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THE LAND ACQUISITION LAW (CAP. 81)

(1995 Revision)

Consolidated with Law 37 of 1985.

Revised under the authority of the Law Revision Law (19 of 1975).

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Cap. 81-1st January, 1964

Law 37 of 1985-19th December, 1985

Consolidated and revised this 8th day of August, 1995.

LAND ACQUISITION LAW

(1995 Revision)

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**Short title
Definitions**

LAND ACQUISITION LAW

(1995 Revision)

PART I-General

1. This Law may be cited as the Land Acquisition Law (1995 Revision).

2. In this Law-

“Court” means the Grand Court;

“Governor” means the Governor in Council;

“land” includes all land, whether covered with water or otherwise, and benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth, and, where such meaning may be inferred, any estate, term, easement, right or interest in or arising out of land;

“person” includes any corporation, either aggregate or sole, and any club, society, association or other body, or one or more persons; and

“person interested” includes every person who claims an interest in any compensation which is to be paid on account of the acquisition or occupation of land under this Law, but does not include a monthly tenant.

PART II-Acquisition

Preliminary notification

3. Whenever it appears to the Governor that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be gazetted and the Governor shall cause copies of such notification to be exhibited at suitable places in such locality.

Entry for purposes of survey, etc.

4. (1) Notwithstanding anything contained in any other law, as soon as a notification has been published and exhibited in accordance with section 3 it shall be lawful for any officer, either generally or specially authorised by the Governor, and for his servants and workmen-

- (a) to enter upon, survey and take levels of any land in such locality;
- (b) to dig or bore into the sub-soil;

- (c) to do all other acts necessary to ascertain whether the land is adaptable to the public purpose;
- (d) to set out the boundaries of the land proposed to be taken and the intended line of work, if any, proposed to be executed thereon;
- (e) to mark such levels, boundaries and line by placing marks and cutting trenches;
- (f) to cut down and clear away any part of any land, including any standing crop, bush, tree and any fence, in cases where the survey cannot otherwise be completed or where the levels cannot otherwise be taken or where the boundaries or line of the work cannot otherwise be marked; and
- (g) to do all such other acts as may be incidental to or necessary for any of the purposes aforesaid.

(2) Nothing in this section shall be deemed to authorise any person to enter into any building or upon any enclosed court or garden attached to a dwelling-house except with the consent of the occupier thereof, without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Compensation for damage

5. (1) So soon as conveniently may be after any entry has been made under section 4, the Governor shall pay for all damages done as a result of such entry.

(2) Where there is a dispute as to the amount so to be paid for any such damage, the Governor shall refer such dispute for the decision of the Court.

Declaration of intended acquisition

6. (1) Whenever it appears to the Governor that any particular land is needed for a public purpose, a declaration to that effect shall be gazetted.

(2) The declaration shall state the district in which the land is situated, the purpose for which it is needed, its approximate area and, where a plan has been made of the land, the place where such plan can be inspected.

(3) No declaration shall be made under this section in regard to any land save in cases where the compensation for the acquisition of the land is to be paid wholly or in part out of-

- (a) the revenues or funds of the United Kingdom Government; or
- (b) the public revenues or loan funds of the Islands.

(4) A declaration under this section shall be conclusive evidence that the land to which it relates is required for a public purpose.

Negotiations for purchase

7. (1) Whenever a declaration has been made under section 6 the Governor shall, without delay, enter into negotiations for the purchase of the land to which the declaration relates upon reasonable terms (which shall include early possession).

(2) It shall not be necessary for the Governor to await the publication of the declaration before he endeavours to conclude an agreement under this section.

(3) Nothing in this section shall be construed as prohibiting or delaying the procedure hereinafter provided for the compulsory acquisition of any land.

Power of Governor to direct compulsory acquisition

8. Where a declaration has been made and published as required by section 6, and where in respect of the land to which the declaration relates the Governor is satisfied that-

- (a) it has not been possible to conclude a satisfactory agreement under section 7;
- (b) the negotiations in connection with any such agreement have been or are being unduly delayed; or
- (c) it is not in the public interest to enter into such negotiations,

the Governor may, by order under his hand, proceed to acquire and to enter upon and take possession of the land compulsorily in accordance with this Law.

Marking out, etc., and notice of intention to take possession

9. (1) In every case where, under section 8, he acquires any land compulsorily, the Governor shall, without delay, cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured and (if no plan has been made thereof) a plan to be made of the same.

(2) The Governor shall then cause public notice to be given at convenient places on or near the land to be taken, stating the intention of the Government to take possession of the land and that claims to compensation for all interests in such land may be made to the magistrate.

