

FOREST RESOURCES AND TIMBER UTILISATION (AMENDMENT) BILL 1990

(NAME OF BILL)

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 Notice of Presentation
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 (~~Authorisation from Minister of Finance under s.60 of Constitution~~)

FROM: Attorney General's Chambers

TO: Minister
 (for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: ~~Minister of Finance~~
 (~~for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution~~)

TO: Clerk to National Parliament
 (for certificate by Speaker) *Stuhlschneider 9/5/90*

TO: Attorney General's Chambers
 (for printing)

TO: Clerk to National Parliament
 (for reference during 1st, 2nd and 3rd Readings)
 (Date passed: 15/5/90 Act No. 7/90) *Stuhlschneider 15/5/90*

TO: Attorney General's Chambers
 (for checking before Assent) *19/6/90*

TO: Governor-General
 (for Assent) *20/6/90*

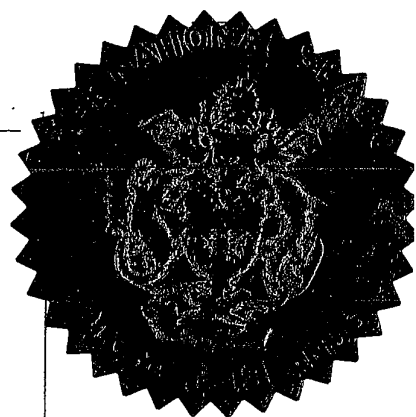
TO: Clerk to National Parliament
 (for distribution):

- 1 copy Attorney General's Chambers *✓ 20/6/90*
- 1 copy Ministry *Angana 21/6/90*
- 1 copy Parliament Office
- 1 copy Registrar of the High Court *20/6/90*



**FOREST RESOURCES AND
TIMBER UTILISATION
(AMENDMENT) ACT 1990**

(NO. 7 OF 1990)



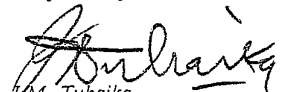


FOREST RESOURCES AND TIMBER UTILISATION (AMENDMENT) ACT 1990

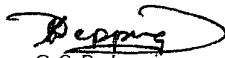
(NO. 7 OF 1990)

Passed by the National Parliament this fifteenth day of May 1990.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.


M. Tuhaika
Clerk to the National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this twentieth day of June 1990.


G.G.D. Lepping
Governor-General

Date of commencement: see section 1.

AN ACT to Amend the Forest Resources and Timber Utilisation Act, to repeal Part IIA of the Act and introduce new provisions for the acquisition of timber rights on customary land.

ENACTED by the National Parliament of Solomon Islands.

Short title
and
commence-
ment.

1. This Act may be cited as the Forest Resources and Timber Utilisation (Amendment) Act 1990 and shall be deemed to have come into operation on the 13th day of January, 1978.

Repeal and
replacement
of Part IIA
of Cap. 90.

2. Part IIA of the Forest Resources and Timber Utilisation Act is hereby repealed and the following new Part substituted therefor -

“PART IIA - APPROVED TIMBER
AGREEMENT AFFECTING CUSTOMARY LAND

Interpretation.

5A. In this Part, unless the context otherwise requires -

“appropriate Government” means the respective Provincial Executive in the province;

“approved agreement” means an agreement approved under the provisions of this Part;

“area council” means the area council constituted under the respective Provincial Ordinances;

“Commissioner” means the Commissioner of Forest Resources;

“timber rights” include a right to -

- (a) inspect, survey, enumerate, mark and map any area or trees;
- (b) cut, trim, lop, top and crop any tree;
- (c) plant and cultivate any seed, seedling or tree;
- (d) take any measure whatsoever for the healthy growth and protection of any tree;
- (e) have access to and extract (whether with or without any agents, servants, workmen, animals, vehicles and machines or all or any of them) any timber or trees;
- (f) take any timber into possession or ownership;
- (g) for the purpose of any of the things specified in paragraphs (a) to (f), construct and maintain -
 - (i) any works (including railways, tramways, harbours, ports areas, wharfs, jetties, bridges, dams, pipelines, aerodromes, yards and camps);
 - (ii) any buildings and structures (including warehouses, sheds, mills, kilns, offices, houses and fences); and
 - (iii) any cables, power supplies, lines or other means for the distribution of power, cranes, weightbridges, sawbenches or other things;
- (h) for any of the aforesaid purposes -
 - (i) subject to any provisions of the relevant legislation relating to water, to take and use water; and

- (ii) to quarry, extract, move and use any stone, earth or other road making or building material.

5B. (1) Any person who wishes to carry on business in Solomon Islands as a timber exporter or sawmiller, and desires to acquire timber rights on customary land shall make application to the Commissioner in the prescribed form and manner and obtain his consent to negotiate with the appropriate Government, the area council and the owners of such customary land.

Application
to
Commissioner
for consent
to
negotiate.

(2) When the Commissioner gives his consent to an application made under subsection (1), the Commissioner shall forward a copy thereof to the appropriate Government and to the appropriate area council.

