

CONDOMINIUM DES NOUVELLES-HEBRIDES
NEW HEBRIDES CONDOMINIUM

ARRETE CONJOINT 3 de 1930

et
5 de 1930

JOINT REGULATIONS 3 of 1930

and
5 of 1930

JOINT REGULATION NO. 3 of 1930

JOINT REGULATION No. 5 of 1930

To provide for the establishment in the New Hebrides of a Registry of Land Titles and to regulate the registration therein of Instruments affecting land in the said Group.

Joint Regulation No. 3 of 1930 was published in Condominium Gazette No. 34 and is reprinted as amended by the following Joint Regulations (and includes J.R. 5 of 1930 which refers to it).

8 of 1955 Condominium Gazette No. 188

39 of 1964 Condominium Gazette No. 225

16 of 1969 Condominium Gazette No. 283

5 of 1971 (Eng. Text) Condominium Gazette No. 301

21 of 1973 Condominium Gazette No. 326

J.R. 5 of 1930 Condominium Gazette No. 41

Amended by 7 of 1931 (Eng. Text) Condominium Gazette No. 43

Made by His Britannic Majesty's High Commissioner for the New Hebrides and the High Commissioner for the French Republic for the New Hebrides in accordance with the provisions of Article XXVI, of the Anglo-French Convention of 1914.

Preamble.

1. There shall be an office at Vila for the registration establishing rights over land in the New Hebrides, which shall be called the Registry of Land Titles, and the High Commissioners shall appoint any fit and proper person to be Registrar of Land Titles who shall under the direction and supervision of the Resident Commissioners be authorised to execute the provisions of this Regulation. He shall receive such salary as the High Commissioners may from time to time determine.

Registry office to be established at Vila.

2. The High Commissioners may appoint Deputy Registrars and such other officers as may be necessary for carrying out the provision of this Regulation.

Deputy Registrars.

3. The Registrar when appointed shall take an oath before the Court faithfully to carry out his duties under this Regulation.

Registrar to take Oath.

4. The Registrar shall have a seal of office with which he shall seal all instruments registered by him.

Seal.

5. The duties of the Registrar are defined in Article 26 paragraph 3 of the Anglo-French Convention of the 6th August 1914.

Duties of Registrar.

6. The registration of an immovable shall be carried out on terms as specified in and annexed to this Regulation, namely, numbers 1a, 2 and 2a.

Upon the forms numbers 1 and 1a shall be inscribed in extenso the judgment of the Joint Court.

Particulars to be recorded in Forms 1, 1a, 2 and 3a.

Upon the forms numbers 2 and 2a, which shall constitute the Certificate of Title, shall be inscribed in accordance with the provision of Article 26, Section 4, B. of the Anglo-French Protocol of 1914, firstly the particulars concerning the immovable, the owner and the rights. Forms 2 and 2a shall incorporate the date both of the judgment and of the issue of the Certificate of Title. Thereafter shall be set out therein a summary of the dealings in the property, in the sequence of their entry in Form No. 2.

7. All Forms relating to the same registration shall bear the same number. They shall be filed in the order of their completion in a loose leaf binder. The Forms shall bear, instead of serial numbers, the letters of the alphabet in sequence. On Form No. 1 shall be inscribed the date, and a mention of the insertion of every additional form, together with its appropriate letter of the alphabet.

Procedure.

Every Form as brought into use shall be inscribed with its appropriate letter and number, together with the signature and seal of the Registrar.

Each register shall commence with a table of contents, consisting of one or more sheets describing each transaction in not more than one line, and shall also show all cancellations of Forms which may occur.

The total contents of the loose leaf binders, as herein before defined, shall constitute the Land Titles Register.

Land Titles Register.

8. To every owner of real property shall be delivered an authentic duplicate of the corresponding title deed Forms 2 and 2a, which shall be inscribed on a Form No. 3 of which a specimen is annexed hereto.

Authentic Duplicate of Title.

A certified copy of the plan of the immovable shall be attached hereto.

Plan to be attached.

9. To every holder of a right other than a right to real property shall be delivered a true extract of his right. This shall be inscribed on a Form No. 4 of which a specimen is annexed hereto. On this Form shall be inscribed—

Provision of Extracts in cases of charges on property.

- (a) The date of the judgment of the Joint Court upon the immovable and the date of the issue of the said form No. 2;
- (b) The designation of the said immovable, its description, its situation and the extent of its boundaries.
- (c) The designation of the owner or owners.
- (d) A summary of the instrument constituting the right, and of subsequent instruments modifying such right.
- (e) Charges which have priority over the right constituted by the extract.

Particulars to be recorded.

10. Any transfer and any mortgage right or charge existing when or created over the land affected by the Certificate shall be void unless or until the same be registered and countersigned by the Registrar.

Transfers, Charges, etc. to be void until registered.