(3) Such notice shall state the particulars of the land to be taken and shall require all persons interested in the land to appear personally or by agent before the magistrate at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for such interests and their objections, if any, to the measurements made under sub-section (1). The magistrate may, in any case, require such statement to be made in writing and to be signed by the party or his agent.

(4) The Governor shall also serve notice to the same effect on the occupier, if any, of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested as reside, or have agents authorised to receive service on their behalf, within the island in which the land is situate.

(5) Where any person so interested resides elsewhere and has no such agent, the notice shall be sent to him by post in a registered letter addressed to him at his last known residence, address or place of business.

Power to require statement as to persons interested

10. (1) The magistrate may require the owner or occupier of, or any person known or believed to be interested in, any land which the Governor has entered upon or which is to be acquired compulsorily under this Law to make or deliver to him at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition) a statement in writing containing, so far as may be practicable, the name of every other person possessing any interest in the land or in any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, the nature of such interest and the rents and profits, if any, received or receivable on account thereof for three years next preceding the date of the statement.

(2) Whoever being required under this section or section 9 to make or deliver a statement, without reasonable excuse refuses or neglects so to do, or who wilfully makes a false statement, is guilty of an offence and liable on summary conviction to a fine of five hundred dollars and to imprisonment for three months.

Enquiry and award

11. (1) On the day fixed for appearance before the magistrate in accordance with section 9(3), or on any other day to which the enquiry has been adjourned pursuant to subsection (2), the magistrate shall proceed to enquire into the

objections, if any, which any person interested has stated pursuant to a notice given under section 9(3), to the measurements made under section 9(1) and into the value of the land and the respective interests of the persons claiming the compensation, and shall make an award under his hand on-

- (a) the true area of the land;
- (b) the compensation which, in his opinion, should be allowed for land; and
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

(2) The magistrate may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him.

Filing of award

12. (1) Every award made under section 11 shall be forwarded to the Clerk of Executive Council and shall, except as hereinafter provided, be final and conclusive evidence as between the Governor and the persons interested, whether they have respectively appeared before the magistrate or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The magistrate shall give immediate notice of his award to such other persons interested as are not present personally or by their agents when the award is made.

Summoning witnesses

13. (1) For the purpose of enquiries under this Law the magistrate shall have all the powers of the Court to summon witnesses, administer oaths, compel witnesses to give evidence and compel the production of documents so as to elicit all such information as the magistrate may consider necessary, without being bound by the rules of evidence in civil or criminal proceedings:

Provided that if any witness objects to answer any question or to produce any document on the ground that it will tend to incriminate him, or on any other lawful ground, he shall not be required to answer such question or to produce such document, nor shall he be liable to any penalties for refusing to do so.

(2) Every summons issued under subsection (1) shall be signed by the magistrate and shall state the time when and the place where the person

summoned is required to attend and the particular documents which he is required to produce, and the summons shall be served on the person mentioned therein by delivering to him a copy thereof or by leaving with some adult person a copy thereof at his usual or last known place of abode in the Islands

(3) Whoever without lawful excuse fails or neglects to attend in obedience to any summons, or fails to answer any question put to him by the magistrate or to produce any document the production of which is required by the magistrate or to supply any information required by the magistrate, is guilty of an offence, and liable on summary conviction to a fine of fifty dollars and, in default of payment of such fine, to imprisonment for one month.

(4) Any person who intentionally gives a false answer to any question material to the subject of enquiry which may be put to him during the course of any proceedings before the magistrate shall be liable to be indicted and punished for perjury.

Computation of compensation

14. In determining the amount of compensation payable under this Law the magistrate shall be guided by sections 21 and 22.

Possession by Government

15. When the magistrate has made an award under section 11, the Governor may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Cases of urgency

16. (1) In cases of urgency, the Governor, though no award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9(2), take possession of any waste or arable land needed for public purposes. Such land shall thereupon vest absolutely in the Government free from all encumbrances.

(2) In every such case the Governor shall, at the time of taking possession, offer to the persons interested compensation for the standing crops and trees, if any, on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 22; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained

PART III-Reference to Court

Reference of unaccepted award to Court

17. (1) Any person interested who is not satisfied with the award made by the magistrate under section 11 may, by written application to the magistrate, require that the matter be referred by the magistrate for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the magistrate at the time when he made his award, within six weeks from the date of the award; or
- (b) in other cases, within six weeks of the receipt of the notice for the magistrate under section 12(2), or within six months from the date of the award, whichever period shall first expire.