5C. (1) Upon receipt of a copy of the application forwarded to it under section 5B, the area council shall fix a place within the area of its authority and a date, not being earlier than two months, nor later than three months, from the date of receipt of the copy of the application for a meeting to be held with the appropriate Government, the customary landowners and the applicant to determine the matters specified in subsection (3).

Duties of
area
council in
respect of
applications
forwarded
under this
Part.

(2) Notice of the meeting referred to in subsection (1) shall be given within one month of the receipt of the application in a manner the area council considers most effective, to persons who reside within such area and appear to have an interest in the land, trees or timber in question.

(4) Any agreement reached pursuant to discussions held under subsection (3) shall be reduced to writing and be forwarded to the Commissioner with the recommendation of the area council with particular reference to -

- (a) the quantum of profit sharing, if any, agreed upon; and
- (b) the extent of participation, if any, of the appropriate Government,

in the applicants venture.

(5) Upon agreement being reached pursuant to subsection (3), the applicant shall carry out such investigations as are necessary to identify and describe the forest resources on the land and any areas which should be excluded from the application on grounds of environmental or social values.

Area Council's determination in respect of matters relating to application.

5D. (1) Where no agreement is reached between the applicant and the customary landowners, the council shall recommend to the Commissioner to reject the application and the Commissioner shall reject the application accordingly.

(2) On making its determination under section 5C(3), the council shall as soon as practicable -

- (a) issue a certificate in the prescribed form setting out its determination;
- (b) give the public notice of its determination in the same manner as notice under section 5C(2) was given; and
- (c) forward the original certificate to the appropriate Government.

(3) On receipt of the duly issued certificate in accordance with subsection (2), the appropriate Government shall forward the certificate to the Commissioner and a copy thereof to the applicant.

Appeals against act or determination of area council.

5E. (1) Any person who is aggrieved by the determination of the council made under section 5C(3)(b) or (c) may, within one month from the date public notice was given in the manner set out in section 5D(2)(b), appeal to the customary land appeal court having jurisdiction for the area in which the customary land concerned is situated and such court shall hear and determine the appeal.

(2) Notwithstanding any provision to the contrary in any other law, the order or decision of a customary land appeal court on any appeal entertained by it under subsection (1) shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

(3) It shall be the duty of the clerk to any customary land appeal court to forthwith notify the Commissioner of the lodging

in his court of an appeal under this section and where such appeal is finally determined inform the Commissioner and the appropriate Government of the result of the appeal and forward to each of them a copy of the relevant judgement.

5F. On receipt of the certificate issued under section 5D and on being satisfied that -

- (a) the period for lodging an appeal under section 5E has lapsed;
- (b) if an appeal has been lodged, it has finally been disposed of; and
- (c) the agreement for the granting of the timber rights referred to in such certificate has been duly completed in the prescribed form and manner and that the parties to, and the terms and provisions of, such agreement accord with such certificate or, where there has been an appeal under section 5E with the order of the court determining such appeal,

the Commissioner shall recommend to the appropriate Government to grant approval to such agreement.

5G. (1) Upon receipt of a recommendation made under section 5F and the relevant agreement duly stamped, the appropriate Government may complete a certificate in the prescribed form approving the agreement and forward a copy to the Commissioner.

(2) The Commissioner on receipt of the copy of the certificate

Commissioner's
recommendation.

Certificate
of
approval.

- (f) the rates of royalty payments, the method of calculation and the manner of payment thereof;
- (g) the disposal of waste products and the protection of the environment;
- (h) the manner and nature of reforestation so as to protect the timber industry;
- (i) prohibiting or regulating the taking of any specified kind of timber from any customary land; and
- (j) the amount of timber, removed from the land that is the subject of the agreement, required to be processed by the applicant.

Advice of
Commissioner
and other
officers to
be available.

5I. Any person proposing to negotiate the grant of any timber rights affecting customary land may be entitled to seek and to be given, in relation to any question touching on those rights, the advice of the Commissioner or any public officer nominated by him.

Jurisdiction
in relation
to approved
agreements.

5J. Notwithstanding any provision of any other law to the contrary, original jurisdiction to hear and determine any cause or matter arising out of, or relating to an approved agreement shall be exercised only by the High Court.

Power to
enter
customary
land.

5K. Every enforcement officer and every forest officer shall have authority to enter any customary land to exercise the powers or to perform the functions conferred on him by this Act.

Savings.

5L. (1) For the avoidance of doubt it is hereby declared that -

- (a) any licence granted under Part IIA of the principal Act prior to coming into operation of this amending Act shall be deemed to have been validly, properly and lawfully granted notwithstanding that the provisions of that Part in force at the time of such grant may not have been complied with in every particular or requirement;
- (b) any agreement for timber rights in the prescribed form in respect of which a certificate of approval has been issued under section 5F of the principal Act prior to coming into operation of this amending Act shall be deemed to be an approved agreement validly, properly and lawfully granted under the provisions of this Act, notwithstanding that the provisions of sections 5B and 5C of Part IIA of the principal Act in force at that time may not have been complied with in every particular or requirement; and

- (c) upon coming into force of this Act any reference in any subsidiary legislation (including the form of agreement in Form 4) made under the principal Act prior to the commencement of this amending Act shall be construed or deemed to have been made under the corresponding provisions of this Act.

