it in a manner inconsistent with an instrument previously executed whether by the same grantor or a predecessor-in-title or by any other person; or

(b) if, on the face of the records, the grantor named in the instrument does not appear to the land registrar to have been entitled to deal with the land as the instrument purports to have done; or

(c) if the instrument was made in contravention of, or is void by virtue of, an enactment; or

(d) if the instrument contains an interlineation, a blank, an erasure or an alteration not verified by the signature or initials of the persons executing the instrument.

(2) Subsection (1) does not prevent the exercise by a Court of its powers under the Land Development (Protection of Purchasers) Act, 1960 (Act 2) or the Farm Lands (Protection) Act, 1962 (Act 107), and without prejudice to the effect of any other order of a Court, the land registrar is bound by an order of a court made under either Act which provides that a conveyance or an acquisition shall be deemed to have conferred title.

21. Notification of grounds of refusal to register

(1) Where the land registrar is of the opinion that there are grounds under paragraph (d) of subsection (1) of section 20 to reject an application, the land registrar shall notify the applicant in writing of the opinion and the grounds for the opinion, giving the applicant thirty days within which to make further representations.

(2) Where the land registrar is of the opinion that an application should be rejected on the ground in paragraph (a) or (b) of subsection (1) of section 20, the land registrar shall notify the applicant of that opinion and shall refer the matter to the adjudication committee.

(3) On receipt of a reference under subsection (2), the adjudication committee shall serve a notice of the time and place at which the committee shall hear and determine the claims affecting the title to the land.

(4) The adjudication committee shall publish the notice of hearing in the Gazette and in a newspaper circulating in the area where the land is situated or may cause the notice to be published in any other manner it considers appropriate.

(5) The decision of the adjudication committee shall be communicated in writing to the applicant, the land registrar and to any other person affected by the decision within fourteen days after the determination of the matter.

(6) Where the grounds of rejection by the land registrar of an application are reversed by a decision of the adjudication committee under subsection (5), the land registrar shall comply with the decision of the committee.

Adjudication of Title

22. Establishment of land title adjudication committees

(1) There is hereby established in a registration district a land title adjudication committee.

(2) An adjudication committee consists of the chairman and two other persons all of whom shall be appointed by the Minister on the advice of the Board.

(3) The land registrar or an interested person shall refer a dispute relating to the registration of land or an interest in land to the adjudication committee.

(4) The adjudication committee shall determine a dispute referred to it under sub-section (3).

23. Claims

(1) Subject to sections 13 and 22, a person who claims to be a proprietor of land or an interest in land situated in a registration district shall apply, setting forth that claim, in the manner and within the period specified in the notice given under section 11.

(2) Where the land registrar is satisfied that a person who has a claim to land or an interest in land within a registration district has not made the application, the land registrar may proceed as if an application had been made by that person and may request a certified copy of an instrument relevant to that land or interest and registered under the Land Registry Act, 1962 (Act 122).

(3) The land registrar shall, after the expiry of the notice given under section 11 of this Act, proceed to examine the title of a person who has made a claim to a land or an interest in land under subsection (1) or is deemed to have made that claim under subsection (2) of this section, and may for that purpose examine an instrument relating to that interest.

(4) If as a result of the examination the land registrar is satisfied that,

(a) a person claiming to be a proprietor of land has a good title to the land referred to in the claim and that another person has not acquired a title inconsistent with that of the claimant of the land under a law or has acquired proprietorship of that land by prescription, the land registrar shall record that person as the proprietor with absolute title of the land and declare the title to be absolute;

(b) a person claiming to be a proprietor of land is in possession of, or has a right to possession or right of or in occupation of, the land referred to in the claim, but does not have a sufficiently good title to be recorded under paragraph (a) as the proprietor with absolute title, the land registrar may, with the consent of the applicant, instead of rejecting the application, record that person as proprietor with provisional title of the land, and, if the land registrar does so, shall also record

(i) the date on which the possession or occupation of that person began or is deemed to have begun,

(ii) the particulars of an instrument or any other evidence under or by virtue of which a right or an interest in the land adverse to or in derogation of the interest of that person might exist, or

(iii) a qualification which affects the title;

(c) a land referred to in the claim is subject to an interest which is registrable under this Act, the land registrar shall record the particulars which shall enable the interest and the name of the proprietor of the land to be registered under this Act; but if the identity of the proprietor of the interest has not been satisfactorily established, the land registrar shall record the Republic as the proprietor of the interest in trust for the eventual proprietor;

(d) in respect of a land referred to in the claim, a person is not entitled to be registered as proprietor with absolute title under paragraph (a) or with provisional title under paragraph (b), the land registrar shall record the land as being held by the Republic in trust for the eventual proprietor.

(5) In this section “good title” means, in a case in which a title is founded on documentary evidence, a title which consists of or commences with

- (a) an enactment,
- (b) a grant or conveyance from the Republic,
- (c) a grant, conveyance, assignment or mortgage which is more than thirty years old and establishes that a person is entitled to deal with the land, or
- (d) a final judgment of a Court of competent jurisdiction.

(6) Where there are two or more claimants of an interest in land situated in a registration district and the land registrar is unable to effect agreement among the claimants,

- (a) omitted;6
- (b) any other matters shall be referred by the land registrar to the adjudication committee for adjudication.

24. Survey and demarcation of land

(1) A surveyor who is directed under section 6 to survey or demarcate a land within a registration district may cause a notice to be served

- (a) on a person who owns, occupies or is otherwise interested in a land abutting the land to be surveyed or demarcated, or
- (b) on a person employed or connected with the management or cultivation of the land,

requiring that person to attend personally or by an agent before the surveyor at the time and place stated in the notice for the purpose of identifying the boundaries of the land or providing the information that is needed for purposes of the survey or demarcation.

(2) The surveyor may by notice summon a person who, in the opinion of the surveyor or in the opinion of the land registrar is in possession of information or a document relating to the boundaries to attend before the surveyor and give the information or produce the document at the time and place specified in the notice.

25. Notice of commencement of demarcation

(1) Not less than seven days before the demarcation of lands in a registration district begins, the Director of Surveys shall give notice of the demarcation and the time and place at which it will begin in the manner that the adjudication committee considers to be most appropriate to bring the notice of the demarcation to the attention of the persons likely to be affected by the demarcation.

(2) The notice shall require a claimant to indicate the boundaries of the land affected by the claim in the manner specified in the notice.

26. Surveyor to ensure demarcation of boundaries

Subject to the general or particular directions issued by the Director of Surveys, the surveyor shall, within each registration district,

- (a) ensure that the boundaries of each parcel which is the subject of a claim are indicated or demarcated in accordance with the requirements of the notice given under section 23;
- (b) indicate the boundaries of
 - (i) the public roads, public rights of way and any other public lands, and
 - (ii) an unclaimed land;
- (c) carry out the survey that is required in the execution of the adjudication process;
- (d) prepare a demarcation index map of the registration district on which shall be shown every separate parcel identified by a distinguishing number, but rivers and public roads are not required to be identified by a number.

27. Rules to be followed by adjudication committee

The adjudication committee shall, in hearing and determining a dispute or claim under this Act, observe the following rules:

- (a) the exercise by one person of the rights in or over one or more pieces of land shall not be taken as a presumption in favour of that person of the rights in or over a greater extent of land than that in or over which these rights are exercised;
- (b) where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common, those persons shall be recorded as joint proprietors or proprietors in common, and if as proprietors in common, the share of each shall be recorded;
- (c) where land or an interest in land in a registration district remains unclaimed after the expiration of the period specified in a notice given under section 11 or 13, that land or interest in land shall be recorded as held by the Republic in trust for the eventual proprietor.

28. Adjudication record

(1) The adjudication committee shall, after the determination of a dispute or claim referred to under this Act, prepare an adjudication record which shall consist of a form in respect of each parcel of land.

(2) The record shall show

- (a) the description and approximate area of the land as shown on the demarcation map;

(b) the name or the description of the person entitled to be registered as the proprietor of the parcel with particulars of the entitlement, and a restriction affecting the power of dealing with it of that person or the fact that the parcel is public or Republic land;

(c) if a person shown in the adjudication record is under a disability, whether by reason of age, unsoundness of mind or otherwise, the name of the guardian of that person;

(d) a list of the documents produced to the land registrar and retained by the land registrar;

(e) particulars of an instrument registrable under the Land Registry Act, 1962 (Act 122) of what is capable of being registered under this Act, together with the name and description of the person entitled to the benefit of the instrument and particulars of a restriction affecting the power of dealing with the interest under the instrument;

(f) particulars of a right of occupation or any other encumbrance or interest amounting to less than proprietorship of the land, whether existing by virtue of customary law or otherwise, together with the name and description of every person entitled to the benefit of the right, encumbrance or interest and particulars of a restriction on the power of dealing with the interest;

(g) the date on which the form is completed.

(2) When completed the chairman of the adjudication committee shall sign the form.

(3) The form shall, where possible, include an acknowledgement signed by the proprietor of the land, the agent or the guardian of the proprietor named in the record in accordance with subsection (1) (c), that the proprietor, the agent or the guardian of the proprietor accepts the adjudication record.