Statement in writing by magistrate

18. (1) In making any reference under section 17, the magistrate shall state, for the information of the Court, in writing under his hand-

- (a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think are interested in such land;
- (c) the amount awarded for damages and paid or tendered under sections 5 and 16, or either of them, and the amount of compensation awarded under section 11; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

Notice by Court

19. Where any objection to an award is referred to the Court under section 17, the Court shall cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons-

- (a) the applicant;
- (b) all persons interested in the objection, except such of them as have consented without protest to receive payment of the compensation awarded; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Governor.

Procedure at enquiry

20. (1) The scope of the enquiry in every proceeding under section 19 shall be restricted to a consideration of the interests of the persons affected by the objection.

- (2) Every such proceeding shall take place in open Court.

Matters for consideration of Court

21. In determining the amount of compensation to be awarded for land acquired under this Law, the Court shall take into consideration-

- (a) the market value of the land at the date of the publication of the declaration relating thereto under section 6;
- (b) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the taking possession thereof;
- (c) any damage sustained by the person interested, at the time of the taking possession of the land, by reason of severing such land from his other land;
- (d) any damage sustained by the person interested at the time of the taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
- (e) if, in consequence of the acquisition of the land by the Governor, the person interested is compelled to change his residence or place of business, the reasonable expenses incidental to such change; and

- (f) any damage *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the taking possession of the land.

Matters not to be taken into consideration by Court

22. In determining the amount of compensation to be awarded for land acquired under this Law the Court shall not take into consideration-

- (a) the fact that the acquisition is compulsory;
- (b) the degree of urgency which has led to the acquisition;
- (c) any disinclination of the person interested to part with the land acquired;
- (d) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;
- (e) any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6 by or in consequence of the use to which it will be put;
- (f) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;
- (g) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or
- (h) any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Governor after the date of the publication of the declaration under section 6.

Limitations as to amount of award by Court

23. (1) Where the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the magistrate under section 11.

(2) Where the applicant has refused to make such claim or has omitted, without sufficient reason (to be allowed by the Court), to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the magistrate.

(3) Where the applicant has omitted for a sufficient reason (to be allowed by the Court) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the magistrate.

Terms of award by Court

24. (1) Every award under this Part shall be in writing and shall specify the amount awarded under paragraph (a) of section 21 and also the amounts respectively awarded under each of the other paragraphs of the said section, together with the grounds of awarding each of the said amounts.

(2) Every such award shall state the amount of costs incurred in the proceedings under this Part, by what persons and in what proportions they are to be paid.

(3) Where the award of the magistrate is not upheld, the costs shall ordinarily be paid by the Governor, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the magistrate that some deduction from his costs should be made or that he should pay a part of the Governor's costs.

(4) If the sum which, in the opinion of the Court, the magistrate ought to have awarded as compensation is in excess of the sum which he did award as compensation, the award of the Court may direct that the Governor shall pay interest on such excess at the rate of six per cent per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

PART IV-Appportionment of Compensation

Apportionment by agreement

25. Where there are several persons interested in any award under this Law, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Apportionment by Court

26. Where the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Governor may refer such dispute for the decision of the Court.

PART V-Payment

Payment of compensation

27. (1) On the making of an award under section 11, the Governor shall tender payment of the compensation awarded to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by one or more of the contingencies mentioned in subsection (2).

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Governor shall deposit the amount of the compensation in Court:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 17:

Provided also that nothing herein shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Law to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Governor may instead of awarding a money compensation in respect of any land, make any arrangements with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in subsection (3) shall be construed to interfere with or limit the power of the Governor to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

Money deposited in Court

28. (1) If any money is deposited in Court under section 27(2) and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall-

- (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held; or

- (b) if such purchase cannot be effected forthwith, then in such approved securities as the Court thinks fit,

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would, for the time being, have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied-

- (i) in the purchase of such other lands as aforesaid; or
- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Governor-

- (a) the costs of such investments as aforesaid; and
- (b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

Investment in certain cases

29. Where any money has been deposited in Court under this Law for any cause other than that mentioned in section 28, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited, or as near thereto as may be.

Interest

30. Where the amount of the compensation payable under this Law is not paid or deposited on or before taking possession of the land to be acquired, the Governor shall pay the amount awarded with interest thereon at the rate of six per cent per annum from the time of so taking possession until it has been so paid or deposited.

PART VI-Temporary Occupation of Land

Temporary occupation of land

31. (1) Subject to Part VII, whenever it appears to the Governor that the temporary occupation and use of any waste or arable land are needed for any public purpose, he may procure the occupation and use of the same for such term, not exceeding three years from the commencement of such occupation, as he thinks fit.

