

CONDOMINIUM DES NOUVELLES-HEBRIDES

NEW HEBRIDES CONDOMINIUM

ARRETE CONJOINT 35 de 1964

JOINT REGULATION 35 of 1964

## JOINT REGULATION

No. 35 of  
1964.**For expropriation for purposes of public utility.**

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MADE by the British and French Resident Commissioners under the provisions of Articles 4, 7 and paragraph 2 of Article 2 of the Anglo-French Protocol of 1914.

## PART I

## GENERAL PROVISIONS

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| 1. Expropriation of immovable property for purposes of public utility shall be effected by Court Order.   | Order of Court.   |
| 2. The Joint Court shall have jurisdiction to order the expropriation—<br>(a) of all immovable property coming under the procedure for the registration of title and not yet registered;<br>(b) of all immovable property belonging to natives or constituted as a native reserve, whether registered or not.<br>In all other cases the court having jurisdiction shall be the National Court of the owner of the immovable property. | Joint Court Jurisdiction.<br><br>National Courts' Jurisdiction. |
| 3. A Court may only make an order of expropriation when the procedure laid down by the present Regulation has been complied with.   | Procedure.  |
| 4. Before possession may be taken of immovable property which has been expropriated, fair compensation shall be paid:<br>Provided that in the case of emergency such possession may be taken after an amount determined by the Court having jurisdiction has been deposited as surety for compensation.   | Taking Possession.  |
| 5. Expropriation may be ordered only after the Resident Commissioners have made Joint Rules—<br>(a) declaring the transaction to be of public utility;<br>(b) authorising such works; and<br>(c) defining the areas affected by the works and the immovable property which is to be acquired wholly or in part.   | Public Works.   |

PART II

PRELIMINARY ADMINISTRATIVE MEASURES

6. The Public Works Department assisted by the Survey Department shall prepare a plan showing the different areas affected by the works and the parts to be acquired. Plans.

7. The technical staff appointed for this work shall have the right to enter on private property in order to prepare such plan. Rights of entry.

Any person who shall obstruct or attempt to obstruct this work may be prosecuted before the Court of First Instance for a breach of this Regulation and shall be liable upon conviction to the penalties laid down in Article 7 of the Anglo-French Protocol of 1914.

8. (1) Copies of the plan with all relevant documents shall be forwarded without delay to the District Agents in whose districts are situated the properties to be acquired together with the names of all persons having a reasonable claim to rights in the said properties: such persons shall hereafter be referred to as "the persons interested". Notification to persons interested.

(2) On receipt of the copies of the plans aforesaid the District Agents shall give written notice to the persons interested of the intention to acquire the said lands.

(3) Such notice shall either be served personally on the persons interested or left at their last usual place of abode or business, and in case any such person shall be absent from the Group such notice shall be left with the occupier of the said lands, or the agent of the persons interested:

Provided that if such person be a corporation, company or firm, such notice shall be left at the principal office in the Group of such corporation, company or firm or shall be served upon some officer or agent of such corporation, company or firm.

9. Copies shall remain eight clear days at the offices of the District Agents. During this period the persons interested, and any other person who may have an interest, may state their observations to them. Exhibition of plan.

10. After the expiration of eight days the District Agents shall return to the Resident Commissioners the plan with the record of such observations, at the same time adding their own observations. Record of observations.

11. If after considering these observations the Resident Commissioners decide to alter the design of the works, a new plan shall be prepared and forwarded to the District Agents, the procedure laid down in Sections 8, 9 and 10 again being followed. Alteration of plan.

12. If the original plan of the works or the plan as modified by virtue of Section 11 is adopted, the Resident Commissioners by Joint Rules shall declare that the areas defined by the plan shall be acquired.

PART III

ACQUISITION OF REGISTERED IMMOVABLE PROPERTY

13. All documents showing that the formalities laid down in Parts I and II of this Regulation have been complied with, together with an extract from the land title relating to the parcel of land to be expropriated, certified correct by the Registrar of Land Titles, shall be forwarded by the Resident Commissioners to the Court having jurisdiction and that Court shall order the expropriation of the immovable property included in the Joint Rules made under section 12 of this Regulation.]

Documents to be sent to Court. J.R. 26 of 1972.