29. Notice of completion of the adjudication record

When an adjudication record in respect of a registration district has been completed, the chairman of the adjudication committee shall sign and date a certificate to that effect and shall, by notice published in the Gazette, give notice of the completion of the adjudication and of the place or places at which the record together with the relevant demarcation map may be inspected.

30. Objections

(1) A person claiming a land or an interest in land referred to in an adjudication record or a demarcation map who considers the record or map to be inaccurate or incomplete in any respect may, within thirty days after the publication of the notice of completion of the record under section 29, notify the adjudication committee stating the grounds of the objection.

(2) The adjudication committee after giving reasonable notice to the persons affected by the objection, shall hear the objection or otherwise determine the matter in the manner that it thinks fit.

31. Procedure for hearing objections

(1) In hearing an objection the adjudication committee shall, so far as is practicable, follow the procedure provided by this Act or the Regulations.

(2) A proceeding conducted under this Act by the adjudication committee is a judicial proceeding.

(3) The adjudication committee shall make a record of the proceedings.

32. Correction of the adjudication record

(1) A correction in an adjudication record required by a decision of the adjudication committee given under section 30 shall be made by the chairman of the adjudication committee and an alteration in the demarcation map required by the decision shall be made by the surveyor.

(2) At any time before an adjudication record becomes final the adjudication committee may

(a) correct a clerical error or an omission not materially affecting the interests of a person, or

(b) with the consent of every person whose interest is affected, make any other alteration in the adjudication record which in its opinion is necessary.

(3) A person aggrieved by an order or decision of the adjudication committee under subsection (2) may appeal in the prescribed manner to the High Court and the Court may annul or confirm, with or without modification, the order or decision.

33. Finality of adjudication record

(1) After the expiry of sixty days from the date of the publication in the Gazette of the notice of completion of an adjudication record under section 29, or on the determination of the objections or appeal in accordance with sections 30 and 32, whichever is later, the record shall, subject to this Act, become final.

(2) The chairman of the adjudication committee shall sign the certificate to that effect and shall deliver the record and the relevant demarcation map to the land registrar together with the documents received in the process of the adjudication to be kept in the Registry.

(3) Where an adjudication record becomes final under subsection (1), the land registrar shall enter in the land register and any other records of the Registry the prescribed contents of the adjudication record.

Maps, Parcels and Boundaries

34. Registry map

(1) The Director of Surveys shall, in consultation with the Registrar, prepare a map or series of maps, to be called the registry map, for every registration district and the map or series of maps shall be maintained in the registry.

(2) For the purposes of the registry map, each registration section constituted under section 7 may be identified by a distinctive name and the registration section may be further divided into blocks which shall be given distinctive numbers or letters or combination of numbers and letters.

(3) The parcels in each registration section shall be numbered consecutively and the name of the registration section and the number or the letter of the block and the number of the parcel shall together be sufficient reference to a parcel.

(4) The Registrar may combine or divide registration sections or blocks or vary their boundaries.

(5) A plan approved by the Director of Surveys shall be noted in the folio of the land register appertaining to each parcel, and the land registrar shall file that plan.

35. Alteration of registry map and preparation of new editions

(1) The Registrar may require the Director of Surveys to correct the line or position of a boundary shown on the registry map with the agreement of a person shown on the register to be affected by the correction, but a correction shall not be effected except on the instructions in writing of the Registrar in the prescribed form.

(2) Where the boundary of a parcel is altered on the registry map, the original number of that parcel shall be cancelled and a new parcel number allocated to it.

(3) The Registrar may require the Director of Surveys to prepare a new edition of the registry map or a part of the registry map and there may be omitted from the new map a matter which the Registrar considers obsolete.

36. Further surveys

The Registrar in consultation with the Director of Surveys may cause a survey to be made for a purpose connected with this Act.

37. General boundaries

(1) The registry map and a plan filed in the registry indicate the approximate boundaries and the approximate situation only of a parcel shown on the map and the plan.

(2) Where an uncertainty or a dispute arises as to the position of a boundary, the adjudication committee, on the application of an interested person, shall, on the evidence that it considers relevant, determine and indicate the position of the boundary.⁷

(3) On the determination of a dispute under subsection (2) the land registrar shall make a note to that effect on the registry map and in the land register and shall file the plan or description as may be necessary to record the decision of the committee.

(4) A Court shall not entertain an action concerning a dispute as to the boundaries of a registered parcel unless the boundaries have been determined as provided in this section.

38. Fixed boundaries

(1) Where the land registrar considers it desirable to indicate on a filed plan, or otherwise to define in the register, the precise position of the boundaries of a registered parcel or a part of the registered parcel, or where an interested person makes an application to the land registrar, the land registrar shall give notice to

the proprietors of interests in, and occupiers of the parcels adjoining the boundaries in question of the intention to ascertain and fix the boundaries.

(2) The land registrar shall, after giving the persons appearing from the register to be affected an opportunity of being heard, cause to be defined by survey the precise position of the boundaries in question and to be filed a plan containing the necessary particulars and shall make a note in the register that the boundaries have been fixed, and the plan, for the purposes of this Act, defines accurately the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the Director of Surveys, a note shall be made in the register and the parcel, for the purposes of this Act, has its boundaries as fixed under this section.

39. Maintenance of boundary features

(1) A proprietor of land shall maintain in proper order and repair, in accordance with the Regulations, a beacon or mark defining a corner point of the parcel.

(2) Subject to subsection (3), where a beacon or mark is not maintained in proper order or repair, or is removed or obliterated, the land registrar may serve on the owner of every parcel in relation to which the beacon or mark indicates a corner point, a notice in writing requesting the owner to restore the beacon or mark to its correct position, or to re-erect it in the prescribed manner.

(3) The restoration or re-erection of a beacon or mark that is removed or obliterated shall be carried out by or under the immediate supervision of a licensed surveyor duly authorised by the Director of Surveys.

(4) The land registrar may, in writing, charge the adjoining proprietors with the responsibility for the care and maintenance, repair, restoration or re-erection of a beacon or mark that is not in proper order or repair or is removed or obliterated.

(5) Where it is established that an adjoining proprietor or a servant or agent of that proprietor, has damaged, removed or obliterated the beacon or mark, the entire cost of repair, restoration or re-erection of the beacon or mark shall be borne by that adjoining proprietor.

40. Interference with boundary features

(1) A person who without lawful excuse, the burden of proof of which lies on that person,

(a) alters, moves, disturbs or wilfully defaces, removes, damages, destroys or otherwise impairs a beacon, mark, signal or boundary feature or a part of the beacon, mark or feature whether the beacon, mark, signal, or boundary feature is on the land of that person or not, or

(b) erects a beacon or mark defining a corner point of a parcel, and whether the intention is to alter the boundary line of a parcel or not, or to cause deception as to the boundary line or not,

commits an offence and is liable on summary conviction to a fine not exceeding one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

(2) A conviction under subsection (1) does not affect the liability of the person concerned to pay for the cost of restoring the boundary resulting from the removal or disturbance of the beacon, mark, signal or boundary feature.

41. Combination and subdivision of parcels

(1) Where contiguous parcels are registered in the name of the same proprietor and are subject to the same registered and overriding interests, the land registrar may, on an application by a proprietor of the parcels, combine them by closing the land register folios relating to them and opening a new folio of the parcel resulting from the combination.

(2) Subject to subsections (3) and (4), where on an application by a proprietor of a parcel for the division of the parcel into two or more parcels, the land registrar shall effect the division by closing the folio in respect of that parcel and by opening a new folio in respect of the new parcels and shall record in the new folios the subsisting entries in the closed folio.

(3) Before combining the parcels or subdividing a parcel under subsection (1) or (2), the land registrar shall give notice to the proprietors of the parcels or parcel and to the proprietors of interests in the parcels or parcel in respect of which it is proposed to combine or subdivide and give the person or persons the opportunity to make representations in relation to the proposed action within the period specified in the notice and the land registrar shall take into consideration the representations which have been duly made.

(4) A thing shall not be done under this section which is inconsistent with this Act or any other enactment, or which affects the rights of a person in a manner not permitted by law.

42. Change of layouts of contiguous parcels

(1) Subject to subsection (2), the land registrar may, on an application by the proprietors of contiguous parcels who are desirous of changing the layout of their parcels, and with the consent in writing of the other proprietors of the parcels or interests in those parcels and of a caveator, cancel the land register folio relating to the parcels and prepare new folios in accordance with the revised layout.

(2) Where in the opinion of the land registrar, a proposed change of layout involves substantial changes of proprietorship which could better be effected by transfer otherwise than under this section, the land registrar may refuse to effect the change in the layout.

(3) Where a change in a layout is effected under subsection (1) the new parcels shall vest in the persons in whose names they are registered.

Effect of Registration

43. Indefeasibility of registration

(1) Subject to subsections (2), (3) and (4) of this section and to section 48, the rights of a registered proprietor of land whether acquired on first registration or acquired subsequently for valuable consideration or by an order of a Court, are indefeasible and shall be held by the proprietor together with the privileges and appurtenances attaching to the land free from any other interests and claims.