(2) The Governor shall give to the persons interested in the land notice in writing of the occupation and of the purpose for which the land is needed, and shall, for the occupation and use of the land and for the materials, if any, to be taken from the land, pay to them such compensation, either by way of a gross sum of money or by way of monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

(3) Where the Governor and the persons interested differ as to the amount or form of the compensation or as to the apportionment thereof, the Governor shall refer such difference for the decision of the Court.

Power to enter and take possession

32. (1) Upon the payment of any compensation, the execution of any agreement or the making of any reference under section 31, the Governor may forthwith enter upon, occupy and use the land, and may further permit and direct the occupation and use thereof by such persons and in such manner as he may deem necessary for the public purpose for which the land is occupied.

(2) Upon the expiration of the term for which any land has been occupied and used under this Part, the Governor shall make or tender to the persons interested in the land compensation for the damage, if any, done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein.

(3) Where any land occupied and used for any term by the Governor under this Part has by reason of such occupation and use become permanently unfit for the purpose for which it was used immediately before the commencement of such term, the Government, if the persons interested in the land so require, shall proceed under this Law to acquire the land as if it were needed permanently for a public purpose.

(4) Where the Governor and persons interested in the land differ as to the condition of the land at the expiration of the term, or as to any matter connected

with the said agreement, the Governor shall refer such difference for the decision of the Court.

PART VII-Miscellaneous

Service of notices

33. (1) Service of any notice under this Law shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, on behalf of the Governor, and, in the case of any other notice, on behalf of the Governor or by the magistrate or the Court (as the case may be).

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof upon some conspicuous part of the land to be acquired and upon the door of the Courthouse:

Provided that, if the Governor, magistrate or Court so directs, a notice may be sent by post, in a registered letter addressed to the person named therein at his last known residence, address or place of business, and service of it may be proved by the production of the addressee's receipt.

Obstructing lawful authority

34. Whoever wilfully obstructs any person in doing any act authorised by section 4 or 9(1), or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on summary conviction be liable to a fine of one hundred dollars and to imprisonment for one month.

Withdrawal from acquisition

35. (1) Notwithstanding anything in this Law contained, the Governor may, at any time, withdraw from the acquisition, or from the occupation and use, of any land before possession thereof has been taken.

(2) Whenever the Governor withdraws from any such acquisition or occupation, the magistrate shall determine the amount of compensation due for

any damage that may have been done to such land and which has not already been paid as provided in this Law, and the Governor shall pay such amount to the persons entitled thereto, and shall further pay to the persons interested all such costs as have been reasonably incurred by them by reason, or in consequence, of any proceedings for the acquisition or occupation of the land.

(3) Part III shall apply, so far as may be practicable, to the determination of the compensation payable under this section.

Acquisition of part of property

36. (1) The powers under this Law shall not be exercised for the purpose of acquiring a part only of any house, mill, factory or other building in any case where such part is reasonably required for the full and unimpaired use of the house, mill, factory or other building, and where any person interested states that he desires that the whole of the house, mill, factory or other building shall be acquired:

Provided that such interested persons may, at any time before the magistrate has made an award under section 11, by notice in writing to the Governor, withdraw or modify his desire so stated that the whole of such house, mill, factory or building shall be so acquired.

(2) The question whether or not any part of a house, mill, factory or building is reasonably required for the full and unimpaired use of the house, mill, factory or building, shall, if the parties cannot agree thereon, be determined by the magistrate.

(3) Where any question arises as to whether or not any land which it is proposed to acquire under this Law is used in connection with any part of a house, mill, factory or building which is reasonably required for the full and unimpaired use of the house, mill, factory or building within the meaning of this section, the Governor shall refer the matter for the decision of the magistrate and shall not take possession of the particular part of the land as to which the reference is made pending the determination of such question

(4) Where the Governor is of opinion that any claim under paragraph (a) of section 21(1) by a person interested, on account of the severing of the land to be acquired from his other land, is unreasonable or excessive, he may order the acquisition of the whole of the land of which the first land sought to be acquired forms a part.

(5) Where the Governor orders the acquisition of the whole of the land under subsection (4), no fresh declaration or other proceedings under sections 6 to 10, shall be necessary; but the Governor shall without delay furnish a copy of the order to the person interested and the magistrate shall thereafter proceed to make his award under section 11.

Exemption from stamp duty and fees

37. Notwithstanding anything contained in any other law, no instrument or document relating to anything lawfully done under or for the purposes of this Law shall be chargeable with any stamp duty, registration or recording fee.

Notice of legal proceedings

38. No suit or other proceedings shall be commenced or prosecuted against any person for anything done in pursuance of this Law, without giving to such person a month's previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends.

Publication in consolidated and revised form authorised by the Governor in Council this 8th day of August, 1995.

Mona N. Banks-Jackson

Clerk of Executive Council