14. The publication and registration of the Order shall be carried out—

Publication of Court Order.

- (a) when the judgment has been pronounced by the Joint Court, according to the normal rules of that Court;
- (b) when the judgment has been pronounced by one of the National Courts, according to the national law of that Court.

15. Within two weeks of the registration of the Order aforesaid the owners shall be bound to effect registration of any rights or charges burdening the property which have come into existence after the initial registration of the property and have not yet been registered. Such rights or charges shall have priority in the order of the time of their creation. Any right or charge not disclosed during this period shall be taken to be finally extinguished and shall not in any circumstances give rise to the payment of compensation:

Decree to be registered.

Provided that nothing that is herein contained shall affect the right of the holder of such rights or charges who has been injured to sue for damages in Courts having jurisdiction.

Notwithstanding the preceding provisions of this Section any holder of a right or charge may without reference to the owner and within the same period of two weeks apply for the registration thereof to the Office of the Registrar of Land Titles.

16. If properties of minors, persons under judicial disability, absent owners or persons incapable of acting are included in the plans drawn up under Sections 6 or 11, the guardian temporary nominee or other legal representative shall obtain authority to dispose of such property according to the procedure laid down in the appropriate law. If any property belongs to absentees who are not legally represented authority to transfer will be granted to an administrator ad hoc.

Properties of minors, etc.

In the cases coming under this Section the compensation for expropriation shall invariably be determined by the Court having jurisdiction.

#### PART IV

##### THE EXPROPRIATION OF IMMOVABLES NOT SUBJECT TO THE SYSTEM OF REGISTRATION OR SUBJECT TO THIS SYSTEM BUT NOT REGISTERED

17. (1) The documents showing that the procedure laid down in Paris I and II has been complied with shall be transmitted by the Resident Commissioners to the Joint Court.

Procedure where property is unregistered.

(2) When immovable property that is not subject to the system of registration, is in question, the Joint Court shall have full power to determine the name of the persons or communities which, in the eyes of local custom, have rights in the said immovable property and to guarantee these rights. It shall then declare the expropriation of the buildings or land included in the Joint Rules made under Section 12 of this Regulation.

The publication and the registration of the judgment shall be carried out according to the normal rules of the said Court.

(3) When immovable property, subject to the system of registration, but not yet registered is in question, the President of the Joint Court shall cause to be established by the Register of the Joint Court a statement of the said immovable property. This statement shall include all the particulars of the application for registration with any amendments and objections that may have been declared.

18. Publication will be made of this statement according to the procedure laid down in Article 33 of the Regulation for Registration Procedure dated 30th November, 1927. If however, the original application for registration has been duly published and the period of publication has expired, the period of publication of the statement referred to in Section 17 shall be reduced to three months. If the period of publication of the application for registration has not expired the said period of three months shall be added to the period of one year prescribed by the Regulation for Registration Procedure.

Publication.

If the application for registration has not been published the Joint Court after examination of the documents shall grant to the claimant an extension not exceeding three months in order to prepare the publication of this application. In such case the publication of the statement referred to in Section 17 shall commence at the same time as that of the application for registration and shall expire on the same date.

In all cases a decision of the Joint Court shall determine the dates of the publication periods.

19. Any person who considers his rights infringed by the expropriation proceedings may file a caveat at the Joint Court

Registry in accordance with the procedure laid down in Chapter III of the Regulation for Registration Procedure.

20. At the expiration of the period of publication laid down in Section 18 the expropriation documents shall automatically be laid before the Court by the Registrar.

Expropriation proceedings before Court.

21. The Joint Court may in its Order of Expropriation make a declaration on the validity of the rights claimed by the different parties in connection with the property expropriated. Wherever appropriate the procedure laid down in Section 16 may be applied.

Decree.

22. The Order of Expropriation shall have the effect of extinguishing ownership with respect of the real or apparent owner as determined by the Court under Section 21. All real rights other than the rights of ownership disclosed during the publication period and admitted by the Court shall be cancelled and transformed into a personal right to compensation. The expropriation judgment shall determine the order in which the holders of rights and charges shall be classified in allotting compensation for the expropriation.

Rights of compensation.