(2) The rights of a proprietor are subject to the interests or any other encumbrances and conditions shown in the land register.

(3) This section does not relieve a proprietor from a duty or an obligation to which the proprietor is otherwise a trustee.

(4) The registration of a person as the proprietor of land or an interest in land does not confer on that person a right to minerals not already vested in that person.

44. Effect of registration with provisional title

(1) Subject to sections 46 and 48, registration of a person as the proprietor with a provisional title of a parcel under paragraph (b) of subsection (4) of section 23 does not affect or prejudice the enforcement of a right or an interest in land which is adverse to, or in derogation of, the title of that proprietor and which has arisen before the date or under the instrument or in the manner specified in the land register in relation to that parcel.

(2) Except as provided in subsection (1), the registration shall have the same effect as the registration of a person as proprietor with absolute title.

45. Conversion of provisional title into absolute title

(1) A person registered as proprietor of land with a provisional title or an interested person may at any time apply to the land registrar to be registered as proprietor of that land with an absolute title.

(2) If the applicant satisfies the land registrar that the qualification to which the provisional title is subject has ceased to be of effect, the land registrar shall make an order for the registration of the applicant as proprietor with absolute title after the land registrar has given notice in the manner directed by the land registrar.

(3) On the making of the order or on the application of an interested person after the expiry of twelve years from the date of first registration of a person as proprietor with provisional title, the land registrar shall substitute in the land register the words “absolute title” for the words “provisional title” and the title of the proprietor of that land becomes absolute.

46. Overriding interests

(1) Unless the contrary is recorded in the land register a land or an interest in land registered under this Act is subject to any of the following overriding interests whether or not they are entered in the land register as may for the time being subsist and affect that land or interest:

(a) the rights of way, rights of water, profits or rights customarily exercised and enjoyed in relation to the parcel which are not recognised interests in land under customary law that were subsisting at the time of first registration under this Act;

(b) customary rights which were subsisting at the time of first registration in respect of concessions granted under the Concessions Act, 1939;8

(c) natural rights of water and support;

(d) rights of compulsory acquisition, resumption, entry, search and user conferred by any other enactment;

(e) leases for terms of less than two years and not capable of extension to terms of two years or more by the exercise of enforceable options for renewal;

(f) rights, whether acquired by customary law or otherwise, of a person in actual occupation of the land except where enquiry is made of that person and the rights are not disclosed;

(g) subject to this Act, rights acquired or in the course of acquisition by prescription or under the Limitation Act, 1972;9

(h) charges for unpaid rates and any other moneys which without reference to registration under this Act, are expressly declared by an enactment to be a charge on land;

(i) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, canals, weirs and dams created, constructed or laid in pursuance or by virtue of a power conferred by an enactment.

(2) Despite subsection (1) of this section but subject to subsection (4) of section 19, the Registrar may direct the registration of a liability, a right or an interest specified in subsection (1) of this section in the manner directed by the Registrar.

47. Interests conferred by registration

Subject to this Act, the registration of a person as the proprietor of an interest in land vests in that person the interest described in the transaction by which it was created, together with the implied and expressed rights and privileges attaching or appertaining to that land and subject to the implied and expressing covenants, liabilities and any other incidents, but nothing in this Act shall cause the benefit or the burden of the rights, privileges or covenants to pass to a transferee of land or an interest in land if it would not otherwise pass.

48. Voluntary transfer

(1) A proprietor who has acquired a land or an interest in land without valuable consideration shall hold the land or interest subject to any unregistered rights, interests or to the liabilities to which the land or interest was subject when held by the transferor, and subject also to the law of bankruptcy or insolvency and to the winding up provisions of the Companies Act, 1963 (Act 179).

(2) Subject to subsection (1), the transfer shall in all respects have the same effect as a transfer for valuable consideration.

49. Acquisition by the Republic of unclaimed land or interest

Where a land or an interest in land is recorded under paragraph (c) or (d) of subsection (4) of section 23 or under paragraph (c) of section 27, as being held by the Republic in trust for the eventual proprietor, and a successful claim has not been made to the land or interest in the land within twelve years after the time at which it was so recorded, the Republic becomes the beneficial proprietor of that land or interest and

shall hold it free from any encumbrances and conflicting claims without any further act or deed, and the land registrar shall amend the land register accordingly.

50. Entries constitute actual notice

A proprietor who acquires a land or an interest in land has notice of every entry in the land register which that proprietor was entitled to inspect at the time of the acquisition.

Certificates and Searches

51. Land certificates

(1) The land registrar shall, on registration of a person as proprietor of land or a lease, issue a land certificate to that person,

(a) if that person is registered as proprietor of the land with absolute title, whether on first registration or on subsequent transfer of the land;

(b) if that person is the proprietor of a lease, where the leasehold is for a term of ten years or more; or

(c) if that person is the holder of a grant under the Concessions Act, 1939¹⁰ or the Concessions Act, 1962 (Act 124) or a licence in respect of minerals granted under the Minerals Act, 1962 (Act 126).

(2) A land certificate shall be in the prescribed form and shall show by an extract from the registry map endorsed on, or annexed to, the certificate, the land to which it relates.

(3) A land certificate issued in respect of a land or an interest in land registered under this Act shall be signed and sealed by the land registrar and marked with the serial number of the folio of the register to which it relates.

(4) A separate land certificate may be issued to each proprietor in common of a land or an interest in land and the certificate shall show the undivided share of the proprietor.

(5) Where two or more persons are registered as joint proprietors of the same land or interest in land, only one certificate shall be issued in respect of that interest in the name of those persons and the certificate shall be delivered to the person whose name first appears as proprietor on the certificate.

52. Creation of new folios and issue of new land certificates

(1) The land registrar may create a new folio of the land register and prepare and issue a new land certificate,

(a) where the land registrar accepts an application for combination of parcels or subdivision of a parcel under section 41,

(b) where in the opinion of the land registrar, it is impracticable to make further endorsements on an existing folio,

(c) where an existing folio has been mutilated or defaced or is in the condition that, in the opinion of the land registrar, it should be replaced, or

(d) where, on registration of a transfer or transmission, the transferee or applicant has become the proprietor of part of the parcel in an existing folio.

(2) On the creation of a new folio the land registrar shall cancel the previous folio, wholly or partially, as required by the circumstances, and shall indicate on the folio the serial number of the new folio or folios and the reason for the cancellation.

(3) Subject to an agreement to the contrary, the proprietor in whose name a new folio is created is liable, as between the proprietor and any other person with whom the proprietor has a dealing in respect of the land, for the cost of creating the folio.

53. Substituted land certificates

(1) The land registrar may, after taking the indemnity that the land registrar considers necessary, issue a substituted land certificate to replace a certificate which is satisfactorily proved to have been lost, destroyed, withheld or to be in the possession of a person out of the jurisdiction of the Republic or not to be obtainable without undue delay or expense.

(2) A substituted land certificate shall be an exact copy of the original and is as valid as the original certificate and shall be used for a purpose for which the original certificate might have been used.

(3) An application for a substituted land certificate may be made by the proprietor of the land or interest comprised in the certificate or by a person claiming through the proprietor, and shall be supported by the evidence required by the land registrar.

(4) The land registrar may, before issuing a substituted certificate, give fourteen days' notice of the intention to do so, by notice published in the Gazette or in one or more of the daily newspapers.

(5) The land registrar shall enter in the relevant folio of the land register a notification of the issue of a substituted land certificate.

(6) The notification cancels the original certificate although the certificate may subsequently be found or recovered.

54. Provisional certificates

(1) The land registrar shall issue a provisional certificate to a person registered under paragraph (b) of subsection (4) of section 23 as proprietor of land with the provisional title.

(2) A provisional certificate shall be in the prescribed form and shall be signed and sealed by the land registrar and marked with the serial number of the folio of the land register relating to the parcel.

(3) On the issue of a provisional certificate the land registrar shall enter in the register notification of the issue of the certificate, the date of issue and the circumstances under which it was issued.

55. Land certificates to be produced and noted on dealings

(1) Subject to subsection (2), a land certificate or provisional certificate shall be produced to the land register

(a) on the entry in the land register of a disposition by the proprietor of the land or the interest in land to which it relates; and

(b) on the transmission of the land or the interest in land to which it relates; and

(c) in the case where under this Act or otherwise, a notice of an interest in land, a claim or restriction is entered on the land register which adversely affects the title of the proprietor of the land or the interest in land to which the land certificate relates.

(2) Subsection (1) (c) does not apply in the case of the lodgement of a caveat.

(3) A note of the entry or the transmission shall be officially entered on the land certificate or provisional certificate.

56. Searches and copies

(1) A person seeking an information concerning a parcel or an interest in land registered under this Act or matters incidental to the parcel or the interest may apply to the land registrar to inspect a register, a sheet of the registry map of an instrument or a plan filed in the Registry and containing the information, on the days and during the hours and subject to the conditions that may be prescribed.

