

CONDOMINIUM DES NOUVELLES-HEBRIDES

NEW HEBRIDES CONDOMINIUM

ARRETE CONJOINT 5 de 1969

JOINT REGULATION 5 of 1969

JOINT REGULATION

No. 5 of
1969.

To provide for the making of, and giving effect to Wills of Natives.

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MADE by the Resident Commissioners under the provisions of paragraph 3 of Article 8 of the Anglo-French Protocol of 1914.

1. In this Regulation, unless the context otherwise requires—
“Court” means the Native Court;

Interpreta-
tion.

“infant” means a person under the age of twenty-one provided that for the purposes of section 22 of this Regulation no person who is legally married shall be regarded as an infant;

“person” means a native of the New Hebrides as defined in the Anglo-French Protocol of 1914.

2. Any person not being an infant and being of sound mind, memory and understanding may make provision by will for the disposal of the whole or any part of his property, of which he is the sole and total owner, after his death, in accordance with and subject to the provisions of this Regulation.

Who may
make a will.

3. A will under the provisions of this Regulation may only dispose of any estate in land vested in the testator of which he is competent to dispose on death in accordance with current native law, or of any estate in land registered in his name alone.

Devise of
land.

4. A will may be in any form or language, but shall—

Form of
will.

- (a) be in writing;
- (b) be signed or thumb printed by the testator at the foot of every page of the will and at the end of the will in the presence of at least two witnesses present at the same time.

5. (1) Every witness to a will shall witness the signature or thumb print of the testator by affixing his signature at the foot of every page and at the end of the will. The address or place of origin of every witness shall be written immediately opposite to his signature.

Duties of
witnesses.

(2) A witness shall only affix his signature if the testator signs or thumb prints the will as provided by Section 4, in his presence and in the presence of the other attesting witness or witnesses; and at least two witnesses shall attest this will in the presence of each other.

(3) It shall not be necessary for a witness to know the contents of the will but he shall know that he is witnessing a will.

6. (1) Every witness to a will shall—

Witnesses.

- (a) not be an infant;
- (b) not be of unsound mind;
- (c) not knowingly be a beneficiary under such will;
- (d) be able to sign his name.

(2) If any person knowing himself to be a beneficiary under a will acts as a witness thereto, the validity of the will shall not be affected, but the beneficiary shall lose any property, benefit or advantage to which he would otherwise have been entitled under such will.

7. A testator may, by a new document made and executed in accordance with the provisions of this Regulation, or by its destruction, revoke a will already made.

Revocation of will.

8. Should any native marry after making a will the said marriage shall automatically revoke such will.

Revocation on marriage.

9. (1) A testator may appoint by his will up to a maximum of four persons to be an executor or executors thereof.

Appointment and qualifications of executors.

(2) If a testator fails to appoint an executor or if any executor appointed is by reason of disability unable to act, or is dead or unwilling to act the Court may appoint any person or persons to be executors but so that the number does not exceed four:

Provided that where it appears to the Court that the value of the property or estate of the testator does not exceed fifty eight pounds the Court may without appointing an executor or other person to administer the estate pay thereout any debts or charges and carry out the directions of the deceased.

(3) A person appointed under the provisions of this Section shall not be an infant and shall not be of unsound mind.

10. (1) A testator may forward his will to the Registrar of the Court for safe keeping or through one of the District Agents in the area wherein the testator resides.

Preservation of wills.

(2) Any District Agent who receives a will as aforesaid shall forthwith forward it to the Registrar of the Joint Court.

(1) When a District Agent is informed on the death of a person he shall ascertain from the Registrar of the Joint Court if said person had a will deposited with the Registrar and, if such be the case, obtain the will from him.

District Agent to ascertain if will exists.

(2) If no such will have been deposited with the Registrar the District Agent shall make enquiries from the relatives or neighbours of the deceased to ascertain if a will exists and if a will is found shall take possession of it.

12. (1) When a District Agent obtains possession of a will of a deceased person he shall forthwith notify the executors named therein and shall publish the contents thereof by reading the same in an open Court held in the area in which the testator resides or had his permanent home.

District Agent to inform executors and publish the will.

(2) The executors and all persons who have an interest in the deceased's estate, or would have had if the deceased had died testate, shall be given at least seven days notice of the date on which the said public reading shall take place.

13. (1) On the publication of a will the Native Court shall give to the executor, or executors or such of them as are not under disability, or have not refused to act, a document of authority in the form as may be prescribed.

Document of Authority to executors to act.

(2) The Native Court shall not issue a document of authority unless it is satisfied that adequate provision has been made for the maintenance of the deceased's spouse, and children under the age of sixteen. Where the Court considers that adequate provision has not been made it shall vest such part of the property of the deceased as it thinks fit, in the said spouse and children.