## PART V

### COMPENSATION FOR EXPROPRIATION

23. The Resident Commissioners shall communicate to the owners, and to all persons claiming in accordance with Section 15 or designated by the Order of Expropriation, the sums which they offer as compensation for acquisition and if appropriate those sums which they intend to counterclaim if the proposed works will increase the value of the rest of the property by more than 15%. These offers shall be communicated to the holders of rights or charges by the District Agents of their districts in the manner and period laid down in Section 9 and 10.

Communication of offers.

24. The owners and other claimants shall state their acceptance or disclose their claims. If they accept the offer of the Resident Commissioners the property shall be transferred at the price thus agreed.

Acceptance of offers.

25. If the offers of the Resident Commissioners are not accepted within the prescribed period by any claimants, such claimants shall be summoned to appear before the Assessment Commission.

Refusal of offers.

26. The Assessment Commission shall be composed of the Registrar of Land Titles as President, the Treasurer, the Head of the Public Works Department and the two persons appointed by the Resident Commissioners who may be selected from outside the areas where the expropriated properties are situated.

Assessing compensation.

It shall be the duty of the Commission to assess the value of the immovable property expropriated and to determine the share of the compensation thus established to be allotted to each claimant.

The Commission shall make its decisions by majority vote. In case of an equal number of votes the decision of the President shall prevail.

## PART VI

### PROCEDURE TO BE FOLLOWED BY THE ASSESSMENT COMMISSION

27. Besides the claimants of which it is notified by the Resident Commissioners the Assessment Commission may summon and hear any person able to give information on the value of the immovable property expropriated, engage in any enquiry, appoint experts, and in general take all measures necessary for its full information.

Hearing  
evidence.

28. The hearings shall be under the direction of the President who shall rule on all questions arising, and fix the dates and places of the meetings. One of the members of the Commission shall draw up a record of the proceedings and of the final decision of the Commission.

Procedure at  
hearings.

29. In determining the compensation for expropriation the Commission shall follow the following rules—

Rules for  
fixing com-  
pensation.

- (a) The Commission shall be judge of the genuineness of all documents and of the effect of all deeds.
- (b) Separate amounts of compensation shall be allotted to parties who claim on different titles.
- (c) The compensation shall consist of a sum of money.
- (d) The compensation shall cover the entire damage caused provided the latter is real and certain.
- (e) Buildings, plantations, improvements and transactions of a speculative character shall not give rise to any additional compensation if, by reason of the time when they were made or other circumstances which it has full power to decide, the Commission is convinced that they were made in order to obtain higher compensation.
- (f) If the Resident Commissioners consider that the proposed works will increase the value of the rest of the property by more than 15%, this additional value shall be calculated by the Commission and, if necessary, deducted from the amount of compensation.
- (g) The compensation shall in no case be less than the amount offered by the Resident Commissioners, nor greater than the amount claimed by the parties.

30. The decision of the Commission shall be signed by all its members. The President shall order its execution and shall declare the Resident Commissioners to be legally in possession of the ex-

Execution  
of decision.

propriated property subject to payment or deposit by them of the amount of the compensation.

31. The decisions of the Commission shall be subject to appeal before the Court having the power to order the expropriation. Appeal.

## PART VII

### OTHER PROVISIONS

32. If in the course of the registration procedure it is shown that a registered property has undergone changes in its composition which have not been registered at the Registry of Land Titles, and if the new owners given notice under Section 15 cannot effect the registration within the period allowed by the said Section, and if the reasons for this failure are held to be valid by the Court having jurisdiction, the Court shall fix the total amount of the compensation and shall order it be deposited in the public Treasury until the various claimants can effect the registration of their titles at the Registry of Land Titles. Deposit of compensation.

33. This Regulation shall only apply to expropriations instituted by the Joint Administration. Any expropriation which may be instituted by either of the Signatory Powers in respect of their own subjects or citizens shall remain subject to the national law of the said Powers. Application.

34. Joint Regulation No. 5 of 10th September, 1945 is hereby repealed by this Regulation which may be cited as the Joint Expropriation Regulation No. 35 of 1964 and shall come into force on the date of its publication in the Condominium Gazette. Short title.

Dated at Vila this 14th day of December, 1964.

M. DELAUNEY

COLIN H. ALLAN

The Resident Commissioner  
for the French Republic.

Her Britannic Majesty's Acting  
Resident Commissioner.