(2) A person conducting a search under subsection (1) may be furnished with particulars of subsisting entries in the land register in relation to that parcel or that interest and also certified copies of the document or of the registry map or an instrument or plan filed in the Registry.

(3) A person referred to in subsection (1) may apply in the prescribed form to the land registrar to make an official search in the land register or the registry map and the land registrar shall issue to the applicant a certificate of the result of the search which shall be presumed to be conclusive of the matters stated in the certificate.

57. Evidence

Despite the provisions of an enactment to the contrary, a process for compelling the production of the land register, a registry map or a filed instrument or plan shall not issue from a Court except with the leave of that Court, and the leave shall not be granted if a certified copy or extract of the register, map or instrument is admissible to the same extent as an original to prove its contents.

PART TWO

Dispositions

General Provisions

58. Disposition of registered land and interests in land

(1) Despite an enactment to the contrary, a land or an interest in land registered under this Act shall be disposed of in accordance with this Act, and a disposition of the land or the interest in land otherwise than in accordance with this Act is ineffectual to create, extinguish, transfer, vary or affect a right or an interest in that land.

(2) The death of a person by or on behalf of whom an instrument disposing of an interest in land has been executed shall not affect the validity of the instrument, and the instrument may be presented for registration as if the death had not occurred.

59. Protection of persons dealing with registered land

Where valuable consideration is given by a person in respect of a disposition, the rights accruing to that person through the disposition shall not be affected by the omission

(a) to inquire into or ascertain the circumstances in which the consideration for a previous registered transaction was paid or the manner in which that consideration or part of the consideration was utilised;

(b) to search a register or record kept under the Land Registry Act, 1962 (Act 122).

60. Time-limit for registration of instruments

(1) An instrument relating to a disposition under this Act shall be presented for registration within three months after its date of execution.

(2) Where an instrument is presented for registration later than three months after the date of its execution an additional fee which does not exceed five times the prescribed registration fee shall be charged but subject to clause (2) of article 174 of the Constitution, the land registrar may waive the payment of an additional fee if the land registrar is satisfied that the circumstances of the case warrant the waiver.

61. Power to compel registration

(1) Where the land registrar is satisfied that a person has wilfully failed to register an instrument registrable under this Act the land registrar may by notice in writing order that person to present the instrument for registration.

(2) A person who fails, without reasonable cause, to comply with an order made under subsection (1) within thirty days after the service of the notice on that person, commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

62. Priority of registered interests

(1) Rights derived from instruments recorded in the land register shall have priority according to the order in which the instruments were presented to the Registry irrespective of the dates of the instruments and although the entry in the land register may have been delayed.

(2) Instruments sent by post and received on a day during the hours of business shall be deemed to have been presented simultaneously and immediately before the close of business on that day and the instruments so sent but received between the time of closing and the next opening of the office for business shall be deemed to have been presented simultaneously and immediately after the opening.

(3) Where more than one instrument or application is presented on the same day or on different days but at so short an interval from each other that in the opinion of the land registrar there is doubt as to their order of priority, the land registrar may withhold registration until the land registrar has heard and determined the rights of the interested parties.

63. Stay of registration

(1) Where a person proposing to deal with a land or an interest in land registered under this Act has applied for an official search under section 56 and has stated in the application the particulars of the proposed dealing, the registration of an instrument affecting the land comprised in or affected by the proposed dealing shall be stayed for a period of fourteen days from the time when the application for the search was made, and a note shall be made in the land register accordingly.

(2) If within the suspension period a properly executed instrument in relation to the proposed dealing is presented for registration, the instrument shall have priority over any other instrument which may be presented for registration during the suspension period, and shall be registered despite a caveat or any other entry for which an application for registration may have been made during the suspension period.

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

(4) For the purposes of this section, “suspension period” means the period of fourteen days specified in subsection (1).

64. Merger of registered interests

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

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

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

Leases

65. Form and registration of leases

(1) A lease of a registered land shall be created by an instrument in the prescribed form.

(2) Subject to subsection (4) of section 19, where a lease is lodged for registration, the land registrar shall register the particulars of the lease in the register and endorse a memorial of the entry on a land certificate relating to that parcel.

66. Lessor's consent to assignment of lease

On the registration of a lease containing an agreement, expressed or implied by the lessee that the lessee shall not transfer, sublet, mortgage or otherwise assign the lease or a part of the lease without the written consent of the lessor, a transaction in respect of the lease shall not be registered until the consent of the lessor, verified in accordance with section 94 has been produced to the land registrar.

67. Lease granted in breach of an obligation

A lease shall not be registered if it is not valid by reason of it having been granted in breach of an obligation binding on the grantor.

68. Variation and extension of leases

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

69. Substitution of leases

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

70. Surrender of leases

(1) Where the lessor and the lessee agree that the lease shall be surrendered, it shall be surrendered in the following manner:

(a) an instrument shall be prepared in the prescribed form, or else the word, "surrendered" shall be endorsed on the lease or on the duplicate or triplicate of the lease;

(b) the instrument or endorsement shall then be executed by the lessee;

(c) the land registrar shall then cancel the registration of the lease; and

(d) the instrument or endorsed lease shall then be filed, and on the filing or at an earlier date that is expressed in the instrument or endorsement, the interest of the lessee shall cease.

(2) Subsection (1) shall not cause a surrender or purported surrender of a lease to have an effect on the rights of a party or any other person which it would not otherwise have.

71. Determination of leases

Where a registered lease has determined, the lessor shall apply in writing to the land registrar to cancel the registration of the lease, and the land registrar shall on being satisfied of the matters set forth in the application cancel the registration of the lease.

Mortgages

72. Form and effect of mortgages

(1) A mortgage created after the commencement of this Act shall be in the prescribed form and shall not have an effect unless it is registered in accordance with this Act.

(2) When a mortgage is registered as an interest in land, the instrument by which the mortgage is created shall be filed in the Registry.

73. Mortgagee's consent to transfer

Where a mortgage contains an agreement that the mortgagor shall not dispose of the land,

- (a) by a particular form of transfer, or
- (b) by a transfer without the consent in writing of the mortgagee,

the agreement shall be noted in the register and a transfer by the mortgagor which would be invalidated by the agreement, shall not be registered until the written consent of the mortgagee has been verified in accordance with section 94 and produced to the land registrar.

74. Variation of mortgage

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

75. Second and subsequent mortgages

Subject to section 74, a mortgagor may create a subsequent mortgage in the same manner as the first mortgage, but the rights conferred by a subsequent mortgage is subject to the prior subsisting mortgages according to the rules of priorities as between mortgages.

76. Further advances

(1) A mortgage of a land or an interest in land registered under this Act may make further advances in priority to a subsequent mortgage noted in the land register,

- (a) if the prior mortgage expressly provides for the making of further advances, or for the giving of credit to the mortgagor on a current or continuing account, or

(b) if the prior mortgage imposes upon the mortgagee an obligation to make further advances,

and that provision or obligation has been noted in the land register pursuant to an application made in the prescribed form and prior to the registration of the subsequent mortgage.

(2) A mortgage created subsequently in respect of a parcel to which subsection (1) applies, shall take effect subject to a further advance made or to be made pursuant to that provision or obligation.

(3) Except as otherwise provided in this section there shall be no right of tacking.

77. Discharge of mortgage

(1) A discharge of a mortgage in the prescribed form may be endorsed on the mortgage instrument or may be executed as a separate instrument.

(2) Where the parties to the mortgage intend to discharge a part of the mortgaged land from the whole of the principal sum or other moneys secured by the mortgage, the prescribed form may be varied or altered accordingly.

(3) On the production of the instrument of discharge, the land registrar shall register the instrument by endorsing a memorial of the instrument in the land register and on the land certificate noting that the mortgage is discharged wholly or partially, and on that notification the land is freed from the mortgage and from the rights and powers of the mortgage, absolutely or to a lesser extent, as expressed in the discharge.

(4) The instrument creating the mortgage shall be surrendered to the land registrar to be cancelled or partially cancelled, unless the land registrar sees reasonable cause to dispense with the surrender.

78. Satisfaction of mortgage

Where

(a) the money due under a mortgage is paid by the mortgagor to the mortgagee or at the direction of the mortgagor, or

(b) the event or circumstance has occurred on which, in accordance with the terms of the mortgage, the money secured by the mortgage ceases to be payable, and money is not owed under the mortgage,

the mortgagor shall apply in writing to the land registrar to cancel the registration of the mortgage, and the land registrar, on being satisfied of the matters set forth in the application, shall cancel the mortgage in the register and on that cancellation the land or the interest in land shall cease to be subject to the mortgage.

Transfers

79. Transfers

(1) A proprietor may, by an instrument in the prescribed form, transfer the land or the interest in land of the proprietor to a person with or without consideration.

(2) The transfer shall be effected by registration of the transferee as proprietor of the land or the interest and the instrument shall be filed.

80. Conditions of transfers not registrable

A transfer which takes effect on the occurrence of an event or the fulfilment of a condition or at any time in the future is not be capable of registration under this Act.