11. No instrument affecting land in the New Hebrides, of which a certified plan has not already been filed in the Registry, may be registered unless it contains a proper plan and description of the land concerned made or certified by an official surveyor.

Plans to be submitted in cases.

12. Every instrument presented to the Registrar for registration shall be accompanied by a translation into the French or English language as the case may require, and such translation shall be certified by an official translator.

Documents to be translated.

13. Every instrument registered in respect of or affecting the same estate or interest shall notwithstanding any express implied or constructive notice be entitled to priority in regard to third parties according to the date of registration and not according to the date of such instrument itself.

Priority of Instruments.

14. When by inheritance, sale, assignment or any other cause, registered property shall be apportioned, the registration shall be cancelled, and there shall be made as many registrations of the new properties established by the division of the original property. In these new entries the original registration number shall be shown. Certified plans drawn up by a qualified surveyor shall be attached to the file containing the new registrations. Nevertheless the provisions of Article 26, paragraph 8, of the Anglo-French Convention of the 6th August, 1914, shall apply to a vendor who retains a portion of the property.

Subdivision.

15. If the duplicate of the Title to the property or the true Extract of Title, is lost or destroyed, the interested party shall bring the fact to the notice of the Registrar, who shall publish in the Condominium Gazette a notice cancelling the document lost or destroyed and, three months after the publication of the Gazette containing such notice, shall issue to the owner a new duplicate which shall show the number of the original and shall be in conformity therewith. Such duplicate shall show the cancellation of the original and indicate clearly that it constitutes a duplicate and shall also bear the same number as the original. (These special circumstances shall be stated in the Register.)

Lost or destroyed Certificate.

16. In order to effect registration of rights or other encumbrances burdening the property, it shall be necessary to furnish the Registrar with the deed or instrument in as many originals, plus one, as are required by the law governing the said deed or instrument publishing such rights or encumbrances, together with the Certificate of Title, and, if required, the True Extract of Title. Provided that such

Registration of Rights or Encumbrances.

ed or instrument shall bear an indication thereon of the law under which it was made.

The Registrar shall endorse the Certificate of Title and the True Extract of Title and all the originals. He shall place one of the originals, which shall be the only one relevant as judicial proof, in the appropriate file and deliver the others, and the true extract of Title, to the persons entitled thereto. He shall return the Certificate of Title so endorsed to the owner of the property or his duly constituted agent.

[Should any person, the holder of a Certificate of Title, refuse or neglect to produce the same to the Registrar when required for the purposes of this Article, the following procedure shall be adopted—

1. The holder of a real right which he wishes to have endorsed on the Land Title, shall by registered letter request the possessor of the Certificate of Title to produce this document to the Registrar with a copy of the aforesaid letter.
2. After the expiry of the period of eight days, if the Certificate of Title has not been produced to the Registrar, the Registrar shall, by registered letter, serve on the possessor of the Certificate of Title, a notice to produce this document within eight days, under pain of cancellation and replacement at his expense.
3. If the possessor of the Certificate of Title, does not comply with the terms of this notice the Registrar shall then proceed—
 - (a) to cancel the Certificate of Title, and such cancellation shall be noted on the Land Title and brought to the notice of the public by means of publication in the usual places;
 - (b) to prepare a new Certificate of Title on which the real right in question shall have been noted, and this Certificate of Title shall not be delivered to the person entitled thereto until he shall have paid the prescribed fees.]

J.R. No. 8
of 1955.

17. On the production of any encumbrance having thereon an endorsement signed by the encumbrancee in conformity with the requirements of the law under which the same was made and evidencing the discharge of the whole or part of the said encumbrance, the Registrar shall make an entry thereof in the register, on the Certificate of Title and on the True Extract of Title, noting that such encumbrance is wholly or partially discharged as the case may require.

Procedure
for removal
of encumbrances in
part or
whole.

18. If an instrument be executed in any part of the world where the law the original and the certificate of proof thereof, certified by a public officer in whose custody the original is kept shall be registered by the Registrar in the same manner as the original instrument, provided the original shall have been proved as is hereinbefore provided.

Copies of
Original
Instruments
to be
certified.

[19. Every signature shown on an instrument drawn up outside the group shall be legalised in accordance with the law of the country where the deed was executed. A certificate that these formalities have been complied with shall be endorsed on the document by the British or French Consular Officers.]

Legislation of documents drawn up outside the Group. J.R. No. 16 of 1969.

[20. Every signature shown on an unauthenticated instrument drawn up inside the group shall be legalised by the British or French District Agent of the District in which the deed is executed.]

Registration of instruments not authenticated. J.R. No. 16 of 1969.

21. The Registrar may refuse registration of any instrument in which in his opinion does not conform to the conditions for registration.

Registrar may refuse registration.