(3) Such document of authority shall vest all the property of the deceased, with the exception of any property which the Court has vested in accordance with paragraph 2 of this Section, in the executor or executors and shall authorise any person who is in possession of any property of, or is indebted to, the testator to sell or dispose of such property or discharge such indebtedness to the executors.

14. On the issue of the document of authority the executors shall proceed to ascertain and collect all the property of the deceased and shall discharge thereout all his debts and obligations; thereafter they shall proceed to carry out the directions of the deceased.

Duties of executors.

Any person who delivers any property of the testator, or discharges an indebtedness to the testator as provided by Sub-section (3) of Section 13, by payment to the executors or any one of them to whom a document of authority has been issued shall be released from all obligations that might otherwise attach to such property or discharge.

Obligations to the estate.

Any person who conceals or fails to disclose the whereabouts of, or to hand over to a District Agent of the area, a will of a deceased person shall be guilty of an offence and on conviction shall be liable to a fine of fifty-eight pounds sterling or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

Penalty for concealing a will.

(1) Where any doubt exists as to the validity or the true meaning of a will the executors or any of them, or any person having an interest in the will may apply to the Court to have the validity of the will determined or the will construed.

Validity or construction.

(2) In construing a will the Court shall not be bound by any technical terms of what might otherwise be considered technical terms but shall be concerned solely to ascertain the true intention of the deceased.

18. The executors or any of them shall be liable personally for any debt of the testator of whose existence they were aware only to the extent of the estate vested in them under the provisions of this Regulation and shall not personally be liable either jointly or severally for anything done in good faith in accordance with the provisions of the will, the document of authority or a direction of the Court.

Executor's liability.

19. The Court may at any time, on being satisfied that it is desirable so to do, either on the application of any person interested in the estate or of its own volition remove an executor and, should think fit, appoint another in his place.

Removal and substitution of an executor.

20. On the death of an executor the Court may appoint another person to replace such deceased executor.

Death of an executor.

21. The estate of a testator vested in an executor who has died or been removed by the Court shall vest in the remaining executor or executors (if any) and any new executor appointed under the provisions of this section.

Estate vests in surviving and new executors.

22. (1) Any property devised or bequeathed to an infant shall remain vested in, and shall be administered by the executor or executors for the benefit of the infant until such time as the infant attains the age of twenty-one.

Infant's property.

(2) On an infant attaining the age of twenty-one all property vested in the executor or executors on his behalf shall vest in the infant. The same shall apply should the child marry before the age of twenty-one.

23. Notwithstanding the provisions of Section 22, the Court may authorise the sale of any, or any part of property vested in an executor or executors for the benefit of an infant and may order the proceeds to be invested in such manner as to the Court may seem fit to be employed in whole or in part for the benefit of the infant in such manner as the Court shall direct.

Court may authorise sale of infant's property.

24. Any executor who—
 (a) wilfully deals with an estate, or any part thereof vested in him in a manner not authorised by the will or by the Court; or
 (b) wilfully disobeys or fails to carry out any order or direction given to him by the Court in relation to the will; or
 (c) wilfully fails satisfactorily to account to the Court for any such estate,

Penalty for executor's wilful mismanagement.

shall, without prejudice to any other proceedings to which he may be liable under the Native Criminal Code or otherwise be guilty of an offence and on conviction therefor shall be liable to a fine not exceeding fifty-eight pounds sterling or to a term of imprisonment not exceeding six months or to both such fine and imprisonment.

25. Where the intention of a testator is ascertainable as to part of a will, effect shall be given to that part of the will notwithstanding the failure of the remaining part.

Testator's intentions only ascertainable in part.

26. No persons shall succeed to any property, benefit or advantage on the death of another if such person—

Incapacity to benefit.

- (a) has been convicted of the murder or manslaughter of the deceased;
- (b) has by coercion, fraud or undue influence caused the deceased to make a will;
- (c) has by coercion, fraud or undue influence prevented the deceased from making or revoking a will;
- (d) has aided, abetted, counselled or procured any person to commit any of the acts set out in paragraph (a), (b) or (c) of this Section.

27. Any person who wilfully interferes with, appropriates, deals with or disposes of, or in any way uses the whole or any part of the estate of a deceased testator otherwise than for the purpose of preserving such estate or in accordance with the instructions of an executor or an order of the Court shall be guilty of an offence and on conviction therefor shall be liable to a fine not exceeding one hundred and sixteen pounds sterling or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Penalty for interfering with estate of deceased testator.

28. The Resident Commissioners may make Joint Rules prescribing the fees to be paid under the provisions of this Regulation for anything which may be or is to be prescribed and generally for the better carrying out of the provisions of this Regulation.

29. This Regulation may be cited as the Joint Native Wills Regulation No. 5 of 1969 and shall come into operation on the day of its publication in the Condominium Gazette.

Citation.

Dated at Vila this 25th day of March, 1969.

RADIAN

C. H. ALLAN

Resident Commissioner
for the French Republic.

Her Britannic Majesty's
Resident Commissioner.