81. Entering orders transferring or vesting land or interest

Where an order is made by a Court of competent jurisdiction transferring or vesting a land or an interest in land in a person, the land registrar shall, when served with a certified true copy of the order, enter a memorandum of the order in the land register.

82. Transfer of parts of lands

A transfer shall not be made effecting a part only of a parcel unless the parcel has first been subdivided as provided in section 41.

Easements, Restrictive Agreements, Profits and Licences

83. Registration of easements

(1) A grant or reservation of an easement is not effectual unless it is registered as an encumbrance in the folio relating to the land burdened by the easement, and in the appropriate section of the folio relating to the land to the benefit of which the easement is granted, and the instrument creating the easement shall be filed in the Registry.

(2) An instrument creating an easement shall specify clearly

(a) the nature of the easement, the period for which it is created and the conditions, limitations or restrictions intended to affect its enjoyment,

(b) the land burdened by the easement and the particular part of the land so burdened, and

(c) the land which enjoys the benefit of the easement,

and shall include, where practicable, a plan which in the opinion of the land registrar is sufficient to define the easement.

(3) This section does not affect the law relating to the acquisition of easements by prescription.

84. Registration of restrictive agreements

(1) Where an instrument containing a restrictive agreement by which one proprietor restricts the building on, or the user or any other enjoyment of the land for the benefit of the proprietor of another land is presented to the land registrar, the land registrar shall enter a notification of the agreement in the folios of

the land burdened by it and of the land benefited by it by entering particulars of the restrictive agreement or by entering a reference to the instrument containing the restrictive agreement, and shall file the instrument.

(2) Unless noted in the land register, a restrictive agreement in respect of a land or an interest in land registered under this Act is not binding on a proprietor of the land or the interest burdened by it other than a party to the restrictive agreement.

(3) Subject to section 50, the note of a restrictive agreement in the land register shall not give the restrictive agreement a greater validity than it would have had independently of this Act.

85. Registration of profits

(1) The grant of a profit is not effectual unless

- (a) it is noted as an encumbrance in the folio relating to the land which it affects,
- (b) where it is appurtenant to other land, it is noted in the folio of that land, and
- (c) the instrument granting the profit is in the form set out in subsection (2), and is filed in the Registry office.

(2) An instrument granting a profit shall specify clearly

- (a) the nature of the profit, the period for which it is to be enjoyed and the conditions, limitations and restrictions intended to affect its enjoyment,
- (b) the land burdened by the profit and the particular part of the land so burdened,
- (c) whether it is enjoyed in gross or as appurtenant to any other land, and the land to which it is appurtenant, and
- (d) whether it is to be enjoyed by the grantee exclusively or by the grantee in common with the grantor.

(3) This section does not affect the law relating to the acquisition of profits by prescription.

86. Release and cancellation of easements, profits and restrictive agreements

(1) On the presentation of a duly executed release in the prescribed form, the registration of the easement, profit or restrictive agreement shall be cancelled and the easement, profit or restrictive agreement shall lapse.

(2) On the application of a person affected by the easement, profit or restrictive agreement, the land registrar may cancel the registration of the easement, profit or restrictive agreement on satisfactory proof that

- (a) the period of time for which it was intended to subsist has expired, or
- (b) the event on which it was intended to determine has occurred, or

- (c) it has become permanently unenforceable by virtue of the Limitation Act, 1972.11

87. Licences

- (1) Without prejudice to section 111, a licence shall not be registered under this Act.
- (2) A licence relating to the use or enjoyment of land is not enforceable against a bona fide purchaser for valuable consideration unless the licensee has protected the interest of the licensee by lodging a caveat under section 111.

Co-proprietorship and Partition

88. Registration of more than one proprietor

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

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

89. Partition of land and interests, severance of joint proprietorship

- (1) An application in the prescribed form to the land registrar for the partition of a land or an interest in land which is registered in the names of joint proprietors or proprietors in common may be made by
 - (a) the parties interested individually or collectively, or
 - (b) a person in whose favour an order of a Court has been made for the sale of an undivided share in the land in execution of the order, or
 - (c) a person affected by an order of a Court for the partition of the land,

and subject to this Act or any other enactment, the land registrar shall effect the partition of the land or interest in the land.

(2) A partition shall be effected by closing the folio of the parcel partitioned and by opening folios in respect of the new parcels created by the partition and the agreement or the order of the Court shall be filed in the manner determined by the land registrar.

(3) Subject to subsections (4) and (5), this Act does not affect the right under any other enactment, of a joint proprietor of land or an interest in land, to constitute the joint proprietor a tenant in common by effecting severance.

(4) An instrument executed for the purpose of severing a registered joint proprietorship shall be in the prescribed form, and is not effective until it has been presented to the land registrar and the land registrar has made an appropriate entry in the land register.

(5) A severance of joint proprietorship shall be entered in the land register by an entry in the prescribed manner stating that the person effecting severance is henceforth a proprietor in common of the land or the interest in the land and an instrument relating to the severance shall be filed.

90. Power of the land registrar to order sale

(1) An application in the prescribed form to the land registrar for sale of a land or an interest in land owned by joint proprietors or proprietors in common may be made by

- (a) the parties interested individually or collectively, or
- (b) a person affected by an order of a court for the sale of the land or the interest in the land and distribution of the proceeds among the proprietors, or
- (c) a party to an application for partition under section 89,

and subject to this Act and any other enactment, the land registrar may order a valuation of the shares of the proprietors and may, unless any of the proprietors undertake to purchase the share of the proprietors requesting the sale, order the sale of the land or the interest in land by public auction or make any other appropriate order for the disposal of the application.

(2) In an application under paragraph (c) of subsection (1), the land registrar shall not make the order unless satisfied that the land to be partitioned is incapable of being partitioned or that partition would adversely affect the proper use of the land.

91. Procedure where share of land to be partitioned is small

(1) Where the resultant share of a particular joint proprietor or proprietor in common on the partition of a parcel is less in area than the minimum prescribed by or under an enactment, the land registrar shall, at the request of the parties, add that share to the share of any other proprietor or distribute that share among two or more other proprietors in the manner and in the proportions that the land registrar thinks fit.

(2) The land registrar shall, for purposes of subsection (1), assess or cause to be assessed the value of the share added or distributed, and shall order the value of the addition to be paid to the proprietor of the share by each proprietor who has received an additional share.

(3) Where a sum of money is to be paid under subsection (2) by a joint proprietor or proprietor in common to any other proprietor, the land registrar may order that the sum be secured by way of charge on the share of the person liable to pay it or give the necessary or proper consequential directions.

Instruments and Agents

92. Form of instruments

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

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

93. Execution of instruments

(1) An instrument affecting a disposition shall be executed by the persons shown in the land register as the proprietors of the interest affected, by the other parties to the instrument and by the persons whose consent and concurrence are required by law.

(2) An instrument is executed by a person if

- (a) in the case of an individual, it is signed by that individual;
- (b) in the case of an individual who cannot read and write, it is marked by that individual with the mark or right thumb-print at the foot of the instrument and the mark or thumb-print is attested by a witness who shall clearly write the name and address of the witness on the instrument and endorse on the instrument a statement to the effect that the instrument was clearly and correctly read over and explained to that individual who appeared to not understand its contents;
- (c) in the case of an individual who is unable to make the mark of that individual, it is sufficient if the instrument is signed by any other person who that individual has authorised on that behalf, and who endorses on the instrument a signed notice to that effect, and evidence of the authority is produced to the satisfaction of the land registrar;
- (d) in the case of a body corporate, it is executed as provided in an enactment relating to that body corporate or is sealed with the common seal of that body corporate affixed to the instrument in the presence of and attested by the secretary or any other officer or by a member of the Board of Directors or any other governing body of that body corporate;
- (e) in the case of a body of persons not required by law to have a common seal, it is signed by the persons who are authorised on that behalf by an enactment, or in the absence of an expressed provision by the persons duly appointed in writing for that purpose, by that body of persons, where evidence of the appointment is produced to the satisfaction of the land registrar;
- (f) in the case of a stool or family it is executed by the individuals whose consent is by customary law a necessary condition for the instrument to bind the stool or family, where evidence of the sufficiency of the participation is produced to the satisfaction of the land registrar;
- (g) in the case of a skin whose land is administered by a person other than the holder of the skin, it is signed by that person on behalf of the skin;
- (h) in the case of a duly registered power of attorney, it is executed by the donee of the power in the name of the donee or in the name of the donor of the power;
- (i) in the case of an infant or person of unsound mind or any other disability, it is executed by the person duly appointed in accordance with the law to represent the infant or the person of unsound mind or any other disability.

94. Verification of execution of instruments

- (1) An instrument executed in accordance with section 93 shall be verified in the manner and form that is prescribed under this Act.
- (2) Where an instrument presented to the land registrar is in a language other than the English language it shall be presented together with a translation into the English language certified by a competent person approved by the land registrar for that purpose.
- (3) The land registrar may, in a case in which the land registrar has reason to suspect impropriety, or where the instrument is executed by a marksman or by a person who appears to be illiterate, require any of the parties or their respective witnesses to appear before the land registrar or a person nominated by the land registrar for the purpose of proving the due execution of the instrument.