22. If the difficulty is of such a nature that it can be rectified, the Registrar shall fix a period for this to be done, and shall make an entry on the instrument that the document has been presented and the period. As soon as the requisite formalities have been completed, the registration shall be carried out, and shall be legally effective from the date of presentation.

Period for rectifying errors.

23. If the Registrar, on the application of any person, refuses to make an entry in the register, he shall give the applicant notice of his refusal, and shall set out therein his reasons for such refusal. Such applicant may thereupon summon the other party or parties to the Contract, or should the case arise, apply ex-parte, before the competent Court for its decision.

Appeal against Registrar in cases of refusal to register.

[24. (1) Any person who may consider himself entitled to challenge the registration of any endorsement may enter a caveat in the form prescribed by Schedule III to this Regulation with the Registrar. If the Registrar shall accept the caveat, he shall record the particulars thereof in the register and shall not enter in the register any endorsement referred to by such caveat until the same shall have been withdrawn or removed. He shall also send notice of the caveat to all affected persons.

Caveats. J.R. No. 5 of 1971.

(2) The caveator may by summons call upon the caveatee to appear before the competent Court within a period of two months, which period may be extended by three months by the Registrar in appropriate circumstances. At the expiration of such period, the caveat shall be struck out at the request of the caveatee, if the caveator has not instituted the said legal proceedings.

(3) If the Registrar shall refuse to accept a caveat, the procedure prescribed by section 23 shall be followed by the caveator.

(4) A record shall be made by the Registrar in the register of the withdrawal, striking out or removal of any caveat.]

25. The Registrar shall allow searches to be made at all reasonable times to be fixed by him, in any register book in his custody, and under his surveillance, and upon request and payment of the prescribed fees shall give copies or extracts of or from any register book, and shall certify all such copies or extracts.

Searches to be allowed and copies given.

26. Any person who shall make for the purpose of being inserted in the register, any false statement relevant to any matter therein required to be known and registered, and any person who shall wilfully destroy, injure, counterfeit, or in any other manner falsify any register book, registered endorsement or certified copy thereof or extract therefrom, or any person who shall be a party to any such offence shall be prosecuted before the Competent Court, and, in the case of natives who may be justiciable by the Joint Court, shall on conviction be liable to a penalty of not exceeding L. 10, or 240 francs, and one month imprisonment.

Offences.

27. The Registrar shall demand and receive the fees prescribed in the Schedule annexed, in respect of any act mentioned therein for which such fees are specified.

Fees.

28. All such moneys as shall be received by the Registrar in accordance with the provisions of this Regulation, shall be paid by him into the Condominium Treasury and shall form part of the Joint revenue.

Fees to form part of revenue.

29. The Registrar shall not be held responsible for any loss or damage occasioned by an act done in his official capacity in good faith.

Liability of Registrar.

30. The Resident Commissioners, acting jointly, may from time to time make, alter and revoke rules—

Resident Commissioners to have power to make rules, etc.

(a) For the regulation and guidance of the Registrar and of all persons acting under him.

(b) Adding to or altering any of the forms which are annexed hereto.

(c) Adding to or altering the fees specified in the Schedule annexed.

[(d) to exempt by Joint Decision any person or corporate body from the payment of all or part of the fees due to the Registration of Lands Department.]

J.R. No. 39 of 1964.

31. This Regulation shall come into operation from the date of publication in the Gazette and may be known for all purposes as "New Hebrides Land Registration Regulation No. 3 of 1930".

Short title.

Published and exhibited in the Public Offices of the Resident Commissioners for His Britannic Majesty and for the French Republic at Vila, in the New Hebrides, this 14th day of March 1930.

HALY
The Resident Commissioner
for the French Republic.

GEO. A. JOY
His Britannic Majesty's
Resident Commissioner.

(SCHEDULE I

J.R. 21/1973.

A. REGISTRY FEES

Fixed Fees

- | | |
|---|-----------|
| 1. Issue of Certificate of Title with certified copy of plan of the property given with judgment from Joint Court .. each | 1,000 FNH |
| 2. Issue of Certificate of Title following partial transfer of a property each | 750 FNH |
| 3. Copies of documents (per folio of 25 lines to the page and about 15 syllables to the line, the folio comprising 2 pages) per folio | 25 FNH |
| 4. Photocopies of documents per folio | 25 FNH |
| 5. Certifying No. 3 and 4 above each copy or print | 125 FNH |
| 6. Registration of declaration of loss, damage or destruction of Certificate of Title each | 500 FNH |
| 7. Issue of Certificate of Title or certified Extract of Title with inscriptions to date each | 750 FNH |
| 8. Registration of documents to be inscribed in the Land Titles Register each inscription | 250 FNH |
| 9. Registration of documents not requiring inscription in Land Titles Register each | 125 FNH |
| 10. Fees for search in Register or file each | 125 FNH |

In each case the equivalent thereof in Australian dollars at the official rate of exchange.