95. Stamps

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

96. Disposal of instruments

- (1) Subject to subsection (2) of this section and to section 98, the instruments accepted by the land registrar shall be retained in the registry for as long as they support a current entry in the land register and for six years after they cease to support that entry.
- (2) Where a lease or mortgage is registered, particulars of registration shall be noted on the duplicate and the triplicate of the lease or mortgage, and both the duplicate and triplicate shall be returned to the person who presented them.
- (3) The land registrar may, at any time after the expiry of six years after an entry in the land register has been superseded or has ceased to have an effect, destroy an instrument which supported the entry in the register.

97. Infants

- (1) A purported disposition, including a disposition by the will of a deceased proprietor, of a land or an interest in land to an infant shall not entitle the infant to be registered as proprietor of the land or the interest until the infant attains full age.
- (2) For the purposes of subsection (1), the disposition shall operate only as a declaration binding on the proprietor or personal representative that the land or the interest is held on trust to give effect to unregistered interests in favour of the infant corresponding with the interests which the disposition purports to transfer or create.
- (3) The disposition or a copy of the disposition or extract for the disposition shall be deposited with the land registrar for safe custody and reference.

(4) Where under subsection (1) the disposition is made to the infant jointly with another person of full age, that person is entitled, during the minority, to be registered as proprietor on trust for that person and the infant, but the infant shall not be registered until the infant attains full age.

(5) Where an infant becomes entitled under a will or on an intestacy to a land or an interest in land, the land or the interest shall not be transferred by the personal representative to the infant until the infant attains full age.

(6) Where an infant becomes entitled to the benefit of a mortgage, the mortgage shall be registered, during the minority, in the names of the personal representatives or trustees and they shall have for the purposes of this Act the same powers in reference of the mortgage as the infant would have had if of full age.

(7) A caveat may be lodged in the name or on behalf of an infant by the parent, trustee or guardian of the infant.

98. Agents and persons under disability

(1) An instrument executed by a person as agent for any other person shall not be accepted by the land registrar unless the person executing the instrument was authorised in that behalf by a power of attorney executed and verified in accordance with sections 93 and 94.

(2) The original of the power of attorney, or with the consent of the land registrar a copy of that power certified by the land registrar, shall be filed.

(3) Where a person is an infant, or of unsound mind, or is under any other disability, the guardian of that person, or if there is no guardian, a person appointed in accordance with the law to represent that person, may make an application, do an act and be party to a proceeding on behalf of that person and shall generally represent that person for the purposes of this Act.

(4) Before accepting a document purporting to be executed by a guardian or a person appointed to represent a person under a disability, the land registrar shall

(a) in the case of a person claiming to be a guardian, be satisfied that that person is entitled to execute the document, and state the reasons in writing for accepting the document;

(b) in the case of a person claiming to be appointed to represent a person under a disability, require the production of the appointment and file a copy of the appointment.

99. Gift to a person under disability

A person under a disability who has been registered as a proprietor of land or an interest in land acquired by that person by way of gift may, within six months after ceasing to be under the disability, repudiate the gift if that person has not already disposed of the subject-matter of the gift, but a repudiation is not effective until

(a) that person has executed a transfer of the land or interest in the land to the donor or the personal representative of the donor, and

(b) the transfer has been registered.

100. Registration of powers of attorney

(1) On an application made by a donor or donee of a power of attorney which contains a power to dispose of a land or an interest in land, the power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the land registrar a certified copy of the power, shall be filed in the file of powers of attorney.

(2) The power of attorney shall be in the prescribed form or any other form that the registrar may, in a particular case, prescribe, and shall be executed and verified in accordance with sections 93 and 94.

(3) The donor of a power of attorney registered under this section may at any time on revocation by the donor of the power of attorney, notify the land registrar who shall enter the revocation in the register of powers of attorney and shall also file the notice of revocation in the file of powers of attorney.

(4) Where a power of attorney registered under subsection (1) revoked by the death, bankruptcy, insolvency or disability of the donor or by the death or disability of the donee an interested person may give notice of the revocation in writing to the land registrar accompanied by the proof required by the land registrar, and the land registrar shall enter the revocation in the register of powers of attorney and note it on the power and shall also file the notice of revocation in the file of powers of attorney.

(5) Subsections (3) and (4) shall not apply to a power of attorney given for valuable consideration during a period for which it is irrevocable by virtue of the terms of the power.

(6) If owing to the length of time since the execution of a power of attorney or for any other reason the land registrar considers it desirable, the land registrar may require evidence that the power of attorney has not been revoked, and may refuse to register a disposition by the donor of the power of attorney until satisfactory evidence is produced.

101. Effect of registered powers of attorney

(1) A power of attorney registered under section 100 and in respect of which a notice of revocation has not been registered under that section, subsists in favour of

(a) a person who acquires the land or an interest in the land affected through the exercise of that power of attorney in good faith and for valuable consideration and without notice of an unregistered revocation, or

(b) a person who derives title from the person who acquires that land or interest.

(2) A person who makes a payment or does an act in good faith in pursuance of a power of attorney registered under section 100, is not liable for the payment or act by reason only that before the payment or the act the donor of the power of attorney had died or become bankrupt, insolvent or subject to a disability or had revoked the power, if at the time of payment or when the act was done that person did not have notice of the fact of death, bankruptcy, insolvency, disability or revocation.

PART THREE

Transmission and Trusts

102. Transmission on death of joint proprietors

Where one of two or more joint proprietors of a land or an interest in land dies, the land registrar shall delete the name of the deceased proprietor from the land register on satisfactory proof of the death.

103. Death of sole proprietor or proprietors in common

(1) Subject to subsection (3), where a sole registered proprietor or proprietor in common dies, the personal representative of that proprietor, on application to the land registrar in the prescribed form and on the production of the grant of probate or letters of administration, is entitled to be registered by transmission as proprietor in place of the deceased proprietor with the following description after the name of the personal representative “as executor of the will of deceased” or “as the administrator of the property of deceased”.

(2) On the production to the land registrar by the personal representative of the probate or letters of administration the land registrar may, without the personal representative being registered, register by transmission

- (a) a transfer by the personal representative, and
- (b) a surrender of a lease or discharge of a mortgage by the personal representative.

(3) Where there are two or more joint personal representatives of a deceased proprietor the application referred to in subsection (1) shall be made by those personal representatives jointly and they shall be registered as joint proprietors and they shall jointly execute the transfer, surrender or discharge to be registered under subsection (2).

104. Transmission on death of a proprietor

(1) Subject to the restrictions imposed on the power of the personal representative to dispose of a land or an interest in land contained in the appointment as personal representative, the personal representative or the beneficiary of the deceased proprietor, shall hold the land or the interest in land subject to unregistered liabilities, rights or interests subject to which the deceased proprietor held the land or the interest in land.

(2) Without prejudice to subsection (1) and for the purposes of a transmission in respect of the land or the interest in land, the personal representative or the beneficiary of the deceased proprietor shall be deemed to be registered as proprietor of the land or the interest with the rights and subject to the limitations conferred or imposed by this Act and any other enactment on a proprietor who has acquired a land or an interest in land for valuable consideration.

(3) The registration of a person under section 103 shall relate back to and take effect from the date of the proprietor.

105. Transmission in bankruptcy

(1) A trustee in bankruptcy or insolvency shall, on the production to the land registrar of a certified copy of the order of the Court adjudging a proprietor bankrupt or insolvent or directing that the property of a

deceased proprietor shall be administered according to the law of bankruptcy or insolvency, be registered as proprietor of a land or an interest in land of which the bankrupt, insolvent or the deceased is proprietor and a copy of the order shall be filed.

(2) A trustee in bankruptcy or insolvency shall be described in the register as “trustee of the property of a bankrupt or insolvent”.

(3) The trustee in bankruptcy or insolvency shall, subject to the restrictions contained in an enactment relating to bankruptcy or insolvency, hold a land or an interest in land subject to the unregistered liabilities, rights or interests subject to which the bankrupt, insolvent or the deceased proprietor held the land or the interest in land.

(4) Without prejudice to subsection (3) and for the purposes of a transmission in respect of the land or the interest in land, the trustee in bankruptcy or insolvency shall have the rights and be subject to the limitations conferred or imposed by this Act or any other enactment on a proprietor who has acquired the land or the interest in land for valuable consideration.

106. Liquidation

(1) Where a company is being wound up, the liquidator shall produce to the land registrar the resolution or the order regarding the appointment as liquidator and the land registrar shall enter the appointment in the folio of the land register relating to a land or an interest in land of which the company is registered as proprietor and shall file a copy of the resolution or order.

(2) An instrument executed by or on behalf of a company in liquidation and delivered for registration after the appointment of the liquidator has been entered under subsection (1), shall be sealed with the common seal of the company and attested by the liquidator or, in the case of a company not required by law to have a common seal, shall be signed by the liquidator whose signature shall be verified in accordance with section 94.

107. Transmission in other cases

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

108. Trusts

(1) A person acquiring a land or an interest in land in a fiduciary capacity and described by that capacity in the instrument of acquisition shall be registered with the addition of the words “as trustee”, but the land registrar shall not enter particulars of the trust in the register.

(2) An instrument which declares or is deemed to declare a trust, or a certified copy of a trust may be deposited with the land registrar for safe custody and reference, but the instrument or copy shall not form part of the land register or be deemed to have been registered.

(3) Where it comes to the notice of the land registrar that a registered interest is affected by a trust, the land registrar may protect in the appropriate manner the rights of a person beneficially interested under the trust or whose consent is required to be given for a transaction under the trust.

109. Survivor of trustees

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

110. Registration of stools and families

(1) Subject to this Act and any other enactment,

(a) where a land or an interest in land is vested in a stool or family, the stool or family shall be registered as proprietor of the land or the interest;

(b) where a land or an interest in land vested in a skin is administered on behalf of the skin by any other person, the skin shall be registered as proprietor of the land or the interest and an entry shall be made in the land register showing the person who administers the land or the interest.

(2) For the purposes of this Act the occupant of the stool or the holder of the skin or a member of a family appointed by the family as its representative for this purpose and served with notices under this Act, may enter a caveat or apply for an order prohibiting or restricting a transaction in respect of a stool, skin or family land on behalf of the stool, skin or family in the same manner and in the same circumstances as the occupant, holder or member would be entitled to do under this Act were the land or the interest registered in the individual name of the occupant, holder or member.

(3) This Act does not relieve an occupant or a subject of a stool or head or member of a family from a duty, customary or otherwise, to consult with or secure the consent or concurrence of other members of the stool or family.¹²

(4) Without prejudice to the generality of subsection (2) of section 136, a disposition of stool or family land or interest in land shall not be registered by the land registrar unless it is satisfactorily proved that the requisite consent and concurrence has been duly given, and that the relevant provisions of article 267 of the Constitution have been complied with.

Restraint on Disposition

111. Caveats

(1) A person who

(a) claims an unregistered interest enforceable in respect of a registered land or an interest in land, or

(b) is entitled to a licence, or

(c) has presented a bankruptcy or insolvency petition against the proprietor of a land or an interest in land registered under this Act,

may lodge a caveat with the land registrar prohibiting the registration of dispositions, and the making of entries in the register affecting the land or the interest.

(2) A caveat may

(a) prohibit the registration of dispositions and the making of entries altogether, or

(b) prohibit the registration of dispositions and the making of entries to the extent specified in the caveat.

(3) A caveat shall be in the prescribed form accompanied by a statutory declaration made in accordance with the Statutory Declarations Act, 1971 (Act 389).

(4) The land registrar may refuse to register a caveat which the land registrar considers unnecessary or if the purposes of the caveat can better be effected by the registration of an interest under this Act.

(5) Subject to this section, a caveat shall be registered in the appropriate folio of the land register.

112. Notice and effect of caveats

(1) The land registrar shall give notice in writing of a caveat to a proprietor whose land or interest in land is affected.

(2) While a caveat remains registered, a disposition which is inconsistent with it shall not be registered except with the consent of the caveator or by an order of the Court or the land registrar.

113. Withdrawal and removal of caveats

(1) A caveat may be withdrawn by the caveator or removed by an order of a Court or, subject to subsection (2), by an order of the land registrar.

(2) The land registrar may,

(a) on the application of an interested person, serve notice on the caveator that the caveat shall be removed at the expiry of the period specified in the notice;

(b) remove the caveat if before the expiry of the period specified in the notice the caveator has indicated that the caveator does not have an objection to the removal of the caveat.

(3) Where the caveator objects to the removal of the caveat, the caveator shall, before the expiry of the period specified in the notice, notify the land registrar who after hearing the interested parties shall make an appropriate order.

(4) On the withdrawal or removal of a caveat, the registration of the caveat shall be cancelled and a liability incurred by the caveator under section 115 shall not be affected by the cancellation.

114. Further caveats in respect of the same matter

The land registrar may refuse to accept a further caveat by the same person or any other person on behalf of the first caveat.

115. Wrong caveats

A person who lodges or maintains a caveat wrongfully and without reasonable cause is liable, in an action at the suit of a person who has suffered damage as a result of the caveat, to pay compensation to the person who had suffered the damage.

116. Notice of intention to register instruments affected by caveat

(1) Where an application is made for the registration of a disposition or the making of an entry, the registration or making of which is prohibited by a caveat, the land registrar shall serve on the caveator a notice of the intention to register the disposition or make the entry, after the expiry of a period of twenty-one days from the date of the issue of the notice, unless before the expiry of that period,

- (a) an order to the contrary has been made by the Court and served on the land registrar, or
- (b) the application has been withdrawn or has otherwise become incapable of acceptance.

(2) Where, before the expiry of the notice issued under subsection (1), the application to which the notice relates is withdrawn, or has otherwise become incapable of acceptance, the notice shall be cancelled, and the caveat shall remain in force until it lapses under section 117.

117. Lapsing of caveats

(1) A caveat shall lapse and cease to affect a land or an interest in land

- (a) at the expiry of the period of twenty-one days prescribed under section 116 from the date of the issue of the notice under that section, unless the Court has made an order to the contrary, in which case it shall lapse according to the terms of the order;
- (b) if before the expiry of the period specified in the notice given under section 116, the caveat is withdrawn or removed; or
- (c) at the expiry of five years from the date of the lodgement of the caveat.

(2) Where, after the expiry of a notice given under section 116, the land registrar registers the disposition or makes the entry referred to in the notice, and the registration or entry does not wholly exhaust the intended purpose of the caveat, the caveat shall be deemed to have lapsed only to the extent necessary to permit the registration.

(3) Where a caveat has lapsed wholly or partially, the land registrar shall enter in the land register an appropriate notification to that effect.

(4) Where a caveat has lapsed by virtue of paragraph (c) of subsection (1), a fresh caveat may be lodged in respect of the same matter during the currency of an existing caveat or otherwise.

118. Restrictions

(1) The Court may, on the application of a person interested in a land or an interest in land, or the land registrar may, with or without the application after directing inquiries to be made and notices to be served and after hearing the persons that the Court or the land registrar, thinks fit and if satisfied that there is a limitation or qualification on the power of the proprietor to deal with the land or the interest in land, or that the interests of justice will be served, impose a restriction, prohibiting or restricting a transaction in respect of a particular land or interest in land.

(2) A restriction may

(a) be valid for a specified period, or until the occurrence of a particular event, or until the making of a further order;

(b) prohibit or restrict

(i) a transaction, or

(ii) a transaction that is inconsistent with the specified conditions.

(3) A restriction shall be registered in the appropriate folio of the land register.

119. Notice and effect of restriction

(1) The land registrar shall give notice in writing of a restriction entered in the land register to a proprietor affected by the restriction.

(2) A transaction which is inconsistent with a subsisting restriction shall not be registered except by an order of a court or the land registrar.

120. Removal and variation of restriction

(1) The land registrar may, on an application by an interested person or on the motion of the land registrar and after having given the parties affected by the restriction an opportunity of being heard, order the removal or variation of a restriction.

(2) On an application to the Court by an interested person and on notice of the application of the land registrar, the Court may order the removal or variation of a restriction.

Rectification and Indemnity

121. Rectification by the land registrar

(1) The land registrar may rectify the land register or an instrument presented for registration if

(a) the land register or instrument contains clerical errors, omissions or any other matters that do not materially affect the interests of a proprietor, or

(b) at any time, the interested persons consent to the rectification, or

(c) on a survey verified and approved by the Director of Surveys, a dimension or an area shown in the land register is found to be incorrect.

(2) The land registrar shall, before rectifying a dimension or an area under paragraph (c) of subsection (1), give notice to the interested persons of the intention to rectify the land register.

(3) On proof of the change of the name or address of a proprietor, the land registrar shall, on the written application of the proprietor, make an entry in the land register recording the change.

122. Rectification by Court

(1) Subject to subsection (2), the Court may order the rectification of the land register by directing that a registration where it is satisfied the cancellation or the amendment of the registration has been obtained, made or committed by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who has acquired a land or an interest in land for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought or had personally caused the omission, fraud or mistake or substantially contributed to it by an act, a neglect or default.

123. Right to indemnity

(1) Subject to this Act and to the Limitation Act, 1972,¹³ a person who has suffered damage in consequence of being deprived of or prevented from acquiring land or an interest or a right in land by reason of

(a) a rectification of the register under this Act, or

(b) a mistake or an omission in the register which cannot be or is not ordered to be rectified under this Act, or

(c) an error in a copy of or extract from a document or plan certified under this Act,

is entitled to indemnity out of moneys provided for that purpose not payable under this Act to a person who has personally caused or substantially contributed to the damage by fraud or negligence or who derives title, otherwise than under a registered disposition made bona fide for valuable consideration, from a person who had caused or substantially contributed to the damage.