Ad Valorem Fees

- | | |
|---|------|
| 1. Transfer of ownership or life interest, by sale, conveyance, exchange, auction sale (by order of the Court), gift, inheritance or by any other means | 4% |
| Leases and sub-leases; creation of easements; creation of mortgages (including further advances on the same security); emphyteusis (or long lease) and all registerable rights or charges | 1% |
| Satisfaction and transfer of mortgages; extension, transfer, cancellation, determination of leases and subleases; cancellation, determination, satisfaction of all registered rights or charges | 0.5% |
| Partition | 0.5% |

These ad valorem fees shall be increased by 100% in the following circumstances—

- (a) when a contract or a deed is presented for registration more than six months after its date of signature;
- (b) in the case of any change of ownership arising on death, when registration of transfer of property is made more than one year after the death if the heirs are living in the New Hebrides, in New Caledonia,

in Fiji, or in the Solomon Islands, or more than eighteen months after the date of the death if the heirs, or one of them, are living in any other place.

Subject to agreement otherwise between the contracting parties, the payment of these ad valorem fees shall be effected by the purchaser, the lessee, the person taking the benefit of an easement or of any other registerable right with the exception of a mortgage for which the fee shall be paid by the mortgagor.

The British, French and Joint Administrations shall be exempted from payment of any ad valorem fees which would normally be payable by them.

The fee to be charged for transfers of ownership or life interest shall be based on the total price expressed in the instrument of conveyance or, if no price is stipulated, upon the actual value thereof at the date of transfer as declared to the Registrar by the transferee.

The fee to be charged on exchanges shall be based upon the value of one of the lots when the exchanged immovable properties have the same value. When the lots have different values, it shall be based upon the higher value.

The fee to be charged on leases and subleases for a specific term shall be based on the longest term to which possession may extend. In the case of an unlimited term, the fee shall be based on a period of twenty years.

Where a mortgage has been created and the amount of the advance is not specified in the instrument the fee payable shall be assessed on the sum advanced as at the date of registration as evidenced by a certificate from the mortgagee. Any sum or sums subsequently advanced to the mortgagor on the same security which increase the amount of the advance beyond the sum in respect of which fees have been paid shall be declared to the Registrar within one month from the date thereof by a further certificate by the mortgagee and an additional fee shall be paid in respect of each such increase.

The fee to be charged on partitions shall be based upon the aggregate value of the lots. If the partition involves a balancing payment, the same shall be subject to a fee of 4% as prescribed in item 11 above.

3. Whenever the Registrar deems it necessary, he may order a valuation to be made by an expert who shall be appointed by the Judge of the appropriate national court or the President of the Joint Court, as the case may be. The cost shall be borne by the party liable for the fee if the valuation is inconsistent with the price or the declared value. Otherwise, the cost shall be borne by the Joint Administration.

4. The fees shall be computed in New Hebridean francs taking the sums rounded up to the next unit of one hundred francs, after the conversion of Australian dollars at the official rate of exchange as the case may require.

5. The fees shall be payable in advance, except that in instruments containing a suspensive clause, the ad valorem fees shall be paid within the three months following the fulfilment of such clause but a specific fee, at the rate prescribed in item 8 above, shall be charged at the time of registration.

B. TARIFF FOR SERVICES RENDERED BY SURVEY DEPARTMENT

Certified tracing or certified copy of plan, per hour FNH 400

Certified print from certified tracing, each FNH 200

Other prints:

(a) from a tracing belonging to Survey Department, per square metre FNH 800

(b) from a tracing supplied by applicant, per square metre .. FNH 300

(c) Print on film from a tracing supplied by applicant per square metre FNH 800

(d) minimum fee per order FNH 100

Computed points:

(a) point with reference mark, per point FNH 50

(b) point without reference mark, per point FNH 20

(c) minimum fee per order FNH 100

Surveying in the field

- (a) surveyor or assistant, per hour FNH 1.000
(b) chairman and labour, if not provided by the applicant.. actual cost

Office work:

- (a) calculation, drafting of plan or map, per hour FNH 800
(b) drawing, per hour FNH 400
(c) search of files, plans, maps or aerial photographs, per
hour FNH 600
(d) minimum fee, per order FNH 100

Payment shall be made in New Hebridean francs or the equivalent thereof in Australian dollars at the official rate of exchange.

Services mentioned under items 1, 2 and 3 shall be paid for in advance.

The British, French and Joint Administrations shall not be liable for payment of fees for any work done for their own purposes.

This Regulation may be cited as the Joint Land Registration (Amendment) (No. 2) Regulation No. 21 of 1973 and shall come into operation on the date of its publication in the Condominium Gazette.]

Citation and
commence-
ment.