124. Amount of indemnity

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

(a) where the land register is not rectified, the value of the land, interest or right at the time when the mistake or omission which caused the damage was made, or

(b) where the land register is rectified, the value of the land, interest or right immediately before the rectification.

125. Procedure for claiming indemnity

The Registrar may, on the application of an interested party, determine whether a right of indemnity has arisen under this Act and, if so, award an indemnity and the costs and expenses properly incurred in relation to the matter.

126. Recovery of indemnity paid

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

(a) may recover by suit or otherwise the amount so paid from a person who had caused or substantially contributed to the loss by fraud or negligence, and

(b) may enforce an express or implied agreement or any other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity was paid.

127. Errors in survey

(1) As between the Government and a proprietor, a claim for indemnity shall not arise and a suit shall not be maintained on account of a surplus or deficiency in the area or measurement of a land shown by a survey as compared with the area or measurement found in a previous survey or the area or measurement shown in the registry map.

(2) As between a proprietor and a person from or through whom the proprietor acquired the land, a claim for indemnity shall not be maintained on account of a surplus or deficiency in the area or measurement of the land as compared with the area or measurement shown in the land register or on the registry map until after the expiry of a period of six months commencing from the date of registration of the transaction by which the proprietor acquired the land.

Miscellaneous

128. Protection of officers

The Registrar, a land registrar and any other officers of the registry are not liable for an act or omission done in good faith in the exercise of a power under this Act.

129. Fees

There shall be charged in respect of a search, survey, plan, printed form and every other matter connected with registration the prescribed fees and the land registrar may refuse registration until the fees are paid.

130. Offences

(1) A person who

(a) fraudulently issues, makes or procures the issue or making of a document or registration or an erasure or alteration in a document kept in or issued by the Registry, or

(b) fraudulently removes from the registry a land register or part of a land register or any other document filed in the registry, or

(c) fraudulently defaces, obliterates or mutilates or causes to be defaced, obliterated or mutilated a land register or any other document kept in the registry, or

(d) fraudulently causes an unauthorised entry or alteration to be made in a land register or any other document kept in the registry,

commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty units and not more than two hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

(2) A person who without reasonable excuse, the burden of proof of which lies on that person, wilfully neglects or refuses to indicate the land or land in which that person claims an interest or to assist in the demarcation of the land when required to do so by a surveyor or an officer under this Act, commits an offence and is liable on summary conviction to a fine of not less than twenty-five penalty unit and not more than one hundred penalty units or to a term of imprisonment not exceeding six months or to both the fine and the imprisonment.

(3) Proceedings or a conviction in respect of an act which is an offence under this section shall not affect a remedy which a person aggrieved or injured by that act is entitled to against the person who committed the act or against the estate of the aggrieved person.

131. Appeals

(1) Where the Registrar or the land registrar refuses to perform an act or a duty which any of them is required or empowered by this Act to perform, or where a proprietor or any other interested person is dissatisfied with a direction, decision or an order of the Registrar or the land registrar in respect of an application, a claim, matter or thing under this Act, the proprietor or interested person may appeal to the High Court.

(2) A person aggrieved by a decision of the adjudication committee in respect of a matter referred to it under this Act may appeal to the High Court.

(3) A person aggrieved by a decision of the High Court in respect of an appeal lodged under subsection (1) or (2) may appeal to the Court of Appeal with a further right of appeal to the Supreme Court.

132. Effect of appeals on registration

Where a person lodges an appeal under section 131, that person shall, within fourteen days give notice in writing of the appeal to the land registrar who shall make a note of the notice in the part or parts of the land register affected by the appeal, and without prejudice to the effect of the appeal on a previous entry in the land register, a subsequent registration shall have effect subject to the outcome of the appeal.

133. Special case to the High Court

(1) Without prejudice to this Act, where on examination of an instrument lodged for registration under this Act the land registrar entertains a doubt as to a matter of law concerning the construction of the instrument, the land registrar shall refer the matter to the Registrar who may state a case for the decision of the High Court.

(2) A decision of the Court in respect of a matter referred to it under subsection (1) or, in the case of an appeal the final decision in the case, is conclusive and binding on the parties.

134. Regulations

Except as otherwise provided in this Act, the Minister may, by legislative instrument, make Regulations generally to give effect to the purposes and the provisions of this Act and in particular but without prejudice for prescribing the qualifications for land registrars and the forms to be used under this Act and the fees payable for anything to be done and for prescribing anything which may be prescribed under this Act.

135. Application

(1) This Act is applicable in an area declared a registration district under section 5.

(2) Until this Act becomes applicable under subsection (1) to a particular area, the registration of instruments affecting land situated in the area shall continue to be done in accordance with the Land Registry Act, 1962 (Act 122).

136. Conflict with other laws

(1) Except as otherwise provided in this Act, any other law, practice or procedure relating to land shall not apply to a land registered under this Act to the extent that the law or procedure is unconstitutional with this Act.

(2) Unless otherwise provided, this Act shall not be construed

(a) to permit a land transaction which is forbidden by the express provisions of any other law, or

(b) to override a provision of any other law requiring the consent, concurrence or approval of any other person, body or authority to that transaction as a condition of its validity or otherwise.

137. Act binds the Republic

Subject to any other enactment, this Act binds the Republic.

138. Repeals

Sections 4 to 11 of the Conveyancing Act, 1973,14 are hereby repealed.

139. Interpretation

In this Act, unless the context otherwise requires,

“adjudication committee” means the land title adjudication committee as provided for in section 22;

“Board” means the Title Registration Advisory Board as provided for in section 10;

“Court” means a court of competent jurisdiction;

“demarcation map” means a demarcation index map prepared under section 26;

“disposition” means an act inter vivos by a proprietor of land or of an interest in land by which the rights in or over the land of the proprietor, are affected, other than an agreement to do that act;

“easement” means a right capable of existing as an easement under the rules of common law attached to land and allowing the proprietor of the land or of an interest in land to use another land in a particular manner or to restrict its use to a particular extent, but does not include a right capable of existing as a profit or a restrictive agreement;

“encumbrance” includes a lease, mortgage or charge capable of being registered under this Act;

“family” includes a group of persons recognised by an applicable customary law as constituting a family and any other corporate person with the capacity to be the single proprietor of land or an interest in land, and “family land” includes land or an interest in land owned by a family;

“file” means to place in the appropriate record in the Registry;

“infant” means a person who has not attained the age of twenty-one years;

“instrument” includes a writing affecting land situated in the Republic and a judge’s certificate and a memorandum of deposit of title deeds;

“interest in land” means a right or an interest in or over land which is capable of registration under this Act;

“land” means land as defined in section 32 of the Interpretation Act, 1960 (C.A. 4);

“land certificate” has the meaning assigned to it in section 51;

“land register” means the register of proprietors of land and interests in land kept in accordance with this Act;

“land registrar” includes principal land registrars, land registrars and assistant land registrars;

“lease” includes a sublease or any other tenancy whether granted under customary law or otherwise registrable under this Act;

“licence” means a permission given by a proprietor of land or of an interest in land which allows the licensee to do certain acts in relation to the land which would otherwise be a trespass, but does not include an easement or a profit;

“Minister” means the Minister responsible for Lands;

“mortgage” has the meaning assigned to it in section 1 of the Mortgages Act, 1972;15

“parcel” means an area of land which has been or will after registration be separately delineated in the registry map;

“personal representative” has the meaning assigned to it in subsection (1) of section 108 of the Administration of Estates Act, 1961 (Act 63);

“prescribed” means prescribed by or under this Act;

“profit” means the right to go on the land of another person to take a particular type of object from that land, whether part of the soil or a product of the soil;

“proprietor” means in relation to a land or an interest in land, the person named in the land register as the proprietor of the land or interest; and the donee of a power to appoint or dispose of the land or the interest;

“Registrar” means the chief registrar of lands appointed under section 3;

“registration district” includes a district declared under section 5 for the purposes of registration of land and a registration section;

“registration section” means a division of a registration district constituted under section 7;

“registry” means the land title registry established under section 1;

“registry map” means the map or series of maps referred to in section 34;

“Regulations” means Regulations made under this Act;

“stool” includes a skin as well as a person or body or persons having control over skin or community land including family land, as a representative of the particular community;

“stool land” includes a land or an interest in or a right over a land controlled by a Stool or the head of a particular community, including a family as known to customary law, for the benefit of the subjects of that Stool or the members of that community;

“surveyor” includes an official surveyor or a licensed land surveyor authorised by the Director of Surveys to perform a function under this Act, and the agents and workmen of the surveyor;

“tacking” means the process by which a loan, advanced subsequently to the creation of a second mortgage of a parcel, may be secured on the first mortgage of that parcel and thereby take priority over the second mortgage;

“transfer” means the passing of land or an interest in land by an act of the parties and not by operation of law, and the instrument by which the passing is effected;

“transmission” means the transfer of land or an interest in land from one person to another by operation of law or death, bankruptcy, insolvency or otherwise or by virtue of appointment or succession to an office and by compulsory acquisition of land under any